

Attachment A

UNIFIED WORKFORCE SYSTEM PROCEDURAL DETAIL

I. IMPLEMENTATION OF COMPLAINT RESOLUTION PROCEDURES

Local complaint procedures must be developed to assure Workforce Innovation and Opportunity Act (WIOA) customers and entities of their rights and to process complaints and appeals in an objective and consistent manner. Procedures must provide for:

- dealing with written complaints from customers and other interested parties affected by the local workforce system as well as entities and organizations administering funds and providing services under the Workforce Innovation and Opportunity Act, including Workforce Development Boards (WDB), One-Stop Career Center Operators and partners, WIOA Title I Administrators, WIOA Fiscal agents and WIOA service providers;
- protecting a complainant's confidentiality to the extent possible and, when consent has been provided for the release of the complainant's identity, ensuring that such disclosure is made under conditions that will promote the continued receipt of confidential information;
- advising complainants and respondents of their right to due process including the right to:
 - ✓ representation by an attorney or other individual of his/her choice;
 - ✓ present evidence;
 - ✓ question others who present evidence; and
 - ✓ receive an impartial decision made strictly on recorded information;
- ensuring that no person, organization or agency may discharge or in any manner retaliate against any person or WIOA entity because that person/entity has filed a complaint, instituted any proceeding related to the WIOA Title I and Wagner-Peyser Regulations, testified or is about to testify in a proceeding or investigation, or has provided information or otherwise assisted in an investigation;
- providing an opportunity for informal resolution (see Attachment B-1 for sample informal resolution process flow chart) and a hearing consistent with the parameters established in this issuance;
- submitting the complaint of alleged violation to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the complaint so provides;
- providing an opportunity for a local level appeal to the State entity (DCS);
- implementing corrective action and/or sanctions when warranted; and

- maintaining all complaint related written materials in a secure file to reasonably assure confidentiality for a period of 3 years.

II. WORKFORCE AREA REQUIRED ELEMENTS

Complaint procedures for direct recipients of WIOA Title I and Wagner-Peyser funds operating in the local workforce area (including Workforce Boards, One-Stop Career Centers, WIOA Title I Administrators, WIOA Fiscal Agents and WIOA service providers) shall be adopted and published by each Local Workforce Board [20 CFR § 667.600(b) and 20 CFR § 658.400].

- **Written Policy and Procedures** – Each Local Workforce Board shall establish and maintain for its workforce area a unified process for the resolution of *formal, written complaints* brought forward by customers or other interested parties in relation to WIOA Title I and Wagner-Peyser (WIOA Title III) Job Service activities; or with regard to alleged violation of an individual’s civil rights or acts of discrimination in a manner consistent with the parameters outlined below.

Furthermore, a statement specifically citing the local area’s adoption of this Unified Workforce System Policy must be included in the local WDB and One-Stop Career Center Standard Operating Procedures (SOP) manual.

- **Designation of Local Complaint Officer/Equal Opportunity Officer and Alternates** – At a minimum, each Local Workforce Area shall designate one Complaint Officer (CO) and one Equal Opportunity Officer (EOO) and a back-up for each. The CO shall be responsible for initial handling of complaints pursuant to this issuance. The same individual may be designated as both the CO and the EOO. The name, business address and telephone number of the designated CO and EOO shall be publicized and included in all customer information describing how to file a complaint. The number of local COs and EOOs (and back-ups) designated by the WDB should be guided by the board’s need to assure that the process of complaint resolution must begin immediately upon receipt of the complaint *without delay* and must be conducted within the timeframes required by the nature of the complaint. Each local career center shall have on-site staff ready to handle the initial complaint process.
- **Local Customer Notification Process** - Local WDBs must assure that *all* Career Center customers are notified of their EO/Complaint rights. This may be accomplished in either a group or individual setting. A written description of the local complaint process (including procedural instruction) shall be included in the package of Career Center Seminar materials. While the Career Center Seminar incorporates specific references to the complaint process, providing an advantageous opportunity to satisfy the customer notification requirement, local WDBs must also assure that other appropriate local mechanisms are in place to ensure maximum notification and that individual notification is duly recorded in the MA One-Stop Employment System (MOSES) database as part of the customer record. WDBs must also ensure that the local notification process assures that complaint procedures are initiated in a timely manner when a customer expresses a desire to file a complaint or requests a copy of the procedures.

