

ALABAMA WORKFORCE INVESTMENT SYSTEM

Department of Economic and Community Affairs
Workforce Development Division
401 Adams Avenue
Post Office Box 5690
Montgomery, Alabama 36103-5690

SEP 18 2001

**GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO. PY 2000-20,
Change 1**

**SUBJECT: Workforce Investment Act (WIA) Grievance and Complaint
Procedures**

- 1. Purpose.** This Directive includes additional instructions for Local Workforce Investment Area (LWIA) grievance and complaint procedures, and transmits State-level WIA grievance procedures and discrimination complaint procedures.
- 2. Discussion.** WIA section 181(c) and 20 CFR Part 667, subpart F require that each State and local area have a procedure for resolving grievances and complaints from participants and other affected or interested parties alleging violations of title I of the WIA. WIA nondiscrimination regulations require States to adopt and publish discrimination complaint procedures (29 CFR §37.76 and 37.77). Please note that program grievances/complaints and discrimination complaints are handled differently, and the procedures are described separately in the attachments that follow. Asterisks denote changes and additions to the LWIA guidelines issued in Governor's Workforce Development Directive No. PY2000-20.
- 3. Action.** Each LWIA must ensure that its grievance and complaint procedures comply with WIA regulations and these guidelines. All WIA title I recipients must comply with the WIA and its regulations regarding grievances and complaints.

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- 4. Contact.** For information and assistance, please contact Lillian Patterson, Equal Opportunity Officer, at (334) 242-5861 (voice) or (334) 242-2408 (TDD) or 711 (Alabama Relay Center), or by e-mail at lillianp@adeca.state.al.us.

A handwritten signature in black ink that reads "Steve Walkley". The signature is written in a cursive style with a large initial "S".

Steve Walkley, Division Director
Workforce Development Division

Attachments

I. Guidelines for Local Workforce Investment Area Grievance Procedures Under the Workforce Investment Act (WIA)

Scope and Purpose

Each local workforce investment area in the Alabama Workforce Investment System must establish and maintain grievance procedures. The procedures must provide for resolution of grievances or complaints from participants and others affected by the local workforce investment system, including complaints about WIA Title I-funded programs and services administered by One-Stop partners and service providers. Local area procedures should include a process for referring grievances and complaints related to One-Stop partners' programs (non-title I-funded) to the appropriate partner agency.

Local area grievance procedures must be designed to resolve grievances or complaints that allege violations of Title I of WIA. Employee grievances or complaints related to terms and conditions of employment will be handled according to procedures established by employers. Discrimination complaints will be handled according to procedures established under WIA regulations at 29 CFR Part 37. Complaints involving criminal fraud, waste, abuse or other criminal activity will be handled according to procedures established under the Department of Labor's Incident Reporting System (20 CFR §667.630).

References

WIA sections 181(c) and 188(e); 20 CFR §667.600; and 29 CFR §§37.25(d), 37.70-37.72, and 37.77.

General Requirements

At a minimum, local area grievance procedures must include the following elements.

- **Notice.** A method of notifying participants and other interested parties of grievance procedures and their rights to use the procedures. Reasonable efforts must be made to ensure that information is available to and understandable by participants and others, including persons of limited-English speaking ability, youth, and persons with disabilities that might affect their ability to read, hear or otherwise access information regarding grievance and complaint procedures.

Local areas must provide information about their grievance and complaint procedures to subrecipients, service providers, and One-Stop partners, and must ensure that every entity to which they award title I funds notifies participants of the grievance and complaint procedures.

- **Time Limits.** Grievances and complaints, except those alleging discrimination, must be filed within one (1) year of the alleged violation.
- **Records.** All records of grievances and complaints (e.g., documentation of informal resolution, investigation reports, hearing records, etc.) will be maintained for no less than three (3) years from the date of final resolution.
- **Confidentiality.** Local areas will ensure that complaints, actions taken, and the identity of complainants will be kept confidential to the maximum extent possible, unless disclosure is essential to a fair determination.

- **Prohibition Against Retaliation.** It is a violation of WIA Section 184 (f) to discharge or in any other manner discriminate against an individual because that individual has filed a complaint, instituted a proceeding under Title I, or testified in a proceeding or investigation under or related to Title I.
- **Due Process.** Local areas must ensure due process in the administration of their grievance procedures. At a minimum, the elements of due process include notice and opportunity to be heard.
- * ▪ **Other Remedies.** Local area grievance and complaint procedures may not prevent an aggrieved person or complainant from pursuing remedies under other Federal, State, or local laws.

