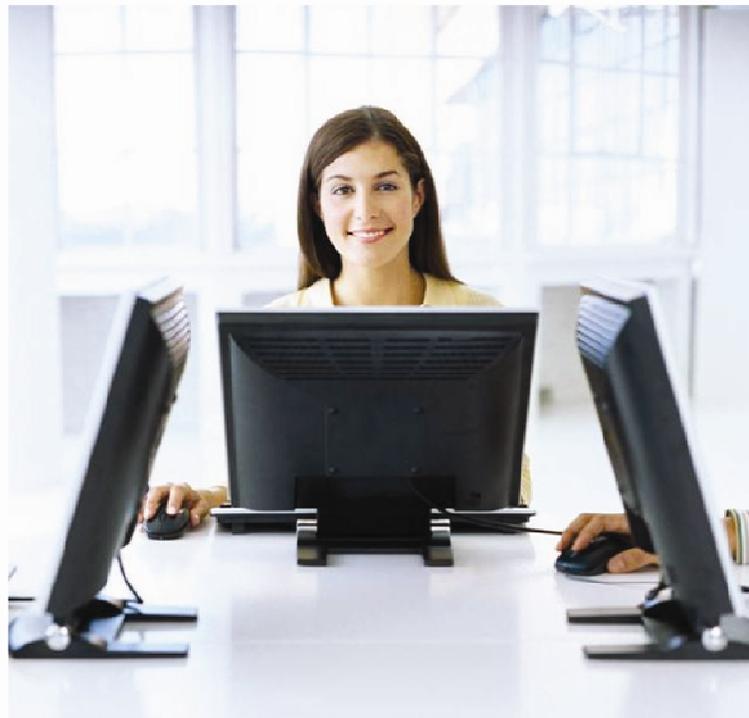


Workforce Investment Act

Complaint Procedures Manual



Revised February, 2013

Ohio Department of Job and Family Services

- Office of Workforce Development
- Bureau of Civil Rights
- Office of Legal and Acquisition Services

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INTRODUCTION

This Workforce Investment Act (WIA) Complaint Procedures Manual contains information regarding when and for what a complaint can be filed, and the process for filing and processing a complaint. This manual was developed by the Ohio Department of Job & Family Services (ODJFS), Office of Workforce Development and Bureau of Civil Rights.

The purpose of this manual is to:

- Define a complaint and the process for filing.
- Define the roles and responsibilities of all parties within the complaint process.
- Define the regulations and processes for each type of complaint.
- Establish the timeframe for processing of complaints.
- Ensure fair and equitable treatment of all parties involved in the complaint process.

The information and forms provided in the WIA Complaint Procedures Manual serve as a guide in the handling of complaints and establish a uniform framework that includes basic minimum requirements for processing complaints and conducting hearings. The forms that are attached to this manual (Attachments) are to be considered as templates and can be modified as needed for use in the complaint process.

The statutory and regulatory authority for the WIA Complaint Workflow is provided in the following:

The Workforce Investment Act of 1998 (WIA), Sections 181, 184 & 188;

Ohio Administrative Code (OAC) Chapter 5101:9-2

Ohio Revised Code (ORC) 5101.24

20 CFR 667.600, et. seq. (U.S. DOL, ETA)

20 CFR 663.105, et. seq. (U.S. DOL ETA)

29 CFR Part 37 (U.S. DOL, CRC)

28 CFR, 42.410, et. seq. (Dept of Justice)

Title VI of the Civil Rights Act of 1964

This manual is intended to be used by program participants, clients and/or beneficiaries, or other interested parties affected or potentially affected by an alleged violation.

The manual also describes the three levels of review that may occur during the processing of a discrimination, programmatic, and/or fraud and abuse complaint:

- *Local Level*
 - Equal Opportunity Officer (EOO) for Discrimination Complaints
 - Hearing Officer designated by Local Workforce Investment Board for Programmatic Complaints
- *State Level*
 - ODJFS, Bureau of Civil Rights (BCR) for Discrimination Complaints
 - ODJFS Official designated by ODJFS Office of Workforce Development (OWD) for Programmatic Complaints
- *Federal Level*
 - U.S. Department of Labor (D.O.L.) Civil Rights Center (CRC) for Discrimination Complaints
 - D.O.L. Asst. Secretary of Employment and Training (ASET) for Programmatic Complaints
 - D.O.L. Office of Inspector General for Fraud and Abuse Complaints

OVERVIEW

As a condition for receipt of federal financial assistance, ODJFS is required to establish and maintain procedures for the receipt, investigation, and resolution of complaints arising from WIA programs, activities and/or services administered by the department and local workforce investment areas (LWIAs or Local WIAs).

Who may file a complaint?

Complaints may be filed by program participants, clients and/or beneficiaries or other interested parties, affected or potentially affected by an alleged violation. Other possible complainants may include: service providers, staff of grant recipients, applicants, labor unions, community-based organizations and local elected officials.

Types of complaints:

There are three types of complaints—*programmatic*, *discrimination*, and *fraud and abuse*—each of which follows its own complaint procedures workflow. The complaint procedures workflow is designed to provide a framework for the timely resolution of complaints. These procedures also provide for the resolution of complaints pertaining to the results of monitoring findings, investigations and audits.

- *Programmatic Complaints* are complaints which allege a violation of WIA law, regulation or policy but do not assert unlawful discrimination. These complaints are filed in connection with WIA-funded programs. Programmatic complaints must be filed within one year of the date of the incident, treatment, action or omission which caused the complaint. Hearings are to be held and decisions issued within sixty (60) days of the date complaints are received. **Must be reviewed at the local level.**
- *Discrimination Complaints* are complaints alleging a violation of law(s) that prohibit(s) discrimination in federally assisted programs on the basis of race, color, religion, sex, age, national origin, disability, political affiliation or belief, and (for Workforce Investment Act (WIA) beneficiaries only) citizenship/status as a lawfully admitted immigrant authorized to work in the United States. WIA participants are also protected against discrimination on the basis of their participant status. Discrimination complaints must be filed within 180 days of the date of the alleged discriminatory act or treatment. **Investigated at the state level.**
- *Fraud and Abuse* is any complaint alleging fraudulent activity or abuse of services. **Investigated at the federal level.**

Although there are some differences in the established timelines for the processing and resolution of the three types of complaints, it is both the implicit and express intent of this agency that all persons and/or organizations filing complaints shall be afforded fairness and due process in the investigation and resolution of their charges.

NOTIFICATION OF BENEFITS AND RIGHTS

Upon application for or enrollment in WIA programs/activities, individuals shall be advised of their rights, responsibilities and benefits from participation in programs (29 CFR 37.36). They shall also be provided a written description of complaint procedures available to them including notification of their right to file complaints and instructions on how to do so. The local level Equal Opportunity Officer (EEO) will also ensure that orientations include discussions of rules of conduct and any applicable disciplinary policies. All other potential complainants will be advised and provided a description of complaint procedures at the time the question of a complaint arises. This manual is the accepted document for the **WIA Complaint Procedures Manual**, last revised February 2013.

Complaint Procedures will include the following elements:

- **Written Complaint** - Before any filing date can be established, a complaint must be reduced to writing. EEOs shall be available to assist complainants and to provide information concerning the rights afforded by the complaint process and accompanying responsibilities.
- **Confidentiality** - To the maximum extent possible, the identity of any person providing information related to or assisting in an investigation of a possible violation of the Act, regulations, grant or other agreement under the Act shall be kept confidential. An individual's identity may, however, need to be disclosed if such disclosure is essential to assure a fair determination of the issues. The identities of all persons giving testimony at a hearing must be disclosed to the hearing officer and to all parties participating in the hearing.
- **Prohibition Against Retaliation** - No local workforce investment board shall terminate an employee, nor in any manner discriminate or retaliate against any individual or deny any individual benefits to which he/she is entitled because the individual has (1) filed a complaint; (2) instituted or caused to be instituted any proceeding under the Act, regulations, grant or other agreement under the Act; or (3) testified or is about to testify or assisted or participated in any manner in an investigation, proceeding or hearing under this procedure. The existence of remedies under this procedure **shall not preclude** pursuit of any other non-WIA remedies for conduct that violates the Act and also violates a federal statute other than WIA or a state or local law.(§ 184(f) of WIA and 29 CFR § 37.11)

RULES AND REGULATIONS

A list of all cited rules and regulations has been included as an attachment in the back of this manual. (**Attachment D**)

TERMINOLOGY

Alternative Dispute Resolution (ADR) - Structured mediation process for resolving discrimination complaints.

Beneficiaries – Applicants, registrants, participants, recipients, sub-recipients, service providers, labor unions, joint labor management committees, and community-based organizations for services, assistance, and other benefits administered by workforce development agencies.

Bureau of Civil Rights (BCR) - The civil rights arm of the Ohio Department of Job and Family Services (ODJFS), reporting to the Office of Employee and Business Services. The Bureau is responsible for receiving and resolving complaints alleging unlawful discrimination in programs administered by ODJFS.

