

Attachment E

LOCAL AREA COMPLAINTS, HEARINGS PROCESS AND TIMEFRAMES

Local workforce entities shall attempt to resolve customer “issues” in an informal manner within **5 days** of receipt of the complaint including an offer of a hearing in advance of escalation to written complaint status. However, should informal resolution not succeed, Local Boards must assure that procedures providing for the resolution of complaints through a formal process of local investigation that includes a review of the facts, a hearing, a determination, and the right to appeal are *fully* in place once a complaint is submitted in writing.

Local Area Responsibilities

Each Local Workforce Board shall ensure that other local entities, based on their status as direct recipients of WIOA Title I and/or Wagner-Peyser funds from the Local Board (or its designated fiscal agent) shall also establish and maintain complaint procedures consistent with these same parameters.

- A complaint related to services provided under either Title I of the Workforce Innovation and Opportunity Act or the Wagner-Peyser Act, as Amended, may be lodged anytime within two (2) years of the alleged violation.
- All formal complaints subject to the process described in this policy must be filed in one of the following formats:
 - ✓ Submission of a written letter signed by the complainant or authorized representative; or
 - ✓ Through an email account as this will be deemed an electronic signature; or
 - ✓ Submission of the official Unified Workforce System Complaint Referral Record Form (see Attachment A3 (instructions A4)).

Complaints submitted in any of the three (3) formats described above must include: the complainant’s full name, telephone number and address and the date of filing. Complaints must also provide a clear, brief statement of the facts of the alleged violation, relevant dates, and other information to assist in the investigation and resolution of the complaint. Staff must offer and provide assistance to any customer seeking to file a complaint including assistance with completing all associated forms if applicable.

- All formal complaints must be entered into the official Unified Workforce System Complaint Log (see Attachment H). Copies of the appropriate Complaint Log pages indicating filing or resolution of complaints occurring in a calendar quarter must be submitted to the State Monitor Advocate (DCSUnifiedComplaint@MassMail.State.MA.US) within 30 days following the end of that quarter.
- The local CO has **15 days** from the date a formal written complaint is received to resolve the complaint (unless complainant has requested a hearing). However, if the complaint was initiated by (or on behalf of) a Migrant and Seasonal Farm Worker (MSFW) the local CO *has only 5 days to resolve the complaint* (unless the MSFW has requested a hearing).

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- If the complainant has not requested a hearing, the local CO may choose to make a determination based solely on the information included in the case file or conduct further investigation before issuing a written determination.
- If the CO has made a written request to the complainant (or the complainant's authorized representative) for additional information, the **15 days** (or in the case of an MSFW initiated complaint, the **5 day** period) does not begin until the requested information has been received by the local Complaint/EO Officer.
- If the CO/EOO is unable to contact the complainant for the purposes of obtaining additional information needed to resolve a complaint, a written request for information must be sent via ***certified mail*** or through some other form of communication where receipt can be verified. All non-MSFW complainants are allowed **20 days** (MSFW complainants are allowed **40 days**) from the date of receipt to respond to a written request for additional information. If a complainant does not respond, the CO must inform the complainant in writing that the matter is considered resolved.

Note: Regulations allow for certain Wagner-Peyser related complaints to be reopened after resolution. If the complainant or the complainant's authorized representative fails to respond, the complainant or the complainant's authorized representative may request to reopen the case within one (1) year after the State Workforce Agency (DCS) has closed the case.

- The CO must provide the complainant with a written determination within **15 days** of the conclusion of the hearing. The CO must include the right to appeal (to the State) within the written determination. Notification must be given that the complainant may submit a request for a State level appeal and/or hearing and that it must be made in writing **within 20 days** of the receipt of the local determination.
- If the local CO does not resolve the complaint to the satisfaction of the complainant within the specified time periods, the complainant may request an appeal and/or hearing at the State level.

Please Note: Complainants may elect to initially file a complaint at the state level by submitting the complaint to the State Complaint Officer or State Monitor Advocate who may choose to process the complaint through resolution. Complaints filed at the state level may, however be remanded back to the local level by the State Complaint Officer/Monitor Advocate for adjudication, including an attempt at informal local resolution. Complaints initially filed at the state level **may not** later be filed at the local level. If complaint resolution occurs above the local level, a copy of the resolution notice will be forwarded to the local entity/organization with which the complaint was originally filed.

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- Copies of all local determinations issued related to Career Center complaints must be forwarded to:

Office of the Director
Department of Career Services
Charles F. Hurley Building
19 Staniford Street, First Floor
Boston, MA 02114

Local Hearings

If a complainant requests or the local Complaint Officer deems that a formal hearing is necessary, the local Complaint Officer will notify the parties (in writing) that the matter has been scheduled for a formal hearing. The notice must inform the parties of the following elements of the hearing process:

- The date, time and location of the hearing.
- That the Local Complaint/Hearings Officer, will conduct and regulate the course of the hearing to assure full consideration of all relevant issues and that actions necessary to ensure an orderly hearing are followed.
- That the Local Complaint/Hearing Officer will rule on the introduction of evidence* and afford the parties the opportunity to present, examine, and cross-examine witnesses.

* For clarity it must be noted that an administrative hearing is not the same as a Court of Law. Technical rules of evidence *do not apply*. It is up to the Local Complaint/Hearing Officer to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

- That a copy of the case record and related documents will be made available to all interested parties before the hearing, upon request.

In conjunction with the hearing process the Hearing Official:

- May decide to make a determination based on the information included in the case file or investigate further prior to the formal hearing.
- May permit (at his/her discretion) the participation of interested parties with respect to specific legal or factual issues relevant to the complaint/appeal.
- May choose to conduct the hearing at a single location convenient to all parties (preferred) or, if that would represent a hardship for one or more parties, the Hearing Official may elect to conduct the hearing by a telephone conference call.
- Must ensure that hearings be recorded or transcribed. All records are to be preserved and/or made available upon completion of the hearing to the complainant or interested parties.

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- Must conduct the hearing *and* issue a written determination to the complainant, the respondent and any other participating interested parties within the **20 day** from the date the hearing was requested.

The Hearing Official's written determination must include:

- ✓ the results of any investigation;
- ✓ conclusions reached on the allegations, facts or evidence presented;
- ✓ an explanation regarding the determination;
- ✓ if the complaint is against an employer and the investigation has found that the employer violated Wagner-Peyser regulations; a statement that the Commonwealth will initiate procedures for discontinuation of services to the employer in accordance with the appropriate regulations (§658.500 - §658.504).
- ✓ an offer to the complainant to request an appeal within 20 days to the State after the certified date of the receipt of the notification.

Responsibilities of Hearings Officer

Responsibilities that will generally be within the scope of the designated Hearing Officer are:

- Administer oaths and affirmations;
- Preparation and review of complete case file prior to the hearing;
- Directing parties to appear at hearing;
- Hold hearing;
- Regulate the course of the hearing and the conduct of the parties;
- Rule upon offers of proof and receive evidence;
- Hold conferences for the settlement or simplification of the issues by consent of the parties;
- Question witnesses and parties as required;
- Consider and evaluate facts, evidence, and arguments to determine credibility;
- Render determinations;
- Rule that the case is improperly before it, that is, that there is a lack of jurisdiction over the case (if applicable);
- Rule that the complaint has been withdrawn properly and in writing;
- Rule that reasonable cause exists to believe that the request has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of delaying or avoiding a hearing

Please note: All hearings documentation and transcriptions must be preserved for a minimum of 3 years.