Specific Elements Required in Local Area Procedures

- Opportunity for informal resolution and a hearing within sixty (60) days of the date a grievance or complaint is filed.
- Opportunity for an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure when an applicable collective bargaining agreement provides for such.
- Opportunity to appeal to the Alabama Department of Economic and Community Affairs (ADECA), Workforce Development Division (WDD) when (1) the local area does not issue a decision within sixty (60) days; or (2) either party to the complaint is dissatisfied with the local area decision. Appeals should be mailed within ten (10) days of receipt of an unsatisfactory decision or of the date by which the complainant should have received a decision to

Division Director
Workforce Development Division
Alabama Department of Economic
and Community Affairs
401 Adams Avenue
PO Box 5690
Montgomery, Alabama 36103-5690.
- * ▪ Local areas must identify at least one person in each career center who will be able to answer customers' questions about grievance and complaint procedures, to refer aggrieved persons to appropriate partner programs, and to assist customers who wish to file complaints. The identity of that person must be made available to all career center staff who have contact with customers. Each LWIA administrative entity must collect and maintain this information and submit a copy to Lillian Patterson, Equal Opportunity Officer (same address as the Division Director) by October 19, 2001.

* **Local Workforce Investment Area Role in Discrimination Complaint Procedures**

Filing a Discrimination Complaint

No person in the United States may be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I-funded program or activity based on that person's race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship

or participation in a WIA Title I-financially assisted program or activity (29 CFR § 37.5). Any person who believes that he/she, or any specific class of persons, has been or is the object of discrimination that is prohibited by WIA may file a written complaint, either by him/herself or through a representative, with the ADECA WDD Equal Opportunity Officer or the Director, Department of Labor, Civil Rights Center.

Receipt of Discrimination Complaints

Discrimination complaints filed in-State, including those involving local area activities, will be received and processed only at the State-level by the ADECA Workforce Development Division. However, local workforce investment areas may be requested/required to assist in State-led investigations and resolution efforts.

Local area grievance and complaint procedures must include a method of informing participants and others affected by or interested in local workforce investment area programs, activities and services of discrimination complaint procedures. At a minimum, local areas must inform participants, service providers, One-Stop partners, and other customers affected by or interested in local workforce investment area programs, activities and services of the right to file, and where and when to file discrimination complaints.

If a discrimination complaint is filed with a LWIA, the LWIA must forward the complaint to the ADECA WDD EO Officer no later than twenty-four (24) hours after receipt.

LWIAs must maintain records (a complaint log) of any discrimination complaints they or their recipients receive and refer to the WDD. Discrimination complaint logs must contain the name and address of the complainant; date the complaint was filed; disposition and date of disposition (referral and date of referral to the ADECA WDD EO Officer).

Where to File Discrimination Complaints: The complainant has the option of filing a written complaint with either

Lillian Patterson
Equal Opportunity Officer
Workforce Development Division
Alabama Department of Economic
and Community Affairs
401 Adams Avenue
PO Box 5690
Montgomery, Alabama 36103-5690
(334) 242-5300 (Voice)
(334) 242-2408 (TDD) or
dial 711 for Alabama Relay Center TTY

or

Director
Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue NW
Room N-4123
Washington, DC 20210

When to File: Discrimination complaints must be filed within 180 days of the alleged violation, unless the Director, Civil Rights Center, extends the time for good cause shown.

II. WIA STATE-LEVEL GRIEVANCE PROCEDURES **WORKFORCE DEVELOPMENT DIVISION**

Scope and Purpose

State-level procedures are established to resolve grievances and complaints that allege violations of title I of the Workforce Investment Act (WIA), regulations (20 CFR Parts 660-671), grants, or other agreements under WIA. The procedures are available to participants and other interested parties affected by Alabama Workforce Investment System statewide programs and activities. Statewide activities are those administered by, or otherwise conducted on behalf of, the Alabama Department of Economic and Community Affairs, Workforce Development Division (WDD). Statewide activities include, but may not be limited to, rapid response activities for dislocated workers; certification of eligible training providers; dissemination of (1) a State list of eligible training providers, (2) a list of eligible providers of youth activities, (3) information identifying eligible OJT and customized training providers, and (4) provider performance and cost information; incumbent worker training; evaluations for continuous improvement; provision of incentive grants; technical assistance to local areas that do not meet performance measures; assistance in establishing and operating one-stop systems; assistance to local areas with high concentrations of eligible youth; and operation of a fiscal and management accountability system.

