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E-mailed: 5/11/2015 (cjb)

Workforce Development Agency (WDA), State of Michigan
Policy Issuance (PI): 11-37, Change 2

Date: May 11, 2015

To: Michigan Works! Agency (MWA) Directors, Local Workforce Development Boards (WDBs), and Local Grant Recipients

From: Mike Wurlinger, Director, Office of Audit and Finance
Workforce Development Agency
SIGNED

Subject: Grievance and Complaint Policy

Affected: Workforce Innovation and Opportunity Act (WIOA), Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF), Food Assistance Employment and Training (FAE&T), Trade Act (except requests for redeterminations), and State of Michigan General Fund/General Purpose (GF/GP) Funded Programs Administered by the WDA.

Rescissions: WDA PI 11-37 and 11-37 Change 1

References: WIOA Sections 106(b)(5) and 181(c)
WIA Sections 116(a)(5) and 181(c)
WIA Regulations, 20 CFR 667.600 and 20 CFR 667.645(a and b)
Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 P.L. 104-193
TANF Regulation, 45 CFR 261.70
Food Stamp Act of 1977

Background: This policy issuance sets forth the procedures that shall govern local and state-level grievances and complaints in accordance with the prescribed programs. Specifically, this policy establishes a process for grievances filed by participants, sub-grantees, subcontractors, service providers, employees, One-Stop partners, providers of training services, and other interested parties.



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This policy also establishes a process for appeals filed by local grant recipients regarding non-designation of a local area, monitoring findings, incident report findings, single audit resolution findings/issues, and other matters.

With the implementation of WIOA on July 1, 2015, the State will supplement the grievance procedure requirements of WIOA with the additional guidance found in the WIA regulations until such time the final federal regulations for WIOA are published and necessitate a change.

The hearing procedures in this policy reflect requirements of federal law and are not contested case procedures under the Administrative Procedures Act of 1969 (Public Act 306 of 1969), as amended, being Michigan Compiled Laws Section 24.201 *et. seq.*

Policy: The following procedures shall govern the processing of grievances and complaints in accordance with the prescribed programs.

I. Definitions

- A. Appellant:** the party that files the appeal to the WDA and the U.S. Department of Labor (USDOL).
- B. Days:** means consecutive calendar days, including weekends and holidays.
- C. Filed:** or filing when used with respect to timelines, means the date of receipt by the intended party.
- E. Grievance:** a written complaint filed in accordance with this policy.
- F. Local Grant Recipient:** entity that expends awards received directly from the WDA to carry out a program or programs.
- G. Interested Parties:** includes sub-grantees, subcontractors, service providers, employees, One-Stop partners, providers of training services, and other relevant parties.
- H. Participant:** an individual who has been determined to be eligible to participate in, and who is receiving services under a program covered under this policy.
- I. Petitioner:** the party that files the grievance.
- J. Respondent:** the party who argues against the petitioner or appellant.
- K. Service Providers:** sub-recipients or entities that expend awards received from WDA grant recipients.

II. Local Grievance Policy and Procedures

A. **Local Grievance Policy:** WDA grant recipients are responsible for developing, maintaining, and making available to participants, and other interested parties grievance procedures consistent with this policy. The locally developed procedures must be in compliance with all state and federal rules and regulations. The procedures must also describe how the content of the policy is provided to interested parties affected by the local Workforce System, including One-Stop partners, service providers, Employer-Based Training employers and participants. For example:

1. **One-Stop Partners** - Included in a Memorandum of Understanding or other signed agreement with the current MWA Complaint and Grievance policy attached.
2. **Service Providers** – Included in the contract language with the current MWA Complaint and Grievance policy attached to the contract.
3. **Employer-Based Training Employers** – Included in the contract language with the current MWA Complaint and Grievance policy attached to the contract; included in the contract language and advise where policy can be reviewed.
4. **Other Interested Parties** – The current MWA Complaint and Grievance policy is posted in all One-Stop and Service Center locations in areas that are accessible to the public. Hard or electronic copies are available to the public upon request.
5. **Participants** – Signed acknowledgement forms that indicate either the participant has received a copy of the local policy or has received information about the content of the local policy and how to access the entire policy.

All locally developed grievance and complaint policies, procedures, signed acknowledgements, and related documentation shall be maintained and available for review by the WDA.

- B. **Accessibility:** All processes prescribed in this policy are to be made available in hard copy and/or posted on the agency's public website and must be accessible to persons with disabilities or other barriers, as required by law.
- C. **Language Barriers:** Pursuant to 29 CFR 37.35, where a significant number or proportion of limited English-speaking individuals exist, the local grant recipients are responsible for making a reasonable effort to

assure that the information in this policy will be provided to and understood by limited English- speaking individuals who seek information regarding the grievance procedure.