- **Public Notice** - All direct recipients of WIOA/Wagner-Peyser (WIOA Title III) funds including Local Workforce Boards, One-Stop Career Centers, WIOA Title I Administrators, WIOA Fiscal Agents and WIOA service providers are required to prominently display in public view the official U.S. DOL approved Complaint System poster with local contact information (Attachment G). In addition, recipients of WIOA / Wagner-Peyser (WIOA Title III) funds shall make reasonable efforts to ensure that the complaint procedure information is understood by affected participants and other individuals, including youth and those who are Limited English Proficient (LEP) individuals. The brochure “You Have the Right to File a Complaint” providing customers with general instructions as to how to file a complaint must also be made available to customers, program participants, employees, one-stop partners, service providers, other interested parties and members of the public. English and Spanish language versions of the brochure are attached (Attachments D/E).

All direct recipients of WIOA/Wagner-Peyser funds must also prominently display the “Equal Opportunity is the Law” Poster in English and Spanish (Attachments K/L).

- **Confidentiality** - The identity of a complainant(s) or any person who furnishes information related to, or who has assisted in an investigation of a complaint shall be kept confidential to the maximum extent possible consistent with applicable law and a fair determination of the complaint. The identity of a complainant may only be released upon written consent of the individual(s) furnishing information regarding a complaint or apparent violation.
- **Complaint Logs** - Each WDB must establish procedures for its area for the use and maintenance of the Unified Workforce System Complaint Log (see Attachment C) consistent with guidance provided, herein.
 - ✓ The WIOA Complaint Log must clearly identify each individual complaint.
 - ✓ Each complaint must have a unique identification number. Copies of those Complaint Log pages that clearly indicate all newly filed and all resolved complaints for the calendar quarter must be promptly submitted (through e-mail) to the State Monitor Advocate no later than the 15th day of the month following the end of each quarter.
 - ✓ The Complaint Log is available in, and is to be completed and maintained in an Excel format.
 - ✓ Local area Complaint Logs will be maintained on an annual basis consistent with the *state fiscal year* (July 1 – June 30). Each annual complaint log will be kept for a period of 3 years following the end of the fiscal year for which the log was kept.
 - ✓ The State Complaint Officer will compile and maintain a statewide Complaint Log from the submitted local Complaint Logs.

Instructions for completing the Complaint Log are included in attachment C-1.

- **Acknowledgement** – Once you receive or accept for processing a formal (signed) complaint, you must acknowledge receipt of the complaint. When mailing letters to

complainants, always send them “return receipt requested”. Acknowledgments may be sent via email, if an email address has been provided by the complainant.

- **Written Determinations** – All formal complaints require a written determination to the complainant within specified timeframes.
- **Appeals** – Every complainant must be provided the opportunity to appeal any local adverse decision.
- **Follow-Up** – Workforce Areas should make a concerted effort to provide follow-up on all customer matters referred to outside enforcement agencies (see attachment M).

III. TYPES OF COMPLAINTS COVERED AND RESOLVED LOCALLY UNDER THE UNIFIED POLICY

Generally, this policy covers complaints 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 and that do not involve alleged criminal activity. Such complaints may be brought forward by Workforce Innovation and Opportunity Act customers, entities, service providers, staff or other interested parties; and are to be handled, at least initially, according to the processes outlined below.

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

- Complaints alleging violations by actions or omissions by a WDB, One-Stop Career Center, WIOA entity or WIOA service provider staff in violation of either Title I or the Wagner-Peyser Act as Amended.
- Complaints (within workforce area jurisdiction) alleging violations by actions or omissions by a WDB, One-Stop Career Center, WIOA entity or WIOA service provider staff in violation of Section 188 of the Workforce Innovation Opportunity Act prohibiting discrimination on the basis of race, color, religion, national origin, age, gender, disability, political affiliation or belief, or on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title I financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended prohibiting discrimination on the basis of race, color and national origin; Section 504 of the Rehabilitation Act of 1973, as amended prohibiting discrimination against individuals with disabilities; The Age Discrimination Act of 1975, as amended prohibiting discrimination on the basis of age; Title IX of the Education Amendments of 1972, as amended prohibiting discrimination on the basis of sex in educational programs; and 29 CFR Part 37, regulations implementing the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act.
- Complaints against an employer about the specific job to which a WIOA/Job Service customer was referred by a staff person of a One-Stop Career Center or other WIOA partner or service provider.
- Complaints against an employer filed by, or on behalf of a WIOA/Job Service customer referred to the employer by a staff person of a One-Stop Career Center or other WIOA partner or service provider alleging violations of employment related laws.

