

**Ohio Department of Job and Family
Services**

**Office of Employee and Business Services
Bureau of Civil Rights**

Workforce Investment Act
Complaint Procedures Manual

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An Equal Opportunity Employer and Service Provider
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I. REGULATORY AUTHORITY

Title VI of the Civil Rights Act of 1964

Department of Justice Regulations at 28 CFR, 42.410, et. seq.

Sections 181 and 188 of the Workforce Investment Act of 1998 (WIA, the Act)

Federal Regulations at 29 CFR, Part 37 (U.S. Dept. of Labor, **CRC**)

Federal Regulations at 20 CFR, Parts 667.600, et. seq. (U.S. DOL, **ETA**)

II. PURPOSE

This complaint procedures manual is designed to provide avenues for the resolution of complaints arising from WIA programs, activities and/or services administered by the Ohio Department of Job and Family Services and its county departments of Job and Family Services. Although there are some differences in the established timelines for the processing and resolution of different kinds of complaints, it is both the implicit and expressed intention of this agency that all persons and/or organizations filing complaints alleging unlawful discrimination shall be afforded fairness and due process in the investigation and resolution of their charges. The agency has created a Bureau of Civil Rights, reporting to the Office of Employee and Business Services.

The Bureau of Civil Rights has responsibility for receiving complaints which allege unlawful discrimination in violation of the statutes and regulations listed above. Any such charges, for which the agency lacks proper jurisdiction, shall be referred to other appropriate civil rights agencies or advocacy groups. WIA-based complaints which allege violations **not** of a discriminatory nature are to be filed with the appropriate local Equal Opportunity Officer. These complaints are characterized as *programmatic* complaints and may be appealed to the Ohio Department of Job and Family Services' Bureau of Civil Rights when the remedy (ies) offered at the local level (is, are) unacceptable. Further discussions regarding the different styles of complaints and the aggrieved parties appeal rights appear in pertinent sections of this manual.

The manual prescribes consistency in the handling of complaints and establishes a uniform framework for equitable treatment of all aggrieved parties, regardless of whether their charges appear to have merit. The Bureau of Civil Rights is available to give advice and technical assistance with the information and procedures described herein. The Bureau can be reached, toll free, at 1-866-BCR-ODJF (227-6353). Inquiries are expected and invited.

III. DEFINITIONS

ALTERNATIVE DISPUTE RESOLUTION (ADR) A structured mediation process for resolving discrimination complaints.

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.

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 and its county departments of Job and Family Services.

CDJFS A county department of Job and Family Services.

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

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 discrimination in federally assisted programs on the bases of race, color, religion, sex, 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.

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 of recipients of federal program funding as one means of monitoring those programs to ensure they are free from unlawful discrimination.

ETA The U.S. Department of Labor's office which oversees its federally funded employment and training programs (**Employment & Training Administration**).

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 A meeting facilitated by the Equal Opportunity Officer 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.

PARTICIPANT An individual who has been registered pursuant to 20 CFR 663.105, 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. Participation commences on the first day.

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.

STATE RECIPIENT The Ohio Department of Job and Family Services

IV. INTRODUCTION

Background

As a condition to receipt of federal financial assistance, the Ohio Department of Job and Family Services is required to establish and maintain procedures for the receipt, investigation and resolution of complaints filed against it and its programs. Those complaints previously defined herein as *discrimination complaints* are to be filed with the ODJFS Bureau of Civil Rights **or** with the DOL Civil Rights Center. Those complaints falling under the *programmatic* definition will be received and processed, pursuant to the provisions set forth at 20 CFR, Part 667.600, et. seq. and as later described in this manual.

Equal Opportunity Officers have been designated to assure the promptness and coordination of the procedures identified in this manual. These individuals will act as liaison with the Bureau of Civil Rights. For uniformity of operation all county departments of Job and Family Services / WIA administering entities shall use the complaint procedures designed by ODJFS.

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.

Time limits for filing complaints/holding hearings

Programmatic complaints which are filed in connection with WIA-funded programs must be filed within one year of the date of the incident or treatment which caused the complaint. Hearings are to be held within thirty (30) days of the dates of receipt of complaints.

Discrimination complaints must be filed within 180 days of the date of the alleged discriminatory act or treatment.