- D. Posting:** Grievance procedures must also be posted and assessable in areas where administration and program services are provided.
- E. Monitoring/Tracking:** A monitoring/tracking system must be maintained to document the grievances received and their disposition. The local grant recipient is responsible for maintaining these records for review for a period of three years. The retention period begins on the date of the WDA's acceptance of the final closeout report for the grant or contract. Records shall be retained beyond three years if any litigation or audit is begun, or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records shall be retained until the litigation, audit, or claim has been resolved.
- F. Informal Resolution:** The local grant recipient is responsible for making available to participants and interested parties, an opportunity to resolve complaints informally before they become grievances.
- G. Process for the Petitioner:** The process the Petitioner must follow to file a grievance, including:
 - 1. Filing:** All grievances related to WIA, WIOA, TANF, FAE&T, Trade Act (except requests for redeterminations), and State of Michigan GF/GP programs funded by the WDA are required to be filed within one year of the date of the event that gave rise to the grievance.
 - 2. Criteria:** All grievances shall be in writing and contain, to the extent practicable, all the following information:
 - a)** The full name, address, and telephone number of the petitioner.
 - b)** The full name, address, and telephone number of the respondent(s).
 - c)** A clear and concise statement of the facts as alleged, including the pertinent dates, constituting the alleged violation.
 - d)** The provision of the act, regulations, grant, contract, or other agreements under the act believed to have been violated.
 - e)** The relief requested.

H. Process of the Grant Recipient: The local grant recipient's procedure for handling the grievance, including:

1. **Rejection:** The local grant recipient may reject a grievance for any of the following reasons:
 - a) It lacks merit.
 - b) The petitioner fails to state a grievable issue.
 - c) There is no relief that can be granted.
 - d) The petitioner fails to comply with the procedures prescribed in this policy issuance.

The local grant recipient will inform the petitioner in writing of the reason(s) the grievance was rejected. The notification must be issued within 60 days from the date the grievance was filed and will include the opportunity to appeal to the WDA.

2. **Informal Resolution:** An opportunity for an informal resolution of the grievance. If the grievance is settled through the informal resolution process, a written decision shall be issued to the petitioner(s) within 60 days of the filing of the grievance. [Note: The timeline for a hearing decision is the same 60-day window from the date the grievance was filed.]
3. **Hearing:** An opportunity for a hearing must be provided for WIA or WIOA related grievances that are not informally resolved or withdrawn. Should a hearing be held, it shall be conducted within 30 days from the date the grievance was filed, and a decision shall be rendered no later than 60 days from the date the grievance was filed.
 - a) **Hearing Notice:** If a hearing is to be conducted, written notice to the involved parties is to be provided. The notice shall include the date, time, place of the hearing and outline the process to present evidence including witnesses. The notice of the hearing shall indicate the issues to be decided. Notice shall be given not less than 10 days prior to the scheduled hearing date.
 - b) **Hearing Process:** At a minimum, the hearing process shall include:
 - i. A hearing officer;

- ii. An opportunity for each party to present witnesses and evidence;
- iii. An opportunity for each party to ask questions of all witnesses providing testimony at the hearing;
- iv. A record of the hearing; and
- v. A list of all evidentiary exhibits presented at the hearing.

At the discretion of the hearing officer, there may be an opportunity to exchange evidentiary information prior to the hearing.

c) **Hearing Decision:** A written decision shall be issued by the hearing officer and shall include the following information:

- i. Date, time, and place of hearing.
- ii. Name and address of the petitioner.
- iii. Name and address of the respondent.
- iv. Names and addresses of all witnesses called by the parties.
- v. Information sufficient to identify all evidence presented.
- vi. A reiteration of the issues raised.
- vii. A determination of the facts.
- viii. An analysis of the issues as they relate to the facts.
- ix. A decision addressing each issue.
- x. A statement regarding the opportunity to appeal the decision to the WDA.

I. **Appeal to WDA:** The process to appeal a local decision to WDA, including:

If a response to the grievance is not received within the time prescribed (i.e., 60 days from the filing of the grievance), or should either party be dissatisfied with a decision, there is opportunity for an appeal to the WDA.

The appeal shall be in writing and shall be filed no later than 10 days from receipt of the adverse local decision, or 10 days from the date a decision was due (i.e., 60 days from filing of the grievance) but not issued.

Appeals shall contain, to the extent practicable, all the following information:

1. The full name, address, and telephone number of the appellant(s).
2. The full name, address, and telephone number of the respondent(s).
3. A clear and concise statement of the facts as alleged, including the pertinent dates constituting the alleged violation.
4. The provision of the act, regulations, grant, contract, or other agreements under the act believed to have been violated.
5. The relief requested.