- Complaints against an employer filed by, or on behalf of an individual who was not referred by a staff person of a One-Stop Career Center or other WIOA partner or service provider.
- Complaints of violations of labor standards.
- Complaints by, or on behalf of Migrant Seasonal Farm Workers (MSFWs) that allege violations of laws enforced by ESA or OSHA.
- Complaints by, or on behalf of Veterans alleging violations of the mandatory job listing requirements for federal contractors and/or Veterans' priority of service.
- Appeals of Governor's decision rejecting a request for designation as a workforce development area.
- Appeals of the denial or termination of eligibility as a training provider.

IV. OSCC COMPLAINTS - LOCAL PROCESS/TIMEFRAMES

Local workforce entities shall attempt to resolve customer "issues" in an informal manner 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 determination, and the right to appeal are *fully* in place once a complaint is submitted in writing.

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 WDB (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 years of the alleged violation.
- All formal complaints subject to the process described in this policy must be filed in written form:
 - ✓ Submission of the official Unified Workforce System Complaint Referral Record Form [see Attachment F (includes instructions)], or
 - ✓ Submission of a written letter signed by the complainant or authorized representative.

Written complaints must include the complainant's full name, telephone number and address and the date of filing. Written 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.

- All formal complaints must be entered into the official Unified Workforce System Complaint Log (see Attachment C). 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 within 15 days following the end of that quarter.

- 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.
- The local CO may also choose to resolve the complaint by convening a local hearing. Only the designated local CO or authorized back-up may preside at a local complaint hearing. If the local CO deems that a hearing is necessary the local CO will notify the parties (in writing) that the matter has been scheduled for a formal hearing. The notice must inform the parties of certain conditions of the hearing process that include:
 - ✓ the date, time and location of the hearing,
 - ✓ instruction that the local CO 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, and
 - ✓ instruction that the local CO must rule on the introduction of evidence* and afford the parties the opportunity to present, examine, and cross-examine witnesses.

***NOTE:** For clarity it must be stated 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 CO to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

- Generally, the local CO has only 15 days from the date a written complaint is received to resolve the complaint. 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*.
- If the CO has made a written request to the complainant (or the complainant's authorized representative) for additional information, the 15 day period (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/EO 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 working days / all MSFW complainants are allowed 40 working days from the date of receipt to respond to a written request for additional information. If a complainant does not respond, the complaint shall be considered resolved.
- The CO must provide the complainant with a written determination. If the local CO does not resolve the complaint to the satisfaction of the complainant within the 15-day period (or, in the case of an MSFW initiated complaint, the 5 day period), the complainant may request an appeal and/or hearing at the State level (see Section VI, STATE LEVEL APPEAL/HEARINGS).
- The CO must include the right to appeal 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.
- 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.

- The filing of a complaint at the state level does not preclude an attempt to reach an informal resolution with the complainant at the local level while the complaint is processed centrally by the Department of Career Services.
- 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.
- If complaints are referred to other enforcement agencies for adjudication, follow-up must be conducted (every 90 days for non-MSFW /every 30 days for MSFW related complaints) and customers informed of the results.
- Another type of grievance that shall be reported on investigated or referred for investigation are “Apparent Violations”. An apparent violation is a reported or suspected violation of employment-related laws or employment service regulations by an employer. This only applies to issues related to MSFWs.
- Send copies of determinations related to Career Center complaints resolved at the local level to:

Complaint Officer
Department of Career Services
19 Staniford Street, First Floor
Boston, MA 02114

V. EQUAL OPPORTUNITY COMPLAINTS - LOCAL PROCESS / TIMEFRAMES

- An Equal Opportunity Complaint must be filed within 180 days of the alleged act(s) of discrimination. This complaint must be filed at either the local level or with the USDOL Civil Rights Center (CRC) in Washington, D.C.
- If a customer alerts a career enter of his/her intent to file a discrimination complaint, steps should be taken to connect the complainant with the designated local EO Officer (his or her name should appear on the Complaint / EO poster or flier). If the local Complaint / EO Officer (CO/EO) is not available immediately, the designated EO back-up shall be contacted.
- In all possible instances, the designated local EO should personally meet with the complainant(s) in an area of the agency’s offices that ensures confidentiality. The purpose of this preliminary interview is to:
 - ✓ determine the complainant’s name, address and means of contact;
 - ✓ determine the basis of the complaint;
 - ✓ develop a detailed description of the allegation(s);
 - ✓ determine the date of the most recent alleged event of discrimination; and
 - ✓ Identify the proper respondent.
- Career centers may choose to gather the complainant’s information on USDOL-Civil Rights Center’s (CRC) Complaint Information (CIF) and Privacy Act Consent Forms (see Attachments H/I).

- Once the information is gathered, the document must be signed and dated by the complainant. The signed/dated Consent Form should indicate whether the complainant allows the EO to disclose the complainant's identity, if necessary to investigate his or her complaint.
- The EO should ask the complainant whether he/she would like the complaint handled locally or referred to the USDOL-Civil Rights Center in Washington, D.C. The complainant's decision should be indicated on the signed document Consent form.
- The EO should stress that a local resolution would likely be reached more quickly and that the complainant's right to file again with the USDOL would still be available should the resolution be unsatisfactory.
- If the complainant elects to have his/her complaint resolved at the local level, the EO must request that the customer allow one (1) day for preparation of a written letter to either acknowledge receipt of the complaint or to provide a notice of Lack of Jurisdiction. If this is not possible, the complainant should be asked to wait in the public reception area while the EO examines the complainant's statement and a response is prepared. **Note: when mailing letters to complainants, always send them "return receipt requested." When providing similar written responses in person, secure a signed receipt.**
- The EO must review the information provided and determine if he/she has jurisdiction (see Attachment M).
- Once determined, the EO must declare in writing that he/she either has jurisdiction over the complaint or does not have jurisdiction based on one or more of the following reasons:
 - ✓ The basis for the complaint is not covered by the prohibitions set forth in 29 CFR Part 37.
 - ✓ The complaint was not filed with the prescribed timeframes within 180 days of the date that the discriminatory act (s) allegedly occurred.
 - ✓ The complaint is against an agency, employer, organization, program, or individual within an entity that is not a recipient of WIOA Title I financial assistance as defined in 29 CFR Part 37.4.
- If it is determined that the EO does not have jurisdiction, he/she should provide the complainant with the address and phone number of the appropriate agency with jurisdiction.
- If it is determined that the career center does not have jurisdiction in the particular matter (see Section VII, below), a notice citing one or more of the above reasons shall immediately be provided in writing. The written notice must include the specific phrase "lack of jurisdiction" in describing why the career center is not the appropriate entity to resolve the complaint. If the notice is mailed to the complainant, send "return receipt requested". The notice should also inform the complainant that he/she has 30 days from the date of receipt to file a complaint to the CRC. The *original* signed complaint should be included with the notice. A *copy* of the complaint should be maintained on file with the career center.

- If the discrimination complaint is within the EO's jurisdiction, an acknowledgement letter must be prepared. The acknowledgement letter should contain the following:
 - ✓ Notice of complaint receipt.
 - ✓ Assignment of a distinct complaint number (e.g. xxxx-01-01, first complaint, year).
 - ✓ Restatement of the issues raised in the complaint.
 - ✓ Notice of which issues have been accepted.
 - ✓ Explanation, if necessary of issues that will not be investigated.
 - ✓ A notice that the complainant has a right to representation by any individual he/she chooses during the complaint process. The notice should specify that if an attorney is chosen to represent the complainant, all legal fees are the sole responsibility of the complainant.
 - ✓ A notice that a preliminary period of fact-finding or investigation will occur and may take approximately 15 days to complete. Preliminary fact-finding describes the issues raised by the complainant and the respondent.
 - ✓ A choice of "Alternate Dispute Resolution" (ADR) as an appropriate option for informal resolution.

ADR includes "mediation" as a way of resolving the issues or differences between the parties to the complaint. The ADR objective and process should be briefly explained in the letter. The choice to use ADR rests with the complainant and such a choice to use ADR should be communicated to the EO by the complainant as quickly as possible. Upon receiving notice of the complainant's decision to pursue ADR, the EO must immediately notify the Commonwealth:

Director of Diversity and Equal opportunity
Executive Office of Labor and Workforce
Development
19 Staniford Street, Fifth Floor
Boston, MA 02114

Complaint Officer
and Department of Career Services
19 Staniford Street, First Floor
Boston, MA 02114

ADR should not be considered as an appropriate mechanism for resolution when the complaint:

- is of a high profile nature;
 - involves legal issues;
 - involves the potential for setting a policy precedent; and/or
 - impacts other members of a protected group.
- ✓ If the complainant is dissatisfied with the resolution of the complaint at the State or local level, the complainant may file a new complaint with CRC within 30 days of the date on which the Notice of Final Action was received.
- ✓ If the State or LWDA fails to issue the Notice within 90 days of the date on which the complaint was filed, the complainant may file a new complaint with CRC within 30 days of the expiration of the 90-day period (in other words, within 120 days of the date on which the original complaint was filed).

- The EO complaint process including fact-finding, ADR, settlement agreement, and “Notice of Final Action” must be completed within 90 days of the date that the complaint was filed at the local level.
- The respondent to the complaint must also be notified that a complaint alleging discrimination has been filed and is being processed. The respondent must be provided a summary or copy of the complaint and given written notice that any form of retaliation or intimidation is against the law. The respondent must also be notified if ADR has been offered to the complainant as a means of informal resolution.
- Copies of all correspondence related to EO complaints must be sent to both:

Director of Diversity and Equal opportunity
Executive Office of Labor and Workforce
Development
19 Staniford Street, Fifth Floor
Boston, MA 02114

and

Complaint Officer
Department of Career Services
19 Staniford Street, First Floor
Boston, MA 02114

Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System

- Recently, the U.S. Department of Labor issued Training and Employment Guidance Letter (TEGL) 37-14 (*MA Unified Complaint and Appeals Policy, Attachment N*) to recipients of federal financial assistance regarding the prohibitions on discrimination based on gender identity, gender expression, and sex stereotyping. In the guidance letter, it was noticed that lesbian, gay, bisexual and transgender (LGBT) individuals experience significantly higher rates of unemployment and employment discrimination as compared to the rest of the population.
- Consistent with the guidance and regulatory requirements, One-Stop Career Centers and sub-recipients shall ensure that this targeted population has equal access to available services. Further One-Stop Career Centers and sub-recipients shall utilize attachment 2 of TEGL 37-14 (“Further Guidance Regarding Forms of Sex Discrimination Against LGBT Individuals”) as a guide for the review of their existing policies and procedures. In addition, OSCC staff shall familiarize themselves with attachment 1 of TEGL 37-14 (“Key Terminology for Working with Lesbian, Gay, Bisexual, and Transgender Persons”) in order to facilitate effective communication with LGBT customers and employees of the workforce system.

VI. STATE LEVEL APPEAL / HEARING – PROCESS / TIME FRAMES

As stated above, if the local process *does not* resolve the complaint to the satisfaction of the complainant the “Notice of Final Action” or the CO written determination issued to the complainant must include an offer to request an *appeal* and/or a formal *appeal hearing* to the next higher level (the Commonwealth).

Within 60 calendar days of filing your grievance, WIOA requires the local area to provide a formal hearing, if the issue is not resolved informally prior to the hearing. If you find the local hearing decision unsatisfactory, or if the local area does not respond to you in the allotted 60 days, you will have the opportunity to file a request for review by the State. At the State level, WIA requires an opportunity for an informal resolution and hearing to be completed within 60 calendar days of the filing. If the State does not respond within the 60 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 calendar days of the receipt of the decision being appealed.

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

Formal Hearing Process

If the State Complaint Officer deems that a formal hearing is necessary or if the complainant specifically requests such a hearing, the State 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 (State 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 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 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 complainant, the respondent and any other participating interested parties within the 30-day period (or in the case of a complaint brought by a Migrant and Seasonal Farm Worker –MSFW – within 20 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 as to why the complaint was not resolved;
 - ✓ 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) if the complaint is against an employer and the State level investigation has found that the employer violated Wagner-Peyser regulations;
 - ✓ an offer to the complainant to request a hearing within 20 working 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 complainant to request a hearing within 20 working 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 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 DOL/ETA within 60 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 days after receiving the appeal.

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

and

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

VII. APPEALS OF GOVERNOR’S DECISION REJECTING A REQUEST FOR DESIGNATION AS A WORKFORCE DEVELOPMENT AREA

A unit of general local government (including a combination of such units) or grant recipient *that requests but is not granted* designation as a local area under WIOA Section 106(b), paragraph (2) or (3) may submit an appeal to the State board. The complainant must request the state-level appeal and/or formal appeal hearing in writing within 20 business days of receiving the adverse determination.

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

Director
Massachusetts Workforce Development Board
Executive Office of Labor and Workforce Development
One Ashburton Place, Suite 2112
Boston, MA 02108

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

NOTE: *If the Director of the State Board has made a written request for information to the complainant or the complainant's authorized representative, they do not respond within the given time frame the complaint is considered resolved.*

Formal Hearing Process

If the Director of the State Board deems that a formal hearing is necessary or if the complainant specifically requests such a hearing, the Director of the State Board 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 (Director of the State Board 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 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 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 complainant, the respondent and any other participating interested parties within the 30-day period 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 as to why the complaint was not resolved;

If a decision on the appeal is not rendered in a timely manner, or no later than 30 days, or if the appeal to the State Board does not result in designation, the aggrieved entity may request review by the United States Secretary of Labor, under the procedures set forth at 20 CFR 683.640.

Such appeals made to the U.S. Secretary of Labor must be filed no later than 30 days after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to:

Secretary, U.S. Department of Labor
200 Constitution Ave. NW.
Washington, DC 20210
Attention: ASET

A copy of the appeal must be simultaneously provided to the State 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 designation in WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250.

If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250, the Secretary may require that the area be designated as a local workforce area. In making this determination the Secretary may consider any comments submitted by the State Board in response to the appeal. The Secretary must issue a written decision to the Governor and the appellant.

VIII. APPEAL OF DENIAL OR TERMINATION OF ELIGABILITY 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 State Complaint Officer. The complainant must request the state-level appeal and/or formal appeal hearing in writing within 20 business days of receiving the adverse determination. If the complainant chooses to request an appeal *without specifically requesting an appeal hearing*, the State Complaint Officer may decide to either make a determination based solely on the information included in the case file or conduct further investigation and issuing a written determination without scheduling a formal hearing. In either case, the State Complaint Officer must submit a written determination to the complainant within 30 days of receipt of the original appeal request or after having received additional information from further investigation (unless the State Complaint Officer deems a formal hearing to be necessary as described below).

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

Formal Hearing Process

If the State Complaint Officer deems that a formal hearing is necessary or if the complainant specifically requests such a hearing, the State 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 (State 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 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 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 complainant, the respondent and any other participating interested parties within the 30-day period 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 as to why the complaint was not resolved;

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).

IX COMPLAINTS NOT RESOLVED LOCALLY OR COVERED BY THIS POLICY

- **Criminal Complaints** – All information and complaints alleging criminal fraud, waste, abuse or other criminal activity under WIOA must be reported immediately to the Department of Labor's Office of Inspector General (20 CFR § 667.630). A copy of the complaint must simultaneously be provided to the MA Department of Workforce Development Office of Internal Control and Security.

Office of Inspector General
200 Constitution Avenue, NW, Room S-5506
Washington, DC 20210
Online: <http://www.oig.dol.gov>
Toll free: 1-800-347-3756 FAX: 202-693-5210

Office of Internal Control & Security
Charles F. Hurley Building
19 Staniford Street, 4th Floor
Boston, MA 02114

and

- **Complaints of Job Service Discrimination by an Employer**
All Job Service (Wagner-Peyser) related complaints regarding discrimination by an employer *must* be logged locally and referred to the MA Commission Against Discrimination (MCAD) for adjudication. Simultaneously a copy of the complaint must be forwarded to the U.S. Equal Employment Opportunity Commission (EEOC).

MA Commission Against Discrimination
One Ashburton Place
Sixth Floor, Room 601

U.S Equal Opportunity Commission
and Boston Area Office
John F. Kennedy Federal Building

Boston, MA 02108
Phone: 617-994-6000
TTY: 617-994-6196

475 Government Center
Boston, MA 02203
1-800-669-4000

- **Complaints by MSFWs Alleging Violations of Laws Enforced by ESA or OSHA**
Such complaints are to be logged locally and elevated immediately to the State Monitor Advocate who will refer the complaint to the proper enforcement agency (ESA or OSHA).

State Monitor Advocate
Department of Career Services
19 Staniford Street, First Floor
Boston, MA 02114

- **Complaints Against Employers From Another State**
Such complaints are to be logged locally and elevated immediately to the State level. If the complaint is filed by a Migrant or Seasonal Farm Worker (MSFW), the WDB / OSCCs will refer the complaint to the State Monitor Advocate. The State Complaint Officer or Monitor Advocate will refer the complaint to the appropriate agency in that state.
- **Complaints Involving More Than One Massachusetts Career Center.**
Such complaints are to be logged locally and elevated immediately to the State level.
- **Complaints Alleging Statewide Violations or Involving DCS or CommCorp.**
Such complaints are to be logged locally and elevated immediately to the State level.
- **Complaints Alleging Violations of Unemployment Assistance (UA) or Transitional Assistance for Needy Families (TANF) Law/Regulations**
Such complaints are to be logged locally and elevated immediately to the State level. The State Complaint Officer or the State Monitor Advocate will process such complaints within the parameters set forth in the respective regulations.

Complaint Officer
Department of Career Services
19 Staniford Street, First Floor
Boston, MA 02114

- **Apparent Violations** - is a representation made or referred to a state or local One-Stop Career Center employee based on a personal observation, or a reasonable belief or receipt of information regarding a suspected violation of employment related law(s), or Employment Service regulations.

Processing Apparent Violations

If a State agency employee observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment related laws or Job Service (JS) regulations by an employer, except as provided under the field checks or Job Service Complaint System regulations, the employee shall document the

suspected violation and refer this information to the One-Stop Career Center Operation Manager.

The One-Stop Career Center Operations Manager must determine:

- If the employer has filed a job order with the One-Stop Career Center within the past 12 months; and
- If the apparent violation involves Wagner-Peyser Job Service (WIOA Title III) regulations; terms/conditions of employment (job orders) or employment related laws.

If so, the local OSCC Operations Manager shall attempt informal resolution. If the employer does not remedy the suspected violation within 5 working days, the matter must be elevated to the State Monitor Advocate (SMA) for review and consideration. The SMA may recommend that discontinuation of services procedures be initiated against the employer and, if a violation of an employment related law is involved, the violation will be referred, by the SMA, to the appropriate enforcement agency in writing.

All Child Labor Law apparent violations must be immediately referred the U.S. DOL, Wage and Hour Division and elevated to the SMA:

US Dept. of Labor		State Monitor Advocate
Wage & Hour Division		Department of Career Services
Boston District Office	and	19 Staniford Street, First Floor
JFK Federal Building, Rm. 525		Boston, MA 02114
Boston, MA 02203		

Examples of *Apparent Violations* may include (but are not limited to):

- ✓ An interested party reports to the OSCC that his next door neighbor son / daughter is operating equipment at the farm down the street.
- ✓ A local staff person speaks with a MSFW who complains about unfair treatment by an employer and, though the individual provides credible information alleging an employer violation, the person chooses not to file a complaint (through the formal Complaint Process). The staff person still suspects a violation occurred.
- ✓ A One-Stop Career Center staff person attempts to take a job order from an agricultural employer (non-H-2A or H-2A) who insists on a requirement that is a violation of employment related law(s).
- ✓ A One-Stop Career Center staff person visiting an agricultural work site observes a possible violation of housing / field sanitation / work standards but no complaint has been filed.

If the employer *has not* filed a job order with the local office during the past 12 months, the suspected violation of an employment related law shall be referred to the appropriate enforcement agency in writing with copy to the State Monitor Advocate.

***Note:** While Apparent Violations are to be logged on the Unified Complaint System Log, they are processed separately and are an exception to the formal Complaint Process.*

The State Monitor Advocate will forward a copy of all apparent violations involving MSFWs and / or H-2A employers / farm labor contractors to the Farm Labor Specialist (FLS) assigned to the Regional Office of the U.S. DOL, Wage and Hour Division and will contact the U.S. DOL ETA, Chicago National Processing Center (CNPC) in the event that US workers are withheld from the job prior to the arrival at the job site of H-2A workers.

- **Complaints Alleging Federal Contractor Violations** - Federal contractors must adhere to a number of wage and labor standard requirements mandated under a variety of federal statutes. Complaints alleged against federal contractors should be forwarded to the appropriate federal agency. Attachment J provides contact information and additional guidance with respect to determining the relevant federal agency in such cases.
- **Career Center Staff Personnel Complaints** - Staff Personnel Complaints (other than discrimination complaints) should be handled through the appropriate employer of record Human Resource office. Staff complaints alleging discrimination must be immediately elevated to the Director of Diversity and Equal opportunity.