

ATTACHMENT B

APPEALS AND HEARINGS PROCESS

A complainant has the right to appeal a determination made at the local MCC level to the State, MDCS and determinations made at the State MDCS level to the appropriate Federal enforcement agency. In addition, a complainant may request an appeal in the same manner if a determination is not issued within the allotted procedural timeframe.

This policy covers appeals processes that may arise in the delivery and/or administration of services and activities provided or undertaken locally by direct recipients of WIOA Title I or Wagner-Peyser funds.

More specifically, appeals that fall within the jurisdiction of this policy include:

- I. **Appeal of Local Determinations**
- II. **Appeal of Denial or Termination of Eligibility as Training Provider**
- III. **Appeal of Governor/State Board decision of initial or subsequent non-designation of Local Workforce Development Area**
- IV. **Appeal of One-Stop Infrastructure Amount Designated by the State Under State Infrastructure Funding Mechanism**
- V. **Appeal of Local Workforce Board Competitive Selection of Local One-Stop Operator/Service Provider**

I. STATE LEVEL APPEAL/HEARING RELATED TO LOCAL COMPLAINT DETERMINATION

If a local CO determination issued to the complainant *does not* resolve the complaint to the satisfaction of the complainant, the complainant may request an *appeal* and/or a formal *appeal hearing within 20 business days* of receipt of the determination.

The request for appeal and/or formal appeal hearing must be sent to:

MDCS Complaint Officer
100 Cambridge Street 5th Floor
Boston, MA 02114
DCSUnifiedComplaint@mass.gov

At the State level, WIOA requires an opportunity for an informal resolution and/or hearing to be completed within **60 business days** of the filing. If the State does not respond within the 60 business days, or either party wants to appeal, WIOA allows for a formal appeal to the U.S. Department of Labor (DOL). Federal appeals must be made within **60 business days** of the receipt of the decision being appealed.

NOTE: *If the MDCS Complaint Officer has made a written request for information to the appellant or the appellant's authorized representative, and they do not respond within the given time frame (**40 business days** for Migrant Seasonal Farm Worker (MSFW) related / **20 business days** for non-MSFW related), the complaint is considered **resolved**.*

Formal Hearing Process

If the MDCS Complaint Officer deems that a formal hearing is necessary or if the complainant/appellant specifically requests such a hearing, the MDCS 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 conditions of the hearing process:

- The date, time and location of the hearing.
- Instruction that the State Hearing Official (MDCS Complaint Officer or other, duly authorized State Official) will conduct and regulate the course of the hearing to ensure full consideration of all relevant issues and that actions necessary to ensure an orderly hearing are followed.
- Instruction that the State Hearing Official must 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 State Hearing Official to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

In conjunction with the hearing process the State 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 decide to conduct a hearing on more than one complaint/appeal if the issues are related.
- May permit (at his/her discretion) the participation of interested parties (amicus curae) 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 represents a hardship for one or more parties, the State Hearing Official may elect to conduct the hearing by a telephone conference call.
- Must conduct the hearing *and* issue a written determination to the appellant, the respondent and any other participating interested parties within the **30 business**

days from the date the hearing was requested (or in the case of a complaint brought by an MSFW – **within 20 business days**) from the date the hearing was requested. The State Hearing Official's written determination must include:

- the results of the State level investigation;
- conclusions reached on the allegations;
- an explanation regarding the determination;
- if the complaint is against an employer and the State level 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 appellant to request a hearing within **20 business days** after the certified date of the receipt of the determination if the complaint is against an employer and the State level investigation has found that the employer has not violated Wagner-Peyser regulations; and/or
- an offer to the appellant to request a hearing within **20 business days** after the certified date of the receipt of the notification if the complaint is against a state agency, and a violation by the agency is not determined.