All appeals of a local level grievance decision shall be submitted by certified mail, return receipt requested to:

Workforce Development Agency
Executive Office
Victor Office Center
201 N. Washington Square
Lansing, MI 48913

J. Special Provisions

1. **Equal Opportunity:** Complaints alleging violation of the nondiscrimination and Equal Opportunity (EO) provision of state/federal grant programs must be resolved in accordance with the nondiscrimination and EO policy guidelines issued by the WDA.
2. **Criminal Conduct:** Known or suspected fraud, abuse, or criminal conduct under the WIA or WIOA shall be reported in accordance with the incident report guidelines issued by the WDA.
3. **TANF Displacement:** Pursuant to the PRWORA Regulation 45 CFR 261.70, a grievance may be filed by an affected individual if (1) a recipient of TANF is placed in a position when any other individual is on layoff from the same or any substantially equivalent job or (2) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in

order to fill the vacancy so created with an adult receiving TANF assistance. In this situation, either party to the grievance, the TANF recipient, or the displaced employee, may appeal the local decision to the WDA.

4. **WIA or WIOA Displacement:** A grievance may be filed by a regular employee displaced by a WIA or WIOA participant who is placed in an employment activity operated with WIA or WIOA funds. Also, a grievance may be filed by a WIA or WIOA participant in an employment activity if the participant is displaced.
5. **Binding Arbitration/Collective Bargaining:** Local grant recipient grievance procedures must provide WIA or WIOA participants a process, which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides.
6. **Jurisdiction:** Depending on the nature of the grievance, TANF and FAE&T program applicant and recipient grievances shall be handled in accordance with the local grant recipient or the Michigan Department of Health and Human Services (DHHS) or other applicable procedures. For example, grievances regarding sanctioning or food stamp benefits will be handled by DHHS, while grievances regarding programs administered by the local grant recipient will be handled by the local grant recipient.
7. **Wagner-Peyser:** Grievances involving Wagner-Peyser Act activities must be resolved in accordance with the grievance procedures outlined in the Employment Service Manual, which is available on the One-Stop Management Information System. In addition, please refer to the Employment Service Manual for specific guidance regarding work-related complaints that are not program specific, such as: employer hour and wage violations, migrant and seasonal farm worker complaints, and other possible violations of general labor laws.

III. State Level Review of a Local Level Decision

The processes WDA will follow to handle appeals include:

- A. **Evidentiary Documentation:** Within 15 days from the date the appeal is received by WDA, the parties will be contacted to submit all relevant information and documentation generated at the local hearing to the WDA Executive Office.

B. WDA Review of the Appeal: WDA may take any of the following actions:

- 1. Reject the Appeal:** An appeal may be **rejected**, and a final determination issued, for any of the following reasons:
 - a) It lacks merit.
 - b) The appeal does not state a grievable issue.
 - c) There is no relief that can be granted.
 - d) If the appellant fails to comply with the applicable procedures prescribed in this policy (e.g., the 10 day filing requirement).
- 2. Hearing:** An opportunity for a hearing must be provided for a WIA or WIOA related appeal of a local level decision unless the appeal is rejected by WDA, the parties agree to waive a hearing, or the appellant withdraws the appeal. If a hearing is to be held, it shall be conducted within 30 days of the receipt of the appeal.

A hearing is not required for an appeal of a non-WIA or non-WIOA related local level decision.

- a) **Hearing Notice:** The parties will be provided written notice of the date, time, and place of the scheduled hearing and of the opportunity to present evidence, including witnesses. The notice of the hearing shall indicate the issues to be decided. Notice shall be given not less than ten days prior to the scheduled hearing date.
- b) **Hearing Process:** At a minimum, the hearing process shall include:
 - i. A hearing officer.
 - ii. An opportunity for each party to present witnesses (subpoenas are not authorized under this policy issuance) and evidence.
 - iii. An opportunity for each party to ask questions of all witnesses providing testimony at the hearing.
 - iv. A record of the hearing and a list of all evidentiary exhibits presented at the hearing.

At the discretion of the hearing officer, there may be an opportunity to exchange evidentiary information prior to the hearing.

- C. Final Decision:** A written decision shall be issued not later than 60 days after the filing of the appeal. The decision shall include the following:
1. If a hearing is held, the date, time and place of the hearing.
 2. Name and address of the petitioner.
 3. Name and address of the respondent.
 4. If a hearing is held, the names and addresses of all witnesses called by the parties.
 5. If a hearing is held, the information sufficient to identify all evidence presented.
 6. A reiteration of the issues.
 7. A determination of the facts.
 8. An analysis of the issues as they relate to the facts.
 9. A decision addressing each issue.