State-level procedures are also established to receive and resolve appeals of decisions made by local workforce investment areas.

These grievance and complaint procedures do not apply to the following areas. Refer to the documents cited in parentheses, WIA regulations, or other directives for information about complaints and grievances in these areas.

- Complaints related to terms and conditions of employment from employees of the WDD, local workforce investment areas (LWIAs), or other WIA recipients (see specific employer's personnel policies and procedures).
- Non-designation of local areas (see applicable Governor's Workforce Development Directive [GWDD]).
- Denial/termination of training provider eligibility (see applicable GWDD).
- Audit disputes (see ADECA Audit Policy).
- Discrimination complaints (see attachment 3, this Directive)
- Complaints of fraud, abuse, or criminal activity in WIA programs and activities (see Department of Labor (DOL) Incident Report Procedures).

Retaliation Prohibited: It is a violation of WIA §184 (f) for any WIA recipient to discharge, discriminate against, or otherwise unlawfully deny any individual a benefit to which he/she is entitled under WIA title I because that individual files a complaint, institutes or causes to be instituted any proceeding under WIA title I, or testifies in any such proceeding.

Notice

All participants in Statewide programs and activities will be given a copy and an explanation of the ADECA WDD ***WIA Grievance and Complaint Procedures Form (WDD-24)*** at the time of application/registration. A signed and dated copy of the WDD-24 must be maintained in each participant's file. When grievance and complaint procedures are explained and/or made available in an alternative format to vision-impaired applicants/participants, the alternative format, name of person who explained/provided the procedures, and the date must be recorded in the participant's file.

Career Centers will provide grievance and complaint information to applicants and other WIA customers upon request, or will make such information otherwise available.

Filing and Content of Complaints

Service providers (including training providers), employers, and career center staff will make every effort to resolve grievances informally and immediately (within ten [10] days) after being notified of a grievance. When a grievance or complaint is not resolved informally, an aggrieved customer or complainant may send a written complaint to

Lillian Patterson
Equal Opportunity/Grievance Officer
Alabama Department of Economic and Community Affairs
Workforce Development Division
401 Adams Avenue
PO Box 5690
Montgomery, Alabama 36103-5690.

The written complaint should include (1) a statement of the grievance/complaint, including relevant dates; (2) the complainant's name, address, and telephone number; (3) the name, title, and address of the person against whom the complaint is filed (respondent); (4) the complainant's signature; and (5) date of the written complaint.

The date of filing of any complaint is the date the written complaint is received in the ADECA Workforce Development Division.

Receipt and Resolution

Step 1 – Acknowledgement: The WDD Equal Opportunity (EO)/Grievance Officer will acknowledge receipt of complaints in writing within five (5) days to the complainant, respondent, and other parties, as appropriate. If the complaint is not accepted (e.g., WDD does not have jurisdiction), the complainant will be notified within five (5) days including referral to the appropriate agency.

Step 2 – Informal Resolution: The WDD EO/Grievance Officer (or other WDD staff assigned by the Division Director) will continue to try to resolve the grievance/complaint informally. Informal resolution attempts may include investigation, Informal mediation, or other methods.

If resolution is achieved by informal means, all parties to the complaint will be notified in writing of the resolution, including any agreements or corrective actions. The WDD EO/ Grievance Officer (or other WDD staff assigned by the Division Director) will monitor implementation of

and compliance with agreements and/or corrective action plans. The complaint will be closed according to the terms of any agreement or corrective action plan, but in any case, no later than 60 days after receipt of the grievance or complaint.

If informal resolution is not possible, the WDD/EO Officer (or other staff Assigned by the Division Director) will notify the complaint and other parties to the complaint and a hearing will be scheduled.