The State Hearing Official's determination must also inform the complainant/appellant and respondent that both have the right to appeal the Hearing Official's determination to the U.S. Department of Labor Employment and Training Administration (USDOL ETA). The appeal must be submitted to USDOL ETA within **60 business days** of the receipt of the state's determination. All appeals must be submitted in writing by certified mail; return receipt requested, to the Secretary, US Department of Labor, Attention: ASET. A copy of the appeal must be simultaneously provided to USDOL ETA Boston Regional 1 Office and to the opposing party or parties. USDOL must make a final determination no later than **120 calendar days** after receiving the appeal.

U.S. Department of Labor
Employment and Training Administration
200 Constitution Ave, NW
Washington, DC 20210
Attention: ASET

Employment & Training Administration
U.S. Department of Labor
and JFK Building, Room 350
Boston, MA 02203

II. STATE LEVEL APPEAL/HEARING PROCESS RELATED TO DENIAL OR TERMINATION OF ELIGIBILITY AS A TRAINING PROVIDER

If, after having applied to become an eligible training provider pursuant to WIOA Section 122, an entity is not selected, said entity may appeal the decision to the MDCS Complaint Officer. The appellant must request the state-level appeal and/or formal appeal hearing in writing within **20 business days** of receiving the adverse determination (see attachment I). The request for appeal and/or formal appeal hearing must be sent to:

MDCS Complaint Officer
MassHire Department of Career Services
100 Cambridge Street 5th Floor
Boston, MA 02114
DCSUnifiedComplaint@mass.gov

If the appellant chooses to request an appeal *without specifically requesting a hearing*, the MDCS Complaint Officer may decide to either make a determination based solely on the information included in the case file or conduct further investigation and issue a written determination without scheduling a formal hearing. In either case, the MDCS Complaint Officer must submit a written determination to the appellant **within 30 business days** of receipt of the original appeal request or after having received additional information from further investigation (unless the MDCS Complaint Officer deems a formal hearing to be necessary as described below).

NOTE: *If the MDCS Complaint Officer has made a written request for information to the appellant or the appellant's authorized representative, they do not respond within the given time frame, the appeal is considered **resolved**.*

Formal Hearing Process

If the MDCS Complaint Officer deems that a formal hearing is necessary or if the appellant specifically requests such a hearing, the MDCS 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 conditions of the hearing process:

- The date, time and location of the hearing.
- Instruction that the State Hearing Official (MDCS Complaint Officer or other, duly authorized State Official) 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.
- Instruction that the State Hearing Official must 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 State Hearing Official to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

In conjunction with the hearing process the State 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 decide to conduct a hearing on more than one appeal if the issues are related.
- May permit (at his/her discretion) the participation of interested parties (*amicus curae*) with respect to specific legal or factual issues relevant to the 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 State Hearing Official may elect to conduct the hearing by telephone conference call.
- Must conduct the hearing *and* issue a written determination to the appellant, the respondent and any other participating interested parties within the **30 business days** from the date the hearing was requested. The State Hearing Official's written determination must include:
 - the results of the State level investigation;
 - conclusions reached on the appeal;
 - an explanation as to why the appeal was upheld or not upheld.

A decision under this state appeal process is final and **may not** be appealed to the U.S. Secretary of Labor. 20 CFR 683.630(b)(3).

III. APPEAL OF NON-DESIGNATION OF INITIAL OR SUBSEQUENT LOCAL WORKFORCE DEVELOPMENT AREA

A unit of general local government (including a combination of such units) or grant recipient that requests but is not granted initial or subsequent designation as a Local Workforce Development area under WIOA Section 106(b), paragraph (2) or (3) may submit an appeal to the MDCS CO for immediate referral to the Director of the MassHire State Workforce Board.

The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan or establish that it meets the requirements for initial or subsequent designation or in WIOA section 106(b)(2) or 106(b)(3) and 20 CFR 679.250.

The appellant may request a state-level appeal and/or formal appeal hearing in writing within **20 business days** of receiving the denial of initial or subsequent designation as Local Workforce Development Area.