Complaint – A written alleged violation filed by program participants, clients and/or beneficiaries or other interested parties, affected or potentially affected. There are three types of complaints: *Programmatic, Discrimination, and Fraud and Abuse*.

Complaint Log – A log of all complaints filed with the local area, including the following details about each complaint:

- information sufficient to accurately identify the complainant
- the date the complaint was filed
- basis of the complaint
- type of complaint (e.g. discrimination, programmatic, fraud and abuse)
- complaint status
- the outcome/last action
- date of final action

Complainant/Grievant - A participant/beneficiary or other interested or affected party, alleging violation(s) of laws or regulations governing programs administered by the Ohio Department of Job and Family Services (ODJFS) and LWIAs.

CDJFS - A county department of job and family services.

Civil Rights Center (CRC) - The U.S. Department of Labor's civil rights office.

Day - As used in this manual, day means **calendar** day, rather than **business** day.

Discrimination Complaint - A complaint alleging a violation of law(s) that prohibit(s) discrimination in federally-assisted programs on the basis of race, color, religion, sex, age, national origin, disability, political affiliation or belief, and (for Workforce Investment Act (WIA) beneficiaries only) citizenship/status as a lawfully admitted immigrant authorized to work in the United States. WIA participants are also protected against discrimination on the basis of their participant status.

Due Process - The basic procedural rules and principles governing the conduct of administrative and judicial hearings and related personnel processes, assuring fairness to all parties. The absence of due process violates constitutional rights and can be a basis for the reversal of any result reached through the faulty procedure.

Equal Opportunity Data (EO DATA) - Statistical information including race, age, sex and disability status of participants and beneficiaries under federally assisted programs. The keeping of such data is required for federal program funding as one means of monitoring those programs to ensure they are free from unlawful

discrimination.

Equal Opportunity Officers (EOO) - LWIA grant recipients, subrecipients, and county departments of job and family services (CDJFSs) shall designate individuals to monitor complaint procedures and to ensure that all ODJFS programs and activities are operated in a nondiscriminatory manner. EO Officers act as a liaison with the ODJFS Office of Workforce Development (OWD) for uniformity of operation.

Employment and Training Administration (ETA) – The U.S. Department of Labor (DOL) Office that provides oversight for federally funded employment and training programs.

Fraud and Abuse Complaint – Fraud is an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/her or some other person. It includes any act that constitutes fraud under applicable federal or state law. Abuse is the intentional and unwarranted destruction, diversion, manipulation, misapplication, maltreatment, or misuse of resources; and/or the abuse of one's position or authority as evidenced by the excessive misapplication or misuse of resources. Abuse can occur in financial and non-financial settings.

Hearing - A quasi-judicial forum convened and presided over by the Hearing Officer. This proceeding is conducted pursuant to administrative procedures set forth in this manual. A decision is rendered, usually within a specified time period, and includes applicable appeal rights and procedures for filing an appeal.

Informal Conference – Meeting facilitated by the Equal Opportunity Officer (EOO) during which the facts and circumstances attending a complaint are examined in an effort to informally resolve the complaint. If a mutually agreed upon resolution cannot be achieved, parties are advised of their right to request a hearing.

Local Workforce Investment Area (LWIA) – Has same meaning as “Local Area”, which is defined in ORC 6301.01(A).

Participant - An individual who has been registered pursuant to 20 CFR 663.105, and who has been determined eligible and is receiving services (except for follow up services) under a program or activity authorized by Title I of the Workforce Investment Act of 1998 (WIA).

Programmatic Complaint – Any complaint which alleges a violation of pertinent law, regulations, or policy but does not assert unlawful discrimination.

Respondent - The person or entity named in a complaint as being responsible for alleged unfair treatment, misapplying eligibility guidelines, or misapplying or violating law, rule or policy in a way that is adverse to the complainant.

Service Provider - Refers to entities and individuals providing services directly to WIA participants, such as approved educational institutions and those providing skill training to WIA participants/applicants. Service provider does not include an unsuccessful bidder on a contract to provide software or other services directly to the workforce development agency or local workforce investment area, as these types of contract disputes are subject to government procurement requirements and the contract protest process.

State Recipient - The Ohio Department of Job and Family Services (ODJFS).

Workforce Development Agency – The entity given responsibility for workforce development activities that is designated by the board of county commissioners, the chief elected official of a municipal corporation, or the chief elected officials of a local area.

ROLES AND RESPONSIBILITIES

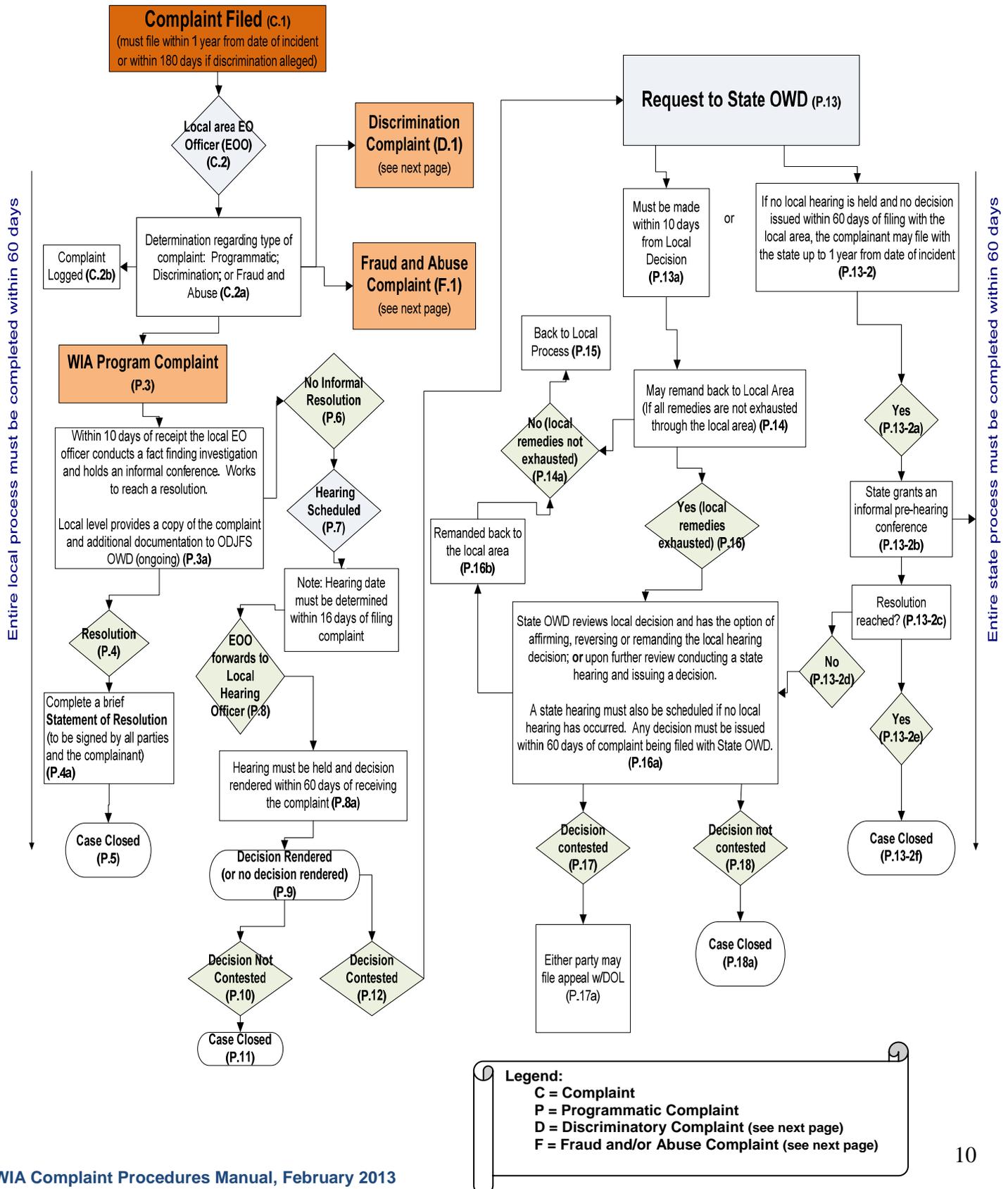
Attachments A-C - Detailed information regarding the roles and responsibilities for the complaint process are included in the Attachments A-C.