Differences in complaint handling procedures Under the Workforce Investment Act of 1998. There are two distinct methods of processing complaints, depending upon the nature of the allegation(s) which has/have been made. The following discussion provides some clarification of the differences in the manner in which these different complaints are to be handled:

Discrimination complaints which are filed against WIA-funded programs or activities may be filed with BCR or with the **U. S. Department of Labor Civil Rights Center**. These complaints may include any of the bases identified under the definition given on page 3 of this manual. (See also: § 188 of WIA-29 USC 2938) Pursuant to 29 CFR § 37.76(c), individuals filing these complaints must also be provided the opportunity for **Alternative Dispute Resolution(ADR)** in place of the customary process. The intention of this alternative procedure is to provide a less adversarial forum for complaint resolution (more on this later). 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.

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 to be initially filed at the local level. The regulations further provide for an opportunity for an informal resolution and a hearing to be completed within 60 days of the date of filing of the complaint. If no decision is reached or the decision is unsatisfactory to either party, either party may appeal to the state (ODJFS Bureau of Civil Rights). The state entity then has 30 days to issue a decision which, if unacceptable, is appealable to the **Secretary of Labor**, to the attention of the Assistant Secretary for Employment and Training.

V. 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 Employee and Business Services, Bureau of Civil Rights
30 East Broad Street, 37th floor
Columbus, Ohio 43215-3414

Ohio Department of Job and Family Services
Office of Legal Services
30 East Broad Street, 31st floor
Columbus, Ohio 43266-0423

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

VI. PROGRAMMATIC COMPLAINTS (local level)

LWIA grant recipients and sub recipients shall follow the procedures set forth at 20 CFR 667.600, et. seq. for resolving any complaint alleging a violation of WIA (“the Act”), the regulations promulgated there under, grants or other agreements under the Act. Procedures shall also provide for the resolution of complaints about the results of monitoring findings, investigations and audits.

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 and a written decision based solely on the evidence/testimony presented; and, notice of appeal rights.

If a decision is not rendered within sixty (60) days of the date of filing of the complaint or 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. The request for review must be made *in writing* within ten (10) days of receipt of the Hearing Officer’s decision. If no timely decision has been rendered, 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 thirty (30) days of the date of receipt of the request for review. A request for review of a local level decision is to be forwarded to the State Recipient Bureau of Civil Rights at the address shown on the previous page of this manual.

VII. PROGRAMMATIC COMPLAINTS (State Recipient level)

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.

Upon receiving a complaint which has not *exhausted* local level administrative remedies, the State Recipient shall, pursuant to 20 CFR 667.600(c)(3), **remand** the complaint to the local level for processing and resolution. Any necessary technical assistance will be provided by the ODJFS Bureau of Civil Rights.

VIII. FRAUD AND ABUSE

Information and/or complaints alleging program fraud, abuse or other criminal activity is/are to be reported through the Department of Labor's Incident Reporting System. The format for reporting such information/complaints may be obtained from the Department of Labor. The federal agency responsible for investigation of these issues is the Department'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

IX. 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.

X. NOTIFICATION OF RIGHTS AND BENEFITS

Orientation

Upon enrollment into WIA Programs/activities, individuals shall be advised of their rights, responsibilities and benefits obtaining 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 (EO) Officer 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. The accepted document for these procedures is the **WIA SUMMARY OF COMPLAINT RIGHTS**, last revised in October, 2007.

Complaint Procedures

Complaint procedures will include the following elements:

An opportunity to file a written complaint. Before any filing date can be established, any complaint must be reduced to writing. Equal Opportunity Officers shall be available to assist complainants and to provide information concerning the rights and responsibilities which are afforded by the complaint process.

When a complaint alleges unlawful *discrimination*, the Equal Opportunity Officer shall refer the complaint to the ODJFS Bureau of Civil Rights. (The EO Officer should also ensure that the Complainant understands that he/she may file his/her complaint directly with the Department of Labor's Civil Rights Center (**CRC**), if he or she chooses to do so.)

Upon receipt of a discrimination complaint, BCR will offer Alternative Dispute Resolution as an option for resolution of the complaint. If the parties are not agreeable to this, BCR will then utilize the customary process identified at 29 CFR, Part 37.76, including a fact-finding investigation, Investigative Report(s) on the issue(s), and notice of the right to appeal the decision to the U. S. Department of Labor's Civil Rights Center when the proposed resolution is unsatisfactory.