The request for appeal and/or formal appeal hearing must be sent to:

MDCS Complaint Officer
MassHire Department of Career Services
100 Cambridge Street 5th Floor
Boston, MA 02114
DCSUnifiedComplaint@mass.gov

If the appellant chooses to request an appeal without specifically requesting an appeal hearing, the State Board or Board Authorized State Official (ASO) may decide to either make a determination based solely on the information included in the case file or conduct further investigation and issue a written determination without scheduling a formal hearing.

In either case, the State Board/ASO must submit a written determination to the appellant within **30 business days** of receipt of the original appeal request or **30 business days** after having received additional information from further investigation or **30 business days** after a formal hearing request.

*If the State Board/ASO has made a written request for information to the appellant or the appellant's authorized representative, they do not respond within the given timeframe the complaint is considered **resolved**.*

If the State Board/ASO deems that a formal hearing is necessary or if the appellant specifically requests such a hearing, the State Board/ASO 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 conditions of the hearing process:

Formal Hearing Process

The notice must inform the parties of the following conditions of the hearing process:

- The date, time and location of the hearing.
- Instruction that the State Board/ASO 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.

- Instruction that the State Board/ASO must 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 State Hearing Official to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

In conjunction with the hearing process the State Board/ASO:

- May decide to make a determination based on the information included in the case file or investigate further prior to the formal hearing.
- May decide to conduct a hearing on more than one appellant if the issues are related.
- May permit (at his/her discretion) the participation of interested parties (*amicus curae*) with respect to specific legal or factual issues relevant to the 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 State Hearing Official may elect to conduct the hearing by a telephone conference call.
- Must conduct the hearing *and* issue a written determination to the appellant, the respondent and any other participating interested parties within **30 business days** from the date the hearing was requested. The State Hearing Official's written determination must include:
 - the results of the State level investigation;
 - conclusions reached on the appeal;
 - an explanation as to why the decision was upheld or not upheld.

A unit of general local government (including a combination of such units) or grant recipient whose appeal or denial of a request for initial or subsequent designation as a Local Workforce Development Area to the State Board/Governor has not resulted in such designation may appeal the State Board's/Governor's denial to U.S. Department of Labor Employment and Training Administration (USDOL ETA). The appeal must be submitted to DOL/ETA within **30 business days** of the receipt of written notification of the denial from the State Board/Governor. All appeals must be submitted in writing by certified mail; return receipt

requested, to the Secretary, US Department of Labor, Attention: ASET. A copy of the appeal must be simultaneously provided to the State Board. USDOL must submit a written determination to the Governor/State Board and the appellant.

U.S. Department of Labor
Employment and Training Administration
200 Constitution Ave, NW
Washington, DC 20210
Attention: ASET

MassHire State Workforce Development
Board (MSWDB)
and 100 Cambridge Street 5th Floor
Boston, MA 02114
Attention: MSWDB Director

IV. ONE-STOP PARTNER APPEAL OF ONE-STOP INFRASTRUCTURE AMOUNT DESIGNATED BY STATE UNDER STATE ONE-STOP INFRASTRUCTURE FUNDING MECHANISM

A One-Stop Partner may appeal a One-Stop Infrastructure amount established under the State Infrastructure Funding Mechanism on the basis that the State Board/Governor's determination is inconsistent with proportionate share requirement in 20 CFR 678.735(a), the cost contribution limitation in 20 CFR 678.735(b), or cost contribution caps in 20 CFR 678.735.

The appellant may request a state-level appeal and/or formal appeal hearing in writing within **10 business days** of the State decision to impose the State One-Stop Infrastructure Funding Mechanism to finalize local Memorandum of Understanding (MOU) to the MDCS CO for immediate referral to the MSWB Director.