Step 3 – Hearing: The WDD Director will assign one or more hearing officer(s). The hearing process will include the following elements:

- ❖ written notice to all parties of the date, time, and place of the hearing; the name(s) of the hearing officer(s); and the issues to be decided;
- ❖ the right to a fair and impartial hearing;
- ❖ the right, at the complainant's expense, to be represented by counsel;
- ❖ the right to present evidence and witnesses;
- ❖ identification of parties involved and in attendance at the hearing;
- ❖ opportunity to question witnesses and other parties involved;
- ❖ written report of findings and recommendations from the hearing officer(s) to the WDD Director;
- ❖ written decision from the WDD Director to the complainant, respondent, and other parties, as appropriate, within 60 days of receipt of the complaint.

Step 4 – Appeals to the Secretary of Labor. Under the following conditions, a complainant and/or respondent may appeal a WDD decision to the Secretary of Labor and will be notified of that right in the WDD's written decision or by other means, as necessary:

- ❖ If the WDD does not issue a decision within 60 days of receipt of a grievance or complaint, either party to the complaint may appeal to the Secretary of Labor within 120 days of the date the complaint was filed with the WDD.
- ❖ A party to a complaint who receives an adverse decision from the WDD may appeal to the Secretary of Labor within 60 days of receipt of the adverse decision.

Appeals to the Secretary must be sent by certified mail, return receipt requested to

Secretary
U.S. Department of Labor
Washington, DC 20210
Attention: ASET

A copy of the appeal must be sent at the same time to the opposing party and to

Anna Goddard, Regional Administrator
U.S. Department of Labor
Employment and Training Administration
61 Forsyth Street SW
Atlanta, Georgia 30303

Appeals of Local Workforce Investment Area Decisions

A complainant or respondent involved in a complaint that is filed with a LWIA may appeal to the WDD if:

- ❖ the LWIA does not reach a decision within 60 days of the date a complaint is initially filed; or
- ❖ either party to the complaint is dissatisfied with the LWIA's hearing decision.

Procedures

Step I – Filing Appeals of LWIA Decisions: An appeal of a local area decision must be written and submitted within ten (10) days after a complainant receives a decision from the LWIA , or

within 10 days of the date he/she/they should have received a decision. The appeal should include (1) a brief statement of the issues in the complaint initially filed with the LWIA; (2) the date the complaint was filed; (3) a brief statement of the LWIA's decision; and (4) the date the complainant received the LWIA's decision. If a complainant does not receive a decision from the LWIA within 60 days of filing a complaint, the appeal should state the date by which a decision should have been received. The appeal should be mailed to

Steve Walkley, Director
Workforce Development Division
Alabama Department of Economic
and Community Affairs
401 Adams Avenue
PO Box 5690
Montgomery, Alabama 36103-5690.

Step 2 – Receipt, Review, Decision: Receipt of appeals will be acknowledged within five (5) days. Appeals that are not timely filed will be denied and returned to the complainants, unless the WDD Director waives the time limitation for filing an appeal for good cause shown.

Appeals will be remanded to LWIAs when

- ❖ an appeal is filed before local procedures are exhausted;
- ❖ a LWIA fails to follow its grievance/complaint procedures and/or does not comply with the WIA or its regulations related to grievances; or
- ❖ a complainant is denied due process at the local level.

The WDD Director will issue a written decision on an appeal of a local level decision within sixty (60) days of receipt of the appeal.

Step 3 – Federal-level Appeals:

- ❖ If the WDD Director fails to issue a decision on the appeal within 60 days, either party to the grievance/complaint may appeal to the Secretary of Labor within 120 days of filing the appeal with the WDD (see mailing address in previous section).
- ❖ Any party to the appeal who/that receives an adverse decision from the WDD may appeal to the Secretary within 60 days of the adverse decision.
- ❖ Appeals must be sent to the Secretary of Labor by certified mail, return receipt requested. At the same time, a copy must be sent to Anna Goddard, ETA Regional Administrator (see address above), and to the opposing party.

Records: Grievance/complaint records will be maintained for no less than three (3) years from the date of resolution.

Discrimination Complaint Procedures
Alabama Department of Economic and Community Affairs
Workforce Development Division

No individual in the United States may be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA title I-funded program or activity on the basis of that individual's race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, on the basis of citizenship or participation in a WIA title I program or activity. (WIA §188; 29 CFR Part 37, §37.5)

Any person who believes that he/she or any specific class of individuals has been or is subjected to discrimination prohibited by the Workforce Investment Act (WIA) or the, may file a written complaint, either by him/herself or through a representative. Complainants and respondents (individuals or entities against whom allegations of discrimination are made) have the right to be represented by an attorney or other individual of their choice.