Programmatic complaints shall be filed initially at the local level and shall include the procedures set forth at 20 CFR, Parts 667.600, et. seq., including an opportunity for informal resolution. Where informal resolution efforts fail, complainants shall be offered an opportunity for a hearing and decision within sixty (60) days of the date the complaint was filed. When a complainant is dissatisfied with the local level Hearing Officer's decision, he/she will have the right of appeal to the ODJFS Bureau of Civil Rights (see also pages 6 and 7 of this manual).

As with *discrimination* complaints, each step of the complaint process will be documented in order for there to be a complete record available for any appeal and subsequent review. (Examples of letters and other documentation are provided in the attachment index of this manual)

The Hearing Officer's written decision shall include:

- the reason(s) for the decision(findings of fact, conclusions and any remedies);
- a statement as to whether local level procedures, as specified in this manual, have been followed; *and*,
- notice of the right to request a review by the State Recipient(ODJFS Bureau of Civil Rights), including applicable time limits, when any party disagrees with any aspect of the decision.

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.

Prohibition Against Retaliation

No recipient shall discharge or in any manner discriminate or retaliate against or deny any individual benefits to which they are entitled because the individual has filed a complaint, instituted or caused to be instituted any proceeding under the Act, regulations, grant or other agreement under the Act; has testified or is about to testify, assisted or participated in any manner in an investigation, proceeding or hearing under the 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)

XI. 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.

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: the name, address and phone number of the Complainant, the grounds or basis for the complaint, the date the complaint was filed, the person(s) and/or organization(s) against whom the complaint is filed, and any other pertinent information;
3. within ten (10) days:
4. begin to prepare an administrative case file and record of the complaint;
5. submit a copy of the complaint to ODJFS Bureau of Civil Rights and continue to forward documentation, as the status of the complaint changes;
6. notify appropriate field staff that a complaint has been filed;
7. investigate to ascertain pertinent facts;
8. 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?);
9. attempt informal resolution;
10. make **recommendations** based on the fact-finding investigation and information obtained during the informal conference;
11. coordinate the hearing process and assist the Hearing Officer.
12. 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.

As discussed previously, **Discrimination Complaints** relating to WIA-funded programs/activities may be filed with either the ODJFS Bureau of Civil Rights or the U. S. Department of Labor, Civil Rights Center. Resolution of these complaints **is not** under the jurisdiction of WIA Hearing Officers. They are to be investigated by EO Officers or their counterparts at either ODJFS or the Civil Rights Center. Complainants must be provided a **Notice of Final Action**, no later than ninety (90) days from the date of filing their complaints. They must also be informed of their right to file with CRC if: a. they have not received a timely decision or b. they have received a decision they are dissatisfied with.

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 reimbursement 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.
- The Hearing Officer shall not be subordinate to any LWIA grant recipient staff involved in administration of WIA programs/activities.
- 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. disposing of 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 a tape recorded transcript of the hearing;
17. rendering and disseminating a decision to all parties and/or their representatives, as well as to the ODJFS Bureau of Civil Rights;
18. including applicable appeal rights at the end of the written decision.

XII. HEARING PROCEDURES, DOCUMENTS AND DUE PROCESS (local level)

Request for Hearing

Upon receiving the notice of the right to request a hearing, the parties to a **Programmatic Complaint** should, within sixteen (16) days of the date of filing of the complaint, consider the facts of the case and decide whether to request a hearing. If either party requests a hearing the Equal Opportunity Officer shall direct the request to the Hearing Officer. A hearing must be held within thirty (30) days of the date of filing of the complaint.

The written request for hearing shall include but not necessarily be limited to:

- 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 names and addresses of witnesses (for Complainant and/or Respondent);
- the date the request is being submitted;
- the date of the informal conference, and,
- the signature (s) of the party (ies) requesting the hearing.

Notification of Hearing

The notification of hearing shall be provided to the parties within five (5) days after receipt of the request for hearing, via certified mail, return receipt requested. *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;
- 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;
- 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;
- burden of proof will be upon the party (ies) who originally filed the complaint.

The hearing will be generally 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;
- 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 standard of proof shall be by a preponderance of the evidence. 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);
- 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 record shall be made of the hearing using tape recording equipment. 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 (ODJFS)

Generally, no request for review will be accepted by the ODJFS Bureau of Civil Rights until LWIA grant recipient level 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;
- 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 the ODJFS Bureau of Civil Rights (see also page 6 of this manual).