IV. USDOL Review of a State Level Decision

In general, a state level decision is final. However, if a decision is not issued by the due date, a WIA or WIOA related appeal may be reviewed by the Secretary of the USDOL if appealed within 60 days after the date the decision was due. A WIA or WIOA related decision may also be appealed by the adversely affected party to the USDOL within 60 days of receipt of the WDA decision. An appeal must be submitted to the Secretary of the USDOL by certified mail, return receipt requested, to:

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

A copy of the appeal must be simultaneously provided to:

Regional Administrator
Employment and Training Administration

U.S. Department of Labor
230 South Dearborn Street, Room 628
Chicago, IL 60604

And

Workforce Development Agency
Executive Office
Victor Office Center
201 N. Washington Square
Lansing, Michigan 48913

V. **Appeal Process for Local Grant Recipients**

Local grant recipients may appeal non-designation of local areas, monitoring findings, incident report findings, Single Audit resolution findings/issues, and other matters related to State Workforce Investment programs by filing an appeal with the WDA within 30 days of the adverse decision.

Other interested parties may not appeal directly to WDA. To the extent that interested parties are affected by a WDA decision, the interested parties must first file a grievance at the local level.

Appeals related to USDOL monitoring findings shall only be reviewed for compliance with USDOL requirements. A record shall be created to forward to USDOL, if applicable.

A. **Appeals:** Appeals shall contain, to the extent practicable, all of the following information:

1. The full name, address, and telephone number of the appellant(s).
2. The full name, address, and telephone number (if any) of the respondent(s).
3. A clear and concise statement of the facts as alleged, including the pertinent dates constituting the alleged violation.
4. The provision of the act, regulations, grant, contract, or other agreements under the act believed to have been violated.
5. The relief requested.

Appeals shall be submitted to:

Workforce Development Agency
Executive Office
Victor Office Center
201 N. Washington Square
Lansing, Michigan 48913

B. Rejection of Appeal: An appeal may be rejected for any of the following reasons:

- a) It lacks merit.
- b) Does not state a grievable issue.
- c) There is no relief that can be granted.
- d) The petitioner fails to comply with the procedures prescribed in this policy issuance.

C. Hearing: An opportunity for a hearing must be provided for a WIA or WIOA related appeal unless the appeal is rejected by WDA, the parties agree to waive a hearing, or the appellant withdraws the appeal. If a hearing is to be held, it shall be conducted within 30 days of the receipt of the appeal.

A hearing is not required for an appeal of a non-WIA or non-WIOA related decision.

1. **Hearing Notice:** The parties will be provided written notice of the date, time, and place of the scheduled hearing date and of the opportunity to present evidence, including witnesses. The notice of the hearing shall indicate the issues to be decided. Notice shall be given not less than 10 days prior to the scheduled hearing date.
2. **Hearing Process:** At a minimum, the hearing process shall include all of the following:
 - a) A hearing officer.
 - b) An opportunity for each party to present witnesses (subpoenas are not authorized under this policy) and evidence.
 - c) An opportunity for each party to ask questions of all witnesses providing testimony at the hearing.
 - d) A record of the hearing and a list of all evidentiary exhibits presented at the hearing.

At the discretion of the hearing officer, there may be an opportunity to exchange evidentiary information prior to the hearing.

- D. Decision:** A written decision shall be issued not later than 60 days after the filing of the appeal. The decision shall include all of the following:
1. If a hearing is held, the date, time, and place of the hearing.
 2. Name and address of the appellant.
 3. Name and address of the party against whom the appeal is made.
 4. If a hearing is held, the names and addresses of all witnesses called by the parties
 5. If a hearing is held, information sufficient to identify all evidence presented.
 6. A reiteration of the issues.
 7. A determination of the facts.
 8. An analysis of the issues as they relate to the facts.
 9. A decision addressing each issue.
- F. USDOL Appeal:** The decision of WDA is final. The local grant recipient may appeal noncompliant WIA or WIOA grievance procedures of the WDA to the Secretary of the USDOL. An appeal must be submitted to the Secretary of the USDOL within 60 days of receipt of the WDA decision by certified mail, return receipt requested, to:

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

A copy of the appeal must be simultaneously provided to:

Regional Administrator
Employment and Training Administration
U.S. Department of Labor
230 South Dearborn Street, Room 628
Chicago, IL 60604

And

Workforce Development Agency
Executive Office
Victor Office Center
201 N. Washington Square
Lansing, Michigan 48913

Action: Effective immediately, local grant recipients shall establish and maintain written grievance procedures in accordance with this policy issuance.

Inquiries: Questions regarding this policy issuance may be directed to WDA at 517/335-5858.

In accordance with the Americans with Disabilities Act, the information contained in this policy will be made available in alternative format (large type, audio tape, etc.) upon request to this office.

Expiration: Continuing
MW:cjb