Where to File Discrimination Complaints: The complainant has the option of filing a written complaint with either

Lillian Patterson
Equal Opportunity Officer
Workforce Development Division
Alabama Department of Economic
and Community Affairs
401 Adams Avenue
PO Box 5690
Montgomery, Alabama 36103-5690
(334) 242-5300 (Voice)
(334) 242-2408 (TDD) or
dial 711 for Alabama Relay Center TTY

or

Director
Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue NW
Room N-4123
Washington, DC 20210

When to File: Discrimination complaints must be filed within 180 days of the alleged violation, unless the Director, Civil Rights Center, extends the time for good cause shown.

Content of Complaints: Each complaint must be filed in writing and must contain the following information:

- the complainant's name, address and telephone number (or another means of contact);
- the identity of the person or entity the complainant alleges is responsible for the discrimination (respondent);
- a description of the allegations; and
- the complainant's or his/her representative's signature.

Complaint Processing Procedures

The date of a complaint is the date the written complaint is received in the ADECA WDD. Upon receipt of a complaint, the WDD EO Officer will determine if the ADECA WDD has jurisdiction, and if so, will provide written notice to the complainant within five (5) days that

- acknowledges receipt of the complaint;
- notifies the complainant of his/her right to representation in the complaint process, at his/her expense;
- identifies or restates the issues raised in the complaint;
- states the issues the WDD will accept or reject, including the reason an issue is rejected;
- offers the complainant the option of an investigation or alternative dispute resolution by mediation; and
- notifies the complainant that a *Notice of Final Action* will be issued within ninety (90) days of receipt of the complaint and of appeal procedures if the *Notice of Final Action* is not issued within that time.

If the WDD does not have jurisdiction, the complainant will also be notified within five (5) days.

Investigation

If the complainant chooses to have his/her complaint resolved through investigation, the WDD EO Officer (or other staff assigned by the WDD Director) will conduct an investigation, make efforts to bring the parties to agreement, as appropriate, and make recommendations for resolution and/or corrective actions to the WDD Director.

Mediation

The WDD uses mediation as a means of alternative dispute resolution. If the complainant chooses mediation as the means of resolution, a third party mediator, acceptable to both parties, will be selected. Because WIA nondiscrimination regulations (29 CFR §37.76[c][1]) entitle a complainant to choose mediation, any respondent who/that is a recipient of WIA title I funds from the ADECA WDD must cooperate in the mediation process.

The complainant and respondent will be notified of the date, time, place, and conditions of the mediation session by the WDD EO Officer or the mediator. All parties must agree to keep the mediation proceedings and any resultant agreements confidential, and not to involve the mediator in any litigation. If the complaint is settled, all parties must sign a written settlement agreement.

Notice of Final Action

A written *Notice of Final Action* will be signed and issued by the WDD Director within 90 days of receipt of a complaint. The *Notice of Final Action* will include

- a discussion of the WDD's decision on each issue and the reason(s) for the decision; or
- a summary of the way the parties resolved the issue (mediation); and
- notice of the complainant's right to complain to the Civil Rights Center (CRC) within thirty (30) days of issuance of the *Notice of Final Action*, if he/she is dissatisfied with the WDD's final action.

Conditions Under Which Parties to Mediation May File a Complaint with CRC

If any party to the settlement agreement breaches the agreement, the non-breaching party may file a written complaint with the CRC Director within thirty (30) days of learning of the breach.

If the parties do not reach an agreement as the result of mediation, the complainant may file a complaint with the CRC Director and will be so advised.

Records

Complaint logs containing the name and address of the complainant; the date the complaint is filed; and the disposition and date of disposition will be maintained by the WDD EO Officer:

All records related to complaints and actions taken will be maintained for a period of not less than three (3) years from the date of resolution.

Retaliation and Intimidation

According to 29 CFR Part 37 §37.11, a WIA recipient must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has

- filed a complaint alleging a violation of Section 188 of WIA or 29 CFR Part 37;
- opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 37;
- furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to any of the following:
 - administration of the nondiscrimination and equal opportunity provisions of WIA;
 - exercise of authority under WIA nondiscrimination and equal opportunity provisions;
 - exercise of privilege secured by those provisions
- otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIA.

Sanctions and penalties may be imposed against any recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.