Listing includes:

- A - Equal Opportunity Officer (EEO)
- B - Hearing Officer and Hearing Process
- C - Alternative Dispute Resolution (ADR) for Discrimination Complaints

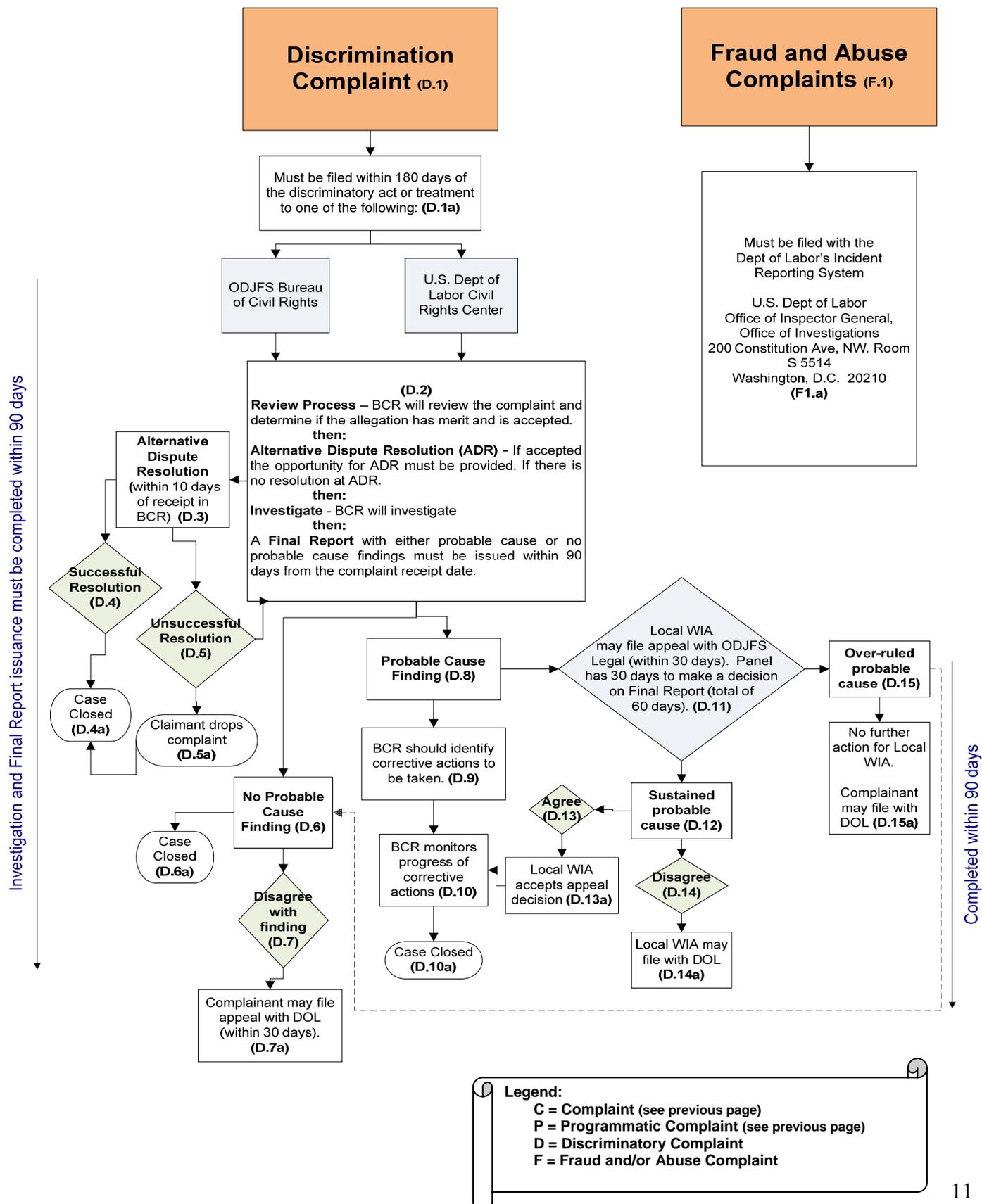
COMPLAINT FLOW DIAGRAM

(Detailed descriptions for each step on following pages)

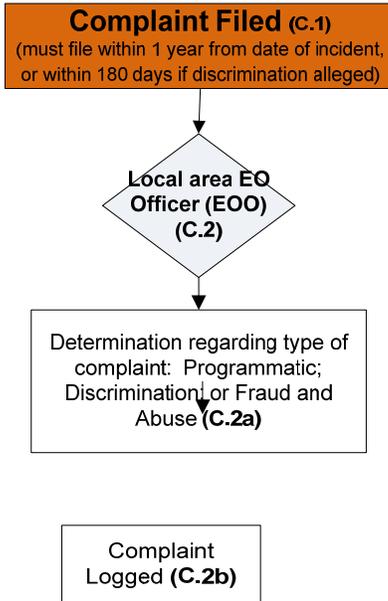


COMPLAINT FLOW DIAGRAM (Continued)

(Detailed descriptions for each step on following pages)



COMPLAINT WORK FLOW – Local Level



(C.1) Complaints must be submitted in writing and filed at the local level within one year of the date of the incident; unless discrimination is alleged, in which case the complaint must be filed within 180 days. If needed or requested, the Local Area EEO shall assist complainant in writing the complaint.

(C.2 & C.2a) - See Attachment A for details regarding selection of EO officers and the EO process - Upon receipt of a complaint the designated Local Area EEO reviews and determines what type of complaint it is. The process, procedure and workflow will differ based on the type of complaint.

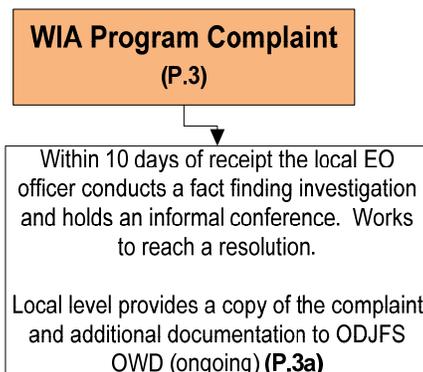
(C.2b) All complaints are to be logged and recorded and shall include: (1) name, address, and phone number of the complainant; (2) grounds or basis for the complaint; (3) date the complaint was filed; (4) person(s) and/or organization(s) against whom the complaint is filed; and (5) any other pertinent information (see also Complaint Log definition on page 7).

EEOs are designated to assure the promptness and coordination of the procedures identified in this manual. All CDJFSs and WIA administrative entities shall designate an individual to monitor and process complaint procedures.

EEOs shall be available to assist complainants and to provide information concerning the rights and responsibilities which are afforded by the complaint process.

EEOs and their alternates shall:

Act independently and without fear of intimidation or retaliation and have direct access to the decision maker (in the course of complaint investigation, resolution and/or referral, the EEO may find it necessary to suggest or bring about changes in policy or practice to correct deficiencies which have adversely affected the complainant or other individuals).



Local Level Processing/Review of Programmatic Complaints

(P.3) Programmatic complaints (AKA grievances) are also addressed under WIA (§ 181(c)) and federal regulations at 20 CFR 667.600, et. seq. These complaints are not discrimination-based and are initially filed at the local level. (See *programmatic* definition – page 5)

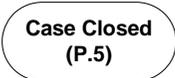
(P.3a) EEOs (and alternates) shall perform the following within ten (10) days of receipt of a programmatic complaint:

- begin to prepare an administrative case file and record of the complaint;
- notify appropriate field staff that a complaint has been filed;
- investigate to ascertain pertinent facts;
- determine if proper procedures have been followed (for example: if an individual is complaining about being unfairly terminated or being denied benefits or services, is there adequate record of action(s) taken and were those actions consistent with agency policy?);
- attempt informal resolution by scheduling and holding an informal conference. The purpose of the conference is to bring the parties together to discuss the issues and to examine evidence and make recommendations which may lead to a resolution;
- make **recommendations** based on the fact-finding investigation and information obtained during the informal conference; and
- If a formal hearing is requested, coordinate the hearing process and assist the Hearing Officer.



Complete a brief **Statement of Resolution** (to be signed by all parties and the complainant) (P.4a)

(P.4 & P.4a) If a resolution is reached, the EOO will prepare a brief **Statement of Resolution**, identifying the issue(s) and the action(s) and /or remedy(ies) to be taken to assure settlement of the matter. This statement will be reviewed by the parties to assure they are in agreement. If the resolution is agreeable to both the complainant and respondent, they will be asked to sign and date the document. The EOO will also sign and date the statement, provide a copy to each party, and place the original in the case file.



(P.5) Case is closed with a signed and dated resolution to the complaint.



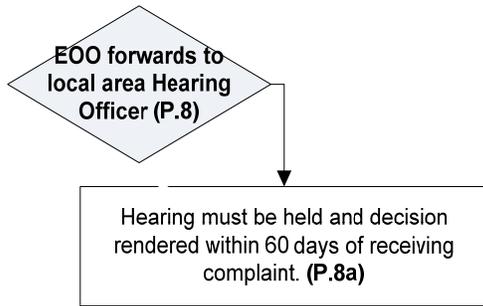
(P.6) If the informal conference does not result in a resolution, the parties will be provided with the “Notice of Hearing and Hearing Rights” (Attachment B) and immediately after the conclusion of the informal conference, a formal hearing date will be scheduled.



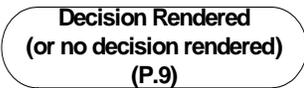
If the complainant does not appear for the informal conference, a formal hearing date will be set and the “Notice of Hearing and Hearing Rights” will be issued by certified mail to the complainant.

Hearing date must be determined within 16 days of filing complaint.

(P.7) The hearing date must be scheduled (not necessarily held) within 16 days of the filing of the complaint.