The ODJFS Bureau of Civil Rights Reviewer may uphold the local level Hearing Officer's decision, in whole or in part, or provide a hearing and decision within thirty (30) 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 thirty 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).

XIII. PREHEARING CONFERENCE (Programmatic Complaints filed at ODJFS)

When, because of one or more of the circumstances outlined above, a programmatic complaint is filed initially with the ODJFS Bureau of Civil Rights, the State Recipient has in place a pre-hearing conference protocol which is designed to afford maximum opportunity for informal resolution of the issues and for saving the time and money of the parties to 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 the prehearing conference 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;
- 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);

The parties must bring all pertinent files, records and other documents to the pre-hearing conference. In any subsequent hearing, the Hearing Officer may exclude from evidence any files or such materials **not marked** as exhibits during the pre-hearing conference. The pre-hearing conference is a requirement for the receipt and processing of these complaints and cannot be waived.

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 on pages 13, 14 and 15 of this manual. ODJFS shall designate hearing officials who will be responsible for ensuring the elements of due process provided for by the procedures set forth herein, including the right to file a complaint with the Secretary of Labor.

XIV. PERFORMANCE STANDARDS/REORGANIZATION PLANS

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 objecting to the plan, the LWIA grant recipient may file a complaint with the ODJFS Bureau of Civil Rights. A pre-hearing conference (as discussed in section XIII. of this manual) will be scheduled. If the complaint remains unresolved, an opportunity for a State Recipient level hearing will be given.

If 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.(see page 16, final ¶ of section XII.)

XV. 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].

XVI. ATTACHMENT INDEX

- A. Notification of Adverse Action
- B. Programmatic Complaint letter
- C. Notice of Informal Conference letter
- D. Sample format for Statement of Resolution
- E. Notice of Right to Request a Hearing letter
- F. Notification of Hearing letter
- G. Witness Notification letter
- H. Outline for Hearing Officer's Decision

Attachment A

NOTICE OF ADVERSE ACTION

Participant Name _____ Date _____

Work/Training Site _____

Supervisor/Instructor Name _____

Action to be taken: () Oral Reprimand () Written Reprimand
 () Suspension () Probationary removal
 () termination

Statement of Offense: (List the reasons for the action taken or recommended—poor attendance, insubordination, poor performance, etc. Cite the authority for the action established policy and procedure, work/training rules and provide notice of the date the action is to become effective)

Reason(s) for Action:

Basis(es) for Action:

Effective date:

Notice to the Affected Party: You have the right to appeal this action. If you wish to file a *Programmatic* Complaint, it must be filed within one (1) year of any alleged unfair treatment. If you wish to file a *Discrimination* Complaint, you must file within 180 days of the alleged unlawful discrimination. It is requested that you sign this notice to ACKNOWLEDGE RECEIPT but not necessarily AGREEMENT with the action being taken.

(Signature of affected party)

(Signature of authorized official)

(Date)

(LWIA grant recipient)

(Date)

Attachment B

PROGRAMMATIC COMPLAINT LETTER

Name_____ Telephone Number_____

Home Address_____

City_____ County_____

Work/Training Site_____

Job Title or Training Type_____

Description of what occurred: (Please state the facts which 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 causing 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)

Attachment C

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.

Yours Truly,

(Name of Equal Opportunity Officer)

Reference Initials

Enclosure(s) (if any)

STATEMENT OF RESOLUTION

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.)

(Complainant's signature)

(Equal Opportunity Officer)

(Date)

(Date complaint received)

(Respondent's representative)

Attachment E

NOTICE OF RIGHT TO REQUEST A HEARING

Date

Inside Address

Dear _____:

Since we were not able to informally resolve your complaint, filed on _____, you are hereby advised of your right to request a hearing. If you wish to have a hearing, you must give me your written request within sixteen (16) days of the date your complaint was filed. Your request should include the following information:

1. Your full name, address and telephone number.
2. The name, address and telephone number of your attorney/representative, if any.
3. The name, address and telephone number of the person against whom you are complaining.
4. Any amendment(s) you may wish to make to your complaint.
5. The name(s) and address(es) of any witness(es) you wish to appear on your behalf.
6. The date you are sending this request.
7. The date of the informal conference.
8. Your signature.

Your request will be forwarded to the Hearing Officer who will provide notice of the hearing and of procedural rights. If you have questions or need further assistance, please contact me at (telephone number)

Yours Truly,

_____, Equal Opportunity Officer

Reference