The request for appeal and/or formal appeal hearing must be sent to:

MDCS Complaint Officer
MassHire Department of Career Services
100 Cambridge Street 5th Floor
Boston, MA 02114
DCSUnifiedComplaint@mass.gov

If the appellant chooses to request an appeal without specifically requesting an appeal hearing, the State Board, or its designee (Authorized State Official - ASO), may decide to either make a determination based solely on the information included in the case file or conduct further investigation and issue a written determination without scheduling a formal hearing.

In either case, the State Board/ASO must submit a written determination to the appellant within **30 business days** of receipt of the original appeal request or **30 business days** after

having received additional information from further investigation or **30 business days** after a formal hearing **request**.

If the State Board/ASO has made a written request for information to the appellant or the appellant's authorized representative, and they do not respond within the given time frame the appeal is considered **resolved**.

If the State Board/ASO deems that a formal hearing is necessary or if the appellant specifically requests such a hearing, the State Board/ASO 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 conditions of the hearing process:

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- Instruction that the State Board/ASO must 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 State Board/ASO to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

In conjunction with the hearing process the State Board/ASO:

- May decide to make a determination based on the information included in the case file or investigate further prior to the formal hearing.
- May decide to conduct a hearing on more than one appellant if the issues are related.
- May permit (at his/her discretion) the participation of interested parties (*amicus curae*) 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 State Hearing Official may elect to conduct the hearing by telephone conference call.
- Must conduct the hearing *and* issue a written determination to the appellant, the respondent and any other participating interested parties within **30 business days** from the date the hearing was requested. The State Board/s/ASO's written determination must include:
 - the results of the State level investigation;
 - conclusions reached on the appeal;
 - an explanation as to why the decision was upheld or not upheld.

A decision under this state appeal process is final and **may not** be appealed to the U.S. Secretary of Labor.

V. APPEAL OF LOCAL WORKFORCE BOARD COMPETITIVE SELECTION OF LOCAL ONE-STOP OPERATOR/SERVICE PROVIDER

An entity that bid and was not selected under a competitive process (as required in WIOA§107(10)(A) and 20CFR 678.605) by the Local MWB as Local One-Stop Operator/Service Provider may appeal that determination to the Local Board following local procurement requirements. If the local determination to uphold the denial of the award does not resolve the appeal to the satisfaction of the appellant, the appellant may request a state-level appeal and/or formal appeal hearing in writing within **10 business days** of receiving the denial. The request for appeal and/or formal appeal hearing must be sent to MDCS Complaint Officer for immediate referral to the MSWB Director:

MDCS Complaint Officer
MassHire Department of Career Services
100 Cambridge Street 5th Floor
Boston, MA 02114
DCSUnifiedComplaint@mass.gov

If the appellant chooses to request an appeal without specifically requesting an appeal hearing, the State Board, or its' designee (Authorized State Official - ASO), may decide to either make a determination based solely on the information included in the case file or conduct further investigation and issue a written determination without scheduling a formal hearing.

In either case, the State Board/ASO must submit a written determination to the appellant within **30 business days** of receipt of the original appeal request or **30 business days** after having received additional information from further investigation or **30 business days** after a formal hearing **request**.

If the State Board/ASO has made a written request for information to the appellant or the appellant's authorized representative, and they do not respond within the given time frame the appeal is considered **resolved**.

If the State Board/ASO deems that a formal hearing is necessary or if the appellant specifically requests such a hearing, the State Board/ASO 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 conditions of the hearing process:

Formal Hearing Process

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In conjunction with the hearing process the State Board/ASO:

- May decide to make a determination based on the information included in the case file or investigate further prior to the formal hearing.
- May decide to conduct a hearing on more than one appellant if the issues are related.
- May permit (at his/her discretion) the participation of interested parties (*amicus curae*) 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 State Hearing Official may elect to conduct the hearing by a telephone conference call.
- Must conduct the hearing *and* issue a written determination to the appellant, the respondent and any other participating interested parties within **30 business days** from the date the hearing was requested. The State Board/s/ASO's written determination must include:
 - the results of the State level investigation;
 - conclusions reached on the appeal;
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