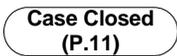
(P.8 & P.8a) See Attachment B for details regarding selection of hearing officers and the hearing process. Where efforts to informally resolve complaints have failed, local procedures shall provide for a hearing and decision within sixty (60) days of the date of filing of the complaint. Such hearing shall include written notice of the date, time and place of the hearing; an opportunity to present both written evidence and testimony; a written decision based on all relevant evidence/testimony; and notice of appeal rights.



(P.9) Hearing must be held and a decision rendered within 60 days of receipt of the complaint. Or, there may be instances when no decision is rendered, because the complaint is resolved or withdrawn prior to issuance of the decision. Resolution by the parties and withdrawals by complainant must be documented.



(P.10) If the decision is not contested then the case is closed.



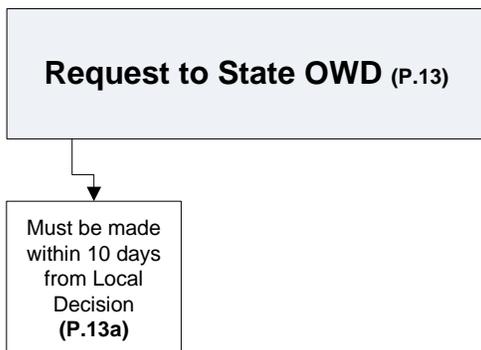
(P.11) If the complaint is resolved or withdrawn prior to issuance of a decision the case is closed with a signed and dated resolution to the complaint. A sample Statement of Resolution is included as part of **Attachment B**. If a resolution requires some agreement or action by the Respondent or individuals other than those identified in the sample document, then those other individuals should be added to the document, and should also sign and date it.

State Level Review of Programmatic Complaint – Path One



(P.12) If the decision is not acceptable to the complainant and/or respondent, either party has the right to request a review of the complaint by the State Recipient, which is ODJFS.

A request for review of a local level decision is to be forwarded to the State Recipient at the address shown in **Attachment A**.



(P.13 & P.13a) - *State Level* - In order to contest or appeal an LWIA hearing decision, a complainant or respondent must submit a request to the State Recipient *in writing* within ten (10) days of receipt of the Local Hearing Officer's decision. If the LWIA hearing decision is not timely issued, then the request for review must be made within fifteen (15) days of the date on which a timely decision **should have been received**.

The State Recipient shall issue a determination within sixty (60) days of the date of receipt of the request for review.

In addition to receiving requests for review of local level decisions, the State Recipient will receive and process complaints relating to workforce investment programs when any of the following conditions apply:

- a complaint involves a conflict/dispute between the State Recipient and a local level entity (LWIA recipient or sub recipient);
- a complaint involves more than one local level entity;
- a complaint is directly related to the operations or responsibilities of the State Recipient; **and/or**
- local level time limits and/or procedures have not been adhered to.

(P.14 & P.14a) Upon receiving a complaint for which the parties have not exhausted local level administrative remedies, the State Recipient shall, pursuant to 20 CFR 667.600(c)(2), **remand** the complaint to the local level for processing and resolution. *(Any necessary technical assistance will be provided by the ODJFS Office of Workforce Development, or OWD.)*

May remand back to Local Area
(If all remedies are not exhausted through the local area) (P.14)

No (local remedies not exhausted) (P.14a)

Back to Local Process (P.15)

(P.15) Complaint is returned to local area for processing and resolution.

Yes (local remedies exhausted) (P.16)

(P.16 & P.16a) State Recipient reviews local decision and has the option of affirming, reversing or remanding the local hearing decision; or upon further review conducting a state hearing (see **Attachment B**) and issuing a decision.

Even if a state hearing is held, a decision must still be issued within 60 days of the complaint being filed with the State Recipient.

State OWD reviews local decision and has the option of affirming, reversing or remanding the local hearing decision; or upon further review conducting a state hearing and issuing a decision.

A state hearing must also be scheduled if no local hearing has occurred. Any decision must be issued within 60 days of complaint being filed with State OWD.

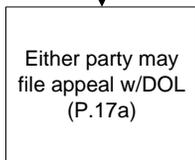
(P.16a)

Remanded back to the local area (P.16b)

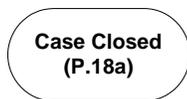
(P.16b) If a case is remanded to the local area, OWD will provide any necessary technical assistance to local area staff.



(P.17 & P.17a) If either party is dissatisfied with the state level hearing officer's decision, he/she will have the right to appeal to DOL, subject to whatever restrictions DOL might have on accepting and reviewing a particular appeal.



(P.18) If the decision is not contested then the case is closed.



(P.18a) If the complaint is resolved or withdrawn prior to issuance of a decision the case is closed with a signed and dated resolution to the complaint. A sample Statement of Resolution is included as part of **Attachment B**.

State Level Review of Programmatic Complaint – Path Two

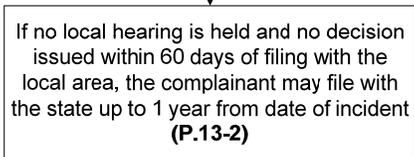
Generally, no request for review will be accepted by ODJFS until LWIA administrative remedies have been exhausted.

Complaints which have not exhausted these remedies shall be **remanded** to the local level, *unless one or more of the following apply:*

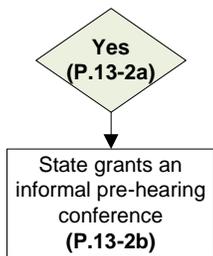
- the LWIA grant recipient has not acted within the time frames;
- the LWIA grant recipient's procedures are not in compliance;
- the complaint involves a dispute between two or more LWIA grant recipients **or** between a local entity and ODJFS; or
- the complaint relates directly to other operations or responsibilities of the State Recipient (ODJFS).

No Local Level Hearing (P.13 & P.13-2)

Based on one or more of the circumstances outlined above, a programmatic complaint may be filed initially with the ODJFS Bureau of Civil Rights (BCR) and thereafter assigned to OWD.



If no local hearing is held and no decision issued within 60 days of filing with the local area, the complainant may file with the state up to 1 year from date of incident. Within 60 days of the complaint being filed with the State Recipient, a resolution must be reached, withdrawal made, or decision issued.



(P.13-2a) Complainant files appeal directly with State for aforementioned reasons.

(P.13-2b) State may grant an opportunity for informal resolution of **Programmatic Complaints** filed at ODJFS, using the pre-hearing conference (Ref. 20 CFR 667.640).

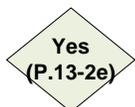
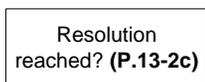
OWD may utilize a pre-hearing conference protocol, in order to afford maximum opportunity for informal resolution of the issues and, concurrently, for reducing the time and expense associated with a full hearing on all of the issues raised in the complaint. Although the pre-hearing conference cannot guarantee resolution of the complaint, it may result in the resolution of some of the issues, thereby simplifying the matter for hearing.

The objectives of a prehearing conference or any discovery are:

- where feasible, simplification of the issues;
- itemization of any applicable monetary amounts;
- to effect any necessary amendment(s) to the complaint;
- the exchange of reports, affidavits, citations of the Act, regulations and any other pertinent documents and to exchange the names of any expert witnesses expected to be called for a hearing;
- examine the possibility of obtaining stipulations of fact, documents and other exhibits which will avoid unnecessary proof;
- specify the kinds of documents and/or relief required to resolve the complaint; and
- afford the opportunity for discovery by opposing parties (representatives for the parties must have the authority to resolve issues through negotiations and they must be prepared to spend sufficient time and effort in negotiations which may require more than one meeting).

Upon request and to the extent possible, the parties must provide all pertinent files, records and other documents to the state hearing official. In any subsequent hearing, the designated ODJFS official may exclude from evidence any files or such materials **not marked** as exhibits during the pre-hearing conference.

(P13-2c) If a resolution is reached, a brief **Statement of Resolution**, identifying the issue(s) and the action(s)/remedy(ies) to be taken to assure settlement of the matter will be prepared. This statement will be reviewed by the parties to assure they are in agreement. If the resolution is agreeable to both the complainant and respondent, they will be asked to sign and date the document. The designated ODJFS official will also sign and date the statement, provide a copy to each party, and place the original in the case file.



(P13.2e) Resolution reached – case will be closed.

Case Closed
(P.13-2f)

(P.13-2f) Case is closed with a signed and dated resolution to the complaint.

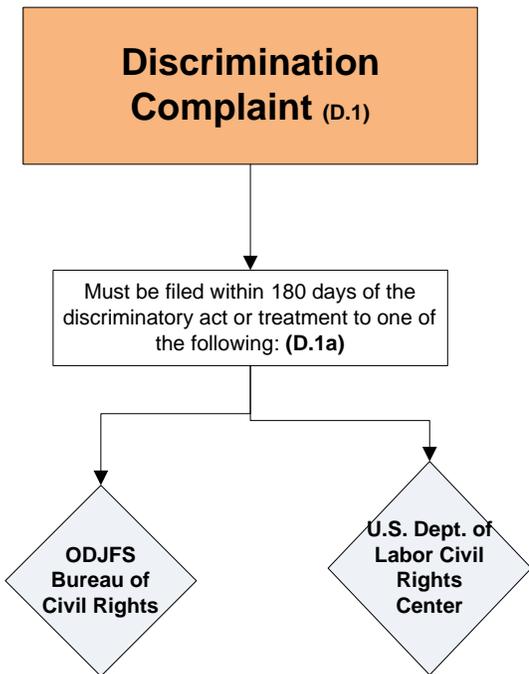
No
(P.13-2d)

(P.13-2d) When all informal resolution efforts have been exhausted and there are issues which remain unresolved, the parties shall be afforded opportunity for a State Recipient level hearing under the same general procedures outlined in **Attachment B** and described in previous steps of the flow diagram. ODJFS shall designate hearing officials who will be responsible for ensuring the elements of due process provided for in this Manual have been met, including the right to file a complaint with the Secretary of Labor.

State OWD reviews local decision and has the option of affirming, reversing or remanding the local hearing decision; **or** upon further review conduct a state hearing and issue a decision.

A state hearing must also be scheduled if no local hearing has occurred. Any decision must be issued within 60 days of complaint being filed with State OWD.
(P.16a)

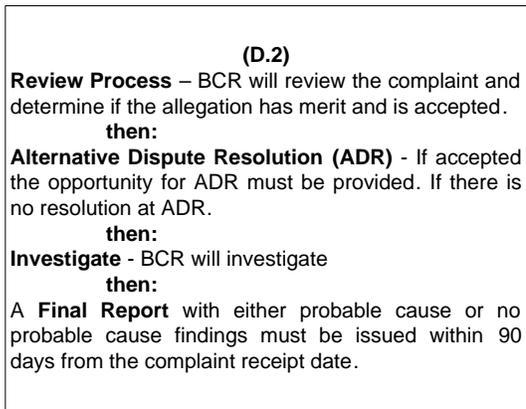
(P.16a) Process flow moves back to P.16a and finishes the process noted above.



DISCRIMINATION COMPLAINT WORK FLOW

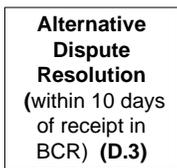
(D.1 & D.1a) *Discrimination* complaints relating to WIA-funded programs/activities may be filed with the ODJFS Bureau of Civil Rights (BCR) or the U. S. Department of Labor (DOL) Civil Rights Center (CRC) (see also: § 188 of WIA-29 USC 2938) within 180 days of the discriminatory act/ or treatment.

Resolution of these complaints **is not** under the jurisdiction of WIA Hearing Officers. Discrimination complaints are to be investigated by either BCR or the CRC.

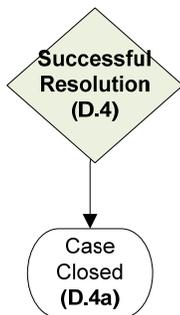


(D.2) Discrimination complaints will go through review process first to determine merit and acceptance of the allegation.

Once the complaint has been accepted, BCR will provide the opportunity for an **Alternative Dispute Resolution (ADR)**.

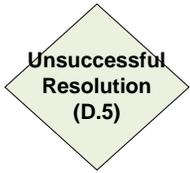


(D.3) Pursuant to 29 CFR § 37.76(c), individuals filing these complaints must also be provided the opportunity for **ADR** in place of the customary process. The intention of this alternative procedure is to provide a less adversarial forum for complaint resolution (see **Attachment C**). Disposition of these complaints, must be effected within 90 days of the date of receipt and must include notice of the right to appeal an adverse decision to DOL.



(D.4) Successful resolution based on the ADR process will result in the case being closed.

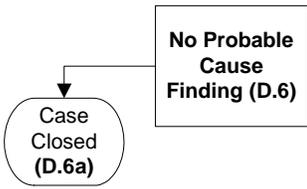
(D.4a) Case is closed with a signed and dated resolution to the complaint.



(D.5) Unsuccessful resolution based on the ADR returns the parties back to **(D.2)** - Investigation. Complainant may ask to withdraw the complaint **(D.5a)** and the case may be closed as a result. **(D.4a)**

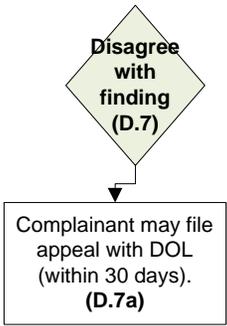
(D.2) If no resolution is reached or the decision is unsatisfactory to either party, then the case is moved into the investigation phase.

Complainants must be provided a **Notice of Final Action** report, no later than 90 days from the date of filing their complaint. They must also be informed of their right to file with CRC if: a.) they have not received a timely decision, or b.) they are dissatisfied with the decision received.

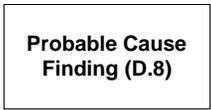


(D.6) No probable cause finding will result in the case being closed.

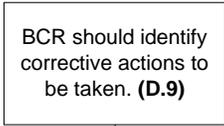
(D.6a) Case is closed with a signed and dated resolution to the complaint.



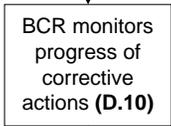
(D.7 & D.7a) If the complainant disagrees with the finding they may file an appeal with DOL within 30 days of the decision receipt.



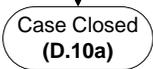
(D.8) If the decision finds that there is probable cause then BCR will establish a corrective action plan with the Local WIA entity.



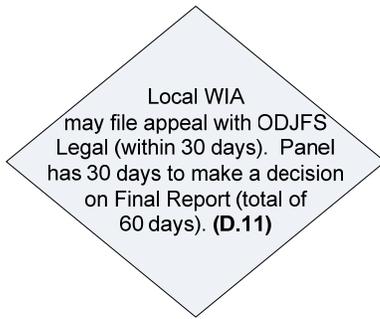
(D.9) BCR will identify and establish a corrective action plan.



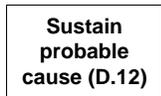
(D.10) BCR will monitor the progress of the corrective action plan.



(D.10a) Case closed with a signed and dated resolution to the complaint.



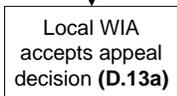
(D.11) If probable cause is found, the Local WIA entity may file an appeal with ODJFS Legal within 30 days. Within 30 days of the appeal receipt date, a panel will review the decision and issue a Final Report. There are two options after the appeal decision is made: **(D.12)** sustain the probable cause finding, or **(D.15)** overrule the probable cause finding.



(D.12) If probable cause is sustained then the Local WIA entity may either: **(D.13)** agree, or **(D.14)** disagree.



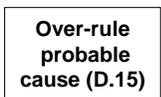
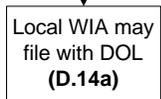
(D.13 & D.13a) If the Local WIA entity agrees with the appeal decision, they accept the resolution. **(D.10 & D.10a)** BCR will then monitor the progress of a corrective action plan and the case will be closed.



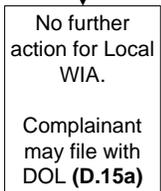
Case is closed with a signed and dated resolution to the complaint.



(D.14&D.14a) If the Local WIA entity disagrees with the appeal decision they may decide to file with DOL. Once filed with DOL the complaint is no longer within these guidelines and is processed based on DOL's policies and procedures.



(D.15) If probable cause is over-ruled, the Local WIA entity will not be required to take any further action.



(D.15a) However, because a change in the probable cause finding adversely impacts the complainant, the complainant may then file an appeal with DOL, and address it to the attention of the Assistant Secretary for Employment and Training (see **Appendix A** for ASET's address information).

Fraud and Abuse Complaints (F.1)

FRAUD AND ABUSE COMPLAINT WORK FLOW

(F.1 & F.1a) Information and/or complaints alleging program fraud, abuse or other criminal activity is/are to be reported through the Department of Labor's (DOL's) Incident Reporting System. The format for reporting such information/complaints may be obtained from DOL. The federal agency responsible for investigation of these issues is DOL's Office of Inspector General and is located at the following address:

U. S. Department of Labor
Office of Inspector General, Office of Investigations
200 Constitution Avenue, NW, Room S 5514
Washington, D. C. 20210
Hotline Phone Number: 1-800-347-3756

Access and Instructions to DOL Hotline Form:
<http://www.oig.dol.gov/hotlineform.htm>

Must be filed with the
Dept of Labor's Incident Reporting
System

U.S. Dept of Labor
Office of Inspector General, Office of
Investigations
200 Constitution Ave, NW. Room S
5514
Washington, D.C. 20210
(F1.a)

PERFORMANCE STANDARDS/REORGANIZATION PLANS – for Grant Recipients

LWIA grant recipients are responsible for meeting performance standards set forth under §136 of the Act and any subsequent state-issued requirements. If those performance standards are not met and failure to meet them persists, the Governor may impose a reorganization plan. If the LWIA grant recipient wishes to object to the plan, the LWIA grant recipient may file a complaint with OWD. A pre-hearing conference will be scheduled. If the complaint remains unresolved, an opportunity for a State Recipient level hearing will be given.

If a state hearing is held and the decision of the Hearing Officer is unsatisfactory to the LWIA grant recipient, an appeal may be made to the Secretary of Labor, no later than sixty (60) days from the date of receipt of the decision.

LABOR STANDARDS

Complaints alleging violations of §181(b) of the Act may be submitted to the Secretary of Labor, by either party to the complaint, when:

- the complainant has exhausted the procedures set forth at 20 CFR 667.600; **or**
- the sixty (60) day time period has elapsed without a decision; **or**
- the State Recipient decision is unsatisfactory [the time limit for appeal of an adverse decision to the Secretary of Labor is sixty (60) days].

Attachment A - General

DETAILED ROLES AND RESPONSIBILITIES

Equal Opportunity Officer

LWIA grant recipients, sub recipients and county departments of job and family services shall designate individuals to monitor complaint procedures and to ensure that all ODJFS programs and activities are operated in a nondiscriminatory manner. The ODJFS Bureau of Civil Rights will provide initial and continuing training and technical assistance for these individuals in order to assure their effectiveness in carrying out their duties. Local elected officials, agency executive directors and members of governing boards/commissions shall not serve as Equal Opportunity Officers (EOOs).

Equal Opportunity Officers and their alternates shall:

Act independently and without fear of intimidation or retaliation and have direct access to the decision maker(in the course of complaint investigation, resolution and/or referral, the Equal Opportunity Officer may find it necessary to suggest or bring about changes in policy or practice to correct deficiencies which have adversely affected the complainant or other individuals)

Equal Opportunity Officers (and alternates) shall perform the following:

1. Determine the nature of each complaint and the procedures applicable for processing it;
2. Receive and/or, if needed, assist complainant in writing the complaint; immediately log the complaint, listing:
 - name
 - address
 - phone number of the complainant
 - grounds or basis for the complaint
 - date the complaint was filed
 - person(s) and/or organization(s) against whom the complaint is filed
 - and any other pertinent information
3. Within ten (10) days:
 - begin to prepare an administrative case file and record of the complaint;
 - submit a copy of the complaint to ODJFS Bureau of Civil Rights and continue to forward documentation, as the status of the complaint changes;
 - notify appropriate field staff that a complaint has been filed;
 - investigate to ascertain pertinent facts;
 - determine if proper procedures have been followed (for example: if an individual is complaining about being unfairly terminated or being denied benefits or services);
 - determine if there are adequate records of action(s) taken and if those actions were

consistent with agency policy?

- attempt informal resolution;
- make **recommendations** based on the fact-finding investigation and information obtained during the informal conference; and
- if a formal hearing is requested, coordinate the hearing process and assist the Hearing Officer.

Within ten (10) days of receipt of a **Programmatic Complaint**, the local area Equal Opportunity Officer should have conducted a fact finding investigation and scheduled an **Informal Conference**. The purpose of the conference is to bring the parties together to discuss the issues and to examine evidence and make recommendations which may lead to a resolution.

If a resolution is reached, the EO Officer will prepare a brief **Statement of Resolution**, identifying the issue(s) and the action(s)/remedy(ies) to be taken to assure settlement of the matter. This statement will be reviewed by the parties to assure they are in agreement. If the resolution is agreeable to both the complainant and respondent, they will be asked to sign and date the document. The EO Officer will also sign and date the statement, provide a copy to each party, and place the original in the case file. This would close the case.

If the Informal Conference does not result in a resolution, the parties will be provided written notice of their right to request a hearing. Formats for this notice, witness notification letters, hearing rights and responsibilities notifications and other pertinent documents are included in the attachments section of this manual.

Agency Addresses

The following addresses are provided for the information and convenience of Equal Opportunity Officers and other individuals who may be using this manual and/or who may require assistance regarding receiving, processing and resolving complaints:

Ohio Department of Job and Family Services
Office of Workforce Development
4020 E. Fifth Avenue
Columbus, OH 43219

Ohio Department of Job and Family Services
Office of Employee and Business Services, Bureau of Civil Rights
30 East Broad Street, 30th floor
Columbus, Ohio 43215

Ohio Department of Job and Family Services
Office of Legal and Acquisition Services
30 East Broad Street, 31st floor
Columbus, Ohio 43215

U.S. Department of Labor
Civil Rights Center
200 Constitution Ave., N.W., Room N-4123
Washington, DC, 20210

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

Attachment B – Local Programmatic

Hearing Process

Hearing Officer

A specific individual and an alternate shall be designated by each LWIA grant recipient to function in a quasi-judicial capacity in relation to **Programmatic Complaints** filed by WIA applicants, participants and/or other beneficiaries or interested parties wishing to allege a violation of the Workforce Investment Act of 1998, its regulations, a grant or some other agreement under the Act.

As with Equal Opportunity Officers, local elected officials, agency executive directors and members of governing boards/commissions shall not serve as Hearing Officers.

WIA funds may be used to reimburse Hearing Officers for their services. It is suggested that a cap of twenty-five dollars per hour be adopted for Hearing Officer re-imbusement so that a uniform standard may be applied for these services. The Hearing Officer might be a person from a city, county or state legal department, legal aid organization or some other person who possesses administrative experience.

Standards to be used in the selection of Hearing Officers are:

The Hearing Officer shall be an impartial third party and must have complete independence in obtaining facts and making decisions. Whatever the organizational structure of the LWIA grant recipient, the Hearing Officer must be in a position to render an impartial decision.

To the extent possible, the Hearing Officer should not be subordinate to any LWIA grant recipient staff involved in administration of WIA programs/activities. In the event that this is not possible, the local area must take any and all steps necessary to ensure that the designated hearing officer is objective, unbiased and independent, so that the integrity of the process is maintained, and to avoid the appearance of unfairness.

The Hearing Officer shall not in any way be involved in the issue(s) causing the complaint.

Responsibilities within the scope of the Hearing Officer's role include:

1. receiving and reviewing a complete case file prior to the hearing;
2. identifying the nature of the action to determine if there is an alleged violation of the Act, regulations, grant or other agreement under the Act or a misapplication of personnel policies/procedures;
3. attempting to informally resolve the complaint at any time circumstances arise that indicate the possibility of informal resolution;
4. supplying a hearing agenda;
5. defining complainant's and respondent's rights;
6. directing parties to appear (notices are to be sent via certified mail, return receipt requested, to assure proper notification has been made);
7. stating the purpose of the hearing;
8. receiving evidence and reserving the right to exclude irrelevant, immaterial or repetitive evidence;
9. answering any procedural questions;

10. exercising discretion in the separation of witnesses;
11. eliciting testimony from and questioning witnesses;
12. avoiding the appearance of impropriety and conflict of interest;
13. considering and evaluating facts, evidence and arguments;
14. determining appropriate remedies;
15. making complete record including any materials that would be relevant to an appeal/request for review;
16. preparing an accurate and complete record of the hearing;
17. rendering and disseminating a decision to all parties and/or their representatives, and to OWD; and
18. include applicable appeal rights at the end of the written decision.

HEARING PROCEDURES, DOCUMENTS AND DUE PROCESS – *Local Level*

Request for Hearing

Upon receiving a programmatic complaint, the parties to the **Programmatic Complaint** should, within sixteen (16) days of the date of filing of the complaint, consider the facts of the case and schedule a hearing unless a resolution is agreed upon. If either party requests a hearing the Equal Opportunity Officer shall direct the request to the Hearing Officer. A hearing must be held and decision issued within sixty (60) days of the date of filing of the complaint.

If there is no resolution during the informal conference a hearing shall be scheduled. In order to schedule a hearing the following information should be collected and provided to the hearing officer:

- the name, address and telephone number of the complainant;
- the name, address and telephone number of the attorney or other representative, if any, for the complainant;
- the name(s), address(es) and telephone number(s) of the party(ies) whom the complaint is against;
- the date the request is being submitted;
- the date of the informal conference
- the signature(s) of the party(ies) requesting the hearing, if that party is present.

The local area shall also provide to the hearing officer, to the extent possible:

- the names and addresses of witnesses (for complainant and/or respondent);

Notification of Hearing

The notification of hearing shall be provided to the parties after receipt of the request for hearing. *Because it is necessary to safeguard the rights of **both the complainant and respondent**, the notice of hearing shall include, but not necessarily be limited to:*

- written notice of the date time and place of the hearing, the manner in which it will be conducted and the issues to be decided;
- the purpose of and necessity for attending the hearing;
- the opportunity to request rescheduling of the hearing for good cause;
- the opportunity to withdraw the request for hearing (this must be in writing);
- the opportunity to be represented by an attorney or other representative at the party's own expense;
- the opportunity to bring documentary evidence and to have witnesses called (names and

- addresses must be provided to the Hearing Officer for proper witness notification);
- the opportunity to have “ordinary course of business” records/documents produced by their custodian;
- the opportunity to present testimony and oral arguments and to question all parties and/or witnesses to the complaint; and
- the availability of further information or assistance (this will include an address and telephone number for the local level Equal Opportunity Officer).

Conduct of Hearing

The hearing should be conducted in a manner which avoids unnecessary technicalities (such as legal requirements which would be mandatory in court proceedings). It should provide flexibility for case by-case adjustment to the circumstances presented.

Full regard should be given to the requirements of due process, including the right to an impartial Hearing Officer and a fair hearing;

- the Hearing Officer may attempt to negotiate a resolution any time that the parties appear receptive to such negotiations;
- the Hearing Officer will establish criteria for the participation of interested parties;
- the Hearing Officer should begin the hearing by summarizing the issue(s): He/she should explain the manner in which the hearing will be conducted, making certain that everyone understands the proceedings; such explanations should be adapted to the needs of the specific situation;
- the Hearing Officer shall take testimony under oath or affirmation;
- the Hearing Officer **shall not advocate** for any party; and
- burden of proof will initially be upon the party(ies) who originally filed the complaint, however that does not relieve Respondent’s burden of justifying it’s actions or decisions.

The hearing will generally be conducted as follows: Complainant makes his/her/their opening statement, outlining the facts they intend to prove and the relief sought (it may be necessary for the Hearing Officer to make an initial statement regarding the need for this statement to be **brief** - complainants, at times believe this to be the only opportunity they will get to present their story, and, as a result, may think they should state their entire case);

- respondent makes opening statement, outlining position being taken;
- complainant presents case-in-chief: Respondent given opportunity to cross-examine;
- respondent presents case-in-chief: Complainant given opportunity to cross-examine;
- rebuttal evidence is presented;
- complainant makes his/her closing statement;
- respondent makes his/her/its closing statement; and
- closing remarks, if any, from Hearing Officer, and, adjournment.

Although we have previously stated that the hearing should be conducted in a manner which avoids unnecessary technicalities, hearing officers may find it expedient to apply rules of procedure in order to ensure that the proceedings are fair and that all parties behave with decorum and respect toward one another **and** that they accord the Hearing Officer the respect due that officer. Additionally, it is important for the Hearing Officer to obtain the most complete information for the record. Therefore, if the parties, or their representatives, do not know how to ask pertinent and relevant questions, it may be necessary for the Hearing Officer to ask questions to ensure all material and relevant facts are brought forth.

Hearing Officer's Decision

The Hearing Officer's written decision shall be submitted, no later than sixty (60) days from the date of filing of the complaint, to all parties, their representatives and the ODJFS Bureau of Civil Rights. The opinions, conclusions and any remedy(ies) ordered shall be based on all the evidence presented at the hearing. *In clear, simple language, the decision shall include the following:*

- a statement that a hearing was held on a specific date and time at which the parties, their representatives and/or witnesses appeared and were heard;
- a list of those in attendance;
- a clear and concise statement of the issues;
- a synopsis of the facts, based on the entire record disclosed at the hearing;
- the opinions and statement of the reasons for the decision;
- the conclusions, based on findings of fact, and a statement indicating the remedies to be applied;
- appeal rights (notification of the parties' right to request a review by the ODJFS Bureau of Civil Rights); and
- the Hearing Officer shall sign and date the decision which will then be sent out to the parties via certified mail, return receipt requested.

Record of Hearing

A complete and accurate file record of the hearing shall be maintained, in the event of appellate review. If a hearing officer decides to record the hearing, care should be taken to ensure that the recording is of sufficient quality so that it may be fully understood during any subsequent review. Court Reporters are not recommended due to the prohibitively high cost of these services. The record will substantiate the procedures followed by the LWIA grant recipient in resolving the complaint and shall be available for any further review.

Request for Review – State Level

Generally, no request for review will be accepted by the ODJFS OWD until administrative remedies have been exhausted at the LWIA grant recipient level. Complaints which have not exhausted these remedies shall be **remanded** to the local level, *unless one or more of the following apply:*

- the LWIA grant recipient has not acted within the time frames;
- the LWIA grant recipient's procedures are not in compliance;
- the complaint involves a dispute between two or more LWIA grant recipients **or** between a local entity and ODJFS; and/or
- the complaint relates directly to other operations or responsibilities of the State Recipient (ODJFS).

Any party to the complaint has ten (10) days from the date of receipt of the Hearing Officer's decision **or** fifteen (15) days from the date on which the decision ***should have been received*** to request a review with OWD.

The OWD reviewer may uphold the local level Hearing Officer's decision, in whole or in part, or provide a hearing and decision within sixty (60) days of the date of receipt of the request for review. The Reviewer's decision is the Governor's final decision. If the ODJFS Reviewer fails to provide a timely decision (within sixty days of receipt of a request for review), **or** if either party is dissatisfied with the decision, a complaint may be filed with the Secretary, U. S. Department of Labor, Washington, DC 20210, to the attention of the Assistant Secretary for Employment and Training (ASET).

PROGRAMMATIC COMPLAINT LETTER

Name _____ Telephone Number _____

Home Address _____

City _____ County _____

E-Mail Address _____

Work/Training Site _____

Job Title or Training Type _____

Description of what occurred: (Please state the facts that prompted the complaint, including the name and address of the party(ies) against whom the complaint is made; the date of the incident or treatment that caused the complaint; the names of any witnesses; any documents or evidence and the remedy being requested. Attach additional sheets, if necessary.)

(Complainant's signature)

(Equal Opportunity Officer)

(Date)

(Date complaint received)

NOTICE OF INFORMAL CONFERENCE

Date

Inside Address

Dear _____:

This is in response to your complaint filed _____. Please be advised that an informal conference has been scheduled for _____. If you have any conflicts with this date and time, please advise me immediately.

Sincerely,

(Name of Equal Opportunity Officer)

cc:

Enclosure(s) (if any)

STATEMENT OF RESOLUTION

Date of Informal Conference

Parties Involved

Statement of Issues: (Background)

Summary of Proposed Remedy/Settlement: (Requires mutual understanding and agreement upon terms and conditions)

Comments: (This should include language which shows that all parties understand and accept the terms and conditions of the resolution. It must not appear in any way coercive or exclusionary nor can it preclude the right of any party to file another complaint.)

(Complete the following if applicable)

The informal conference was unsuccessful in attaining resolution and a formal hearing date has been scheduled for _____ at _____ a.m./p.m. at the following location:

“Notice of Hearing and Hearing Rights” has been provided to the Complainant.

Signature of Complainant

(Date)

Signature of EOO/Hearing Officer

(Date)

NOTICE OF HEARING AND HEARING RIGHTS

Date:

Inside Address:

In the case of: _____ vs. _____

Dear _____:

Since we were unable to informally resolve your complaint, filed on _____, you are hereby notified that a hearing has been scheduled for _____ at _____ a.m./p.m. to be held at

_____ at which the following issue(s) pertaining to your complaint will be addressed:

Listed below is a summary of the responsibilities assigned to the Hearing Officer as well as those of the Complainant and Respondent:

The Hearing Officer will have complete independence in obtaining facts and making decisions regarding the complaint.

You have the opportunity to withdraw the request for hearing, in writing, no later than three (3) days prior to the scheduled date of the hearing. You will have the opportunity to request a rescheduling of the hearing for good cause.

You will be given full opportunity to be heard.

You have the right to be represented at the hearing by counsel or any representative you choose at your cost.

All parties have the right to hear the entire testimony and evidence produced against them; to know the claims or charges against them.

All parties have the right to offer evidence and witnesses in their behalf and to rebut or explain testimony or evidence against them. This includes the right of cross-examination or explanation in support of positions or contentions.

You have the opportunity to have records and/or documents relevant to the issues to be decided at the hearing produced by their custodian when such records or documents are kept by or for the recipient or subcontractor in the ordinary course of WIA business.

You also have the opportunity for identifying witnesses for testimony to support your complaint. **Please submit the names and addresses of witnesses whom you wish to appear on your behalf as soon as possible.**

The Hearing Officer has the responsibility for providing a written decision, setting forth the findings of fact and giving reasons for the decision after the hearing is held. The conclusions or opinions in the decision will be governed by and based on all the evidence adduced at the hearing.

The Hearing Officer may enter a default judgment granting the relief requested against any party who, without just cause, does not appear and argue their case at the scheduled time and place.

Applicable appeal rights and the procedures for doing so will accompany the decision.

If you have questions, please call _____ Equal Opportunity Officer (or Hearing Officer), @ _____.

Sincerely,

_____, Hearing Officer (or Equal Opportunity Officer)

(If applicable)

Acknowledgement of Receipt of "Notice of Hearing and Hearing Rights"

_____, Complainant Acknowledgement

(OUTLINE FOR HEARING OFFICER'S DECISION)

**UNDER THE WORKFORCE INVESTMENT ACT
OF 1998, As Amended**

In the Matter of:

Date of hearing: _____

Date of Issuance: _____

_____,
Complainant;

LWIA Grant Recipient
DECISION

v.

Complaint No. _____

_____,
Respondent.

ISSUE(S):

(This portion of the written decision identifies the cause of action for the complaint...why did the Complainant file his/her charge? What service(s), program(s) and or benefit(s) does he/she claim have been denied and how was it a violation of his/her rights under WIA?)

PROCEDURES or, PROCEDURAL MATTERS:

(This should contain a summarization of any preliminaries which led up to the hearing, acknowledgement that parties were duly notified of the hearing date, time, and place and that witnesses, if any, were requested to appear, including their connection(s) with the case, the Complainant and/or Respondent.)

FINDINGS OF FACT:

(This section of the decision contains the facts adduced during the hearing, through submission of documentary and testimonial evidence. What has been provided to support Complainant's charges? What kinds of rebuttal evidence/testimony has Respondent produced to support the action(s) taken? This section is often best compiled, based on the chronological order of events, leading up to the filing of the complaint, followed by the production of evidence and results of the taking of testimony during the hearing itself.)

CLAIMANT'S (COMPLAINANT'S) ARGUMENTS:

(What has the Complainant asserted regarding why and how he/she has been harmed? What kind(s) of argument(s) has he/she advanced which would support his/her allegations and are any of those arguments supported by fact(s)? Does the record show, for example, that the Complainant did everything he/she was required to do to establish eligibility for the service(s), program(s) and/or benefit(s) which he/she claims have been unfairly or unlawfully denied?)

RESPONDENT'S ARGUMENT(S)/REBUTTAL OF CHARGE:

(What kind of defense has the Respondent advanced, what documentation has been produced to support the action(s) taken? What, if any, regulations, policies and procedures have been produced by the

Respondent, showing that it acted properly, without being arbitrary or capricious in the decision(s) taken?)

CONCLUSIONS OF LAW AND POLICY:

(What portions of the Workforce Investment Act of 1998 and its regulations at 20 CFR, Part 652, et. al., apply to the circumstances, events and actions which have been represented? Are there any such citations which expressly prohibit the actions taken by Respondent? Are there any which support Complainant's assertion(s)? And, are there any other applicable laws and/or constitutional tenets which either support or refute the position(s) of either party?)

ANALYSIS:

(Based on all of the evidence and testimony taken and the application of law, policy and regulation, where does the evidence lead? Does the Complainant's case hold merit or are his/her arguments insubstantial? If, as Hearing Officer, you are compelled to find in favor of the Complainant, in whole or in part, consider what if any remedy might be appropriate.)

DECISION:

(In this final action section of the decision, it is time to either support the Complainant's charge(s) or the Respondent's rebuttals. If the Complainant has produced sufficient evidence and arguments appropriate to fashion a remedy, and if there is clearly a means of doing so, the hearing officer's options are: reinstatement into a program; retrospective and/or prospective relief, etc. If, on the other hand, Respondent has produced sufficient evidence, Complainant's requested relief must be denied.)

APPEAL RIGHTS:

(This portion of the decision gives the parties the option of appealing the decision to the Ohio Department of Job and Family Services, Office of Workforce Development, if one or the other party (or, conceivably, both) is/ are dissatisfied with the outcome. The appeal must be filed within ten (10) days of the date of receipt of the decision or within fifteen (15) days of the date it should have been received.) OWD is located at the following address:

Ohio Department of Job and Family Services
Office of Workforce Development
4020 E. Fifth Ave
Columbus, Ohio 43219

The Hearing Officer shall sign and date the decision.

Attachment C – Civil Rights

Alternative Dispute Resolution (ADR)

Due to the increased emphasis placed on non-adversarial means of resolving complaints which allege unlawful discrimination in WIA-funded programs and activities, this manual section will be devoted to a discussion of ADR and will provide some insight into one model which has been successful in settling contentious issues. With the advent of the Workforce Investment Act of 1998 and the subsequent issuance of nondiscrimination regulations at 29 CFR, Part 37, the Department of Labor's Civil Rights Center has become an advocate of ADR.

Although the regulations do not specifically name the form which ADR should take, it appears that mediation is one method which is gaining popularity and acceptance. There are several models which are currently in use and training is offered through a number of highly credible sources. We offer, for consideration, the **seven stage** model and believe it to be easily understood and employed. Mediation is defined as an informal, structured process in which a third party, called a mediator helps disputing parties generate options for reaching a mutually acceptable solution. There are a number of "key" features which characterize all mediation procedures and those are:

- Mediation is usually a voluntary process
- Mediations are most often private and confidential
- Mediation can be used before or after filing a lawsuit
- Disputing parties maintain control over the outcome
- Mediation encourages the disputing parties to focus on their interests rather than positions
- Mediation allows the parties to agree on creative win/win solutions that courts do not have the time to design or the authority to order
- Mediation tends to mend, maintain, and even strengthen the relationship of disputing parties, whereas, litigation can often damage relationships
- Mediated agreements are often achieved quicker than court judgments
- Voluntary compliance rates for mediated agreements are substantially higher than court judgments

It is clear that a voluntary process can be more conducive to settling disputes and resolving complaints. Individuals who are **willing** to participate in such procedures **are** certainly more likely to focus on interests rather than positions. Having stated that much, as a working premise, we will now list the seven stage mediation model.

STAGE 1 *INTRODUCTION* This is the first formal contact between the parties and the mediator. The mediator should identify the parties, define mediation, explain the mediation process and establish ground rules.

STAGE 2 *PROBLEM DETERMINATION* The mediator asks each party to relate his/her account of the dispute. The mediator's function is to facilitate the flow of this information by using effective communication skills.

STAGE 3 *SUMMARIZING* After each party has completed his/her description of the dispute, the mediator should summarize. The words used by the mediator in the summary must be neutral and nonjudgmental. It is important that the summary accurately reflect the content and emotion of each party's description.

- STAGE 4** *ISSUE IDENTIFICATION* The mediator assists the parties in identifying and presenting all underlying issues that will be addressed in the mediation.
- STAGE 5** *GENERATION AND EVALUATION OF ALTERNATIVES* The parties are responsible for proposing their own alternatives for resolving the dispute. The parties continue to discuss alternatives that may bring about a resolution of the dispute.
- STAGE 6** *SELECTION OF APPROPRIATE ALTERNATIVES* The parties either agree on which alternative(s) will best resolve their dispute or decide that mediation is not the appropriate method for resolving their dispute.
- STAGE 7** *CONCLUSION* If agreement is reached, the mediation should conclude with a final restatement and clarification of the terms of the agreement. If agreement is not reached, the mediator should summarize any progress made toward resolving the dispute.

It is not practical to go into great detail concerning the skills and abilities which are essential for the mediation process. The information supplied herein is intended to be introductory and Equal Opportunity Officers are encouraged to avail themselves of any mediation training that may be offered by their respective employment and training communities. Further information and assistance is available through the ODJFS Bureau of Civil Rights.

Attachment D - Rules and Regulations

Workforce Investment Act (WIA) of 1998

WIA section 181(b)—Labor Standards & (c)—Grievance Procedure

WIA section 184(f)—Discrimination Against Participants, and 184(g)--Remedies

WIA section 188—Nondiscrimination

United States Code (USC)

29 USC Chapter 30, Workforce Investment Systems (29 USC 2801, et seq.).

29 USC 2931 and 29 USC 2938

Code of Federal Regulations (CFR)

Title 20—Employees' Benefits,

Part 663—Adult & Dislocated Worker Activities Under WIA Title 1

Subpart A—Delivery of Adult & Dislocated Worker Services Through One-Stop System

20 CFR 663.105—When Adult & Dislocated Workers Must be Registered

Part 667—Administrative Provisions Under WIA Title 1

Subpart E—Resolution of Findings from Monitoring & Oversight Reviews

20 CFR 667.505—How Do We Resolve Investigative & Monitoring Findings?

Subpart F—Grievance Procedures, Complaints & State Appeals Processes

20 CFR 667.600—Required Grievance Procedures at Local, State & Direct Recipient Level

20 CFR 667.630—How are Complaints & Reports of Criminal Fraud & Abuse Addressed?

Title 28—Judicial Administration,

Part 42—Nondiscrimination, Equal Employment Opportunity

Subpart F—Coordination of Enforcement of Non-Discrimination

28 CFR 42.410—Agencies Administering Continuing Programs Which Receive Fed Assistance.

Title 29—Labor,

Part 37—Implementation of WIA Nondiscrimination & Equal Opportunity Provisions

Subpart A—General Provisions

29 CFR 37.11—Prohibition on Intimidation & Retaliation

Subpart B—Recordkeeping & Other Affirmative Obligations of Recipients

29 CFR 37.36—Responsibilities of Recipients to Communicate Information at Orientations

Ohio Revised Code (ORC) sections

ORC 5101.20 Grant Agreements for Workforce Development Activities

ORC 5101.24 Actions for failure to meet performance standards

ORC 5101.241 Actions for noncompliance with workforce development activity standards or requirements

Ohio Administrative Code (OAC) rules:

OAC 5101:9-2-01 Civil rights plan.

OAC 5101:9-2-03 Workforce Investment Act (WIA): programmatic complaints.

OAC 5101:9-2-05 Workforce Investment Act: discrimination complaints.

John R. Kasich
Governor

Michael B. Colbert
Director

An Equal Opportunity Employer and Service Provider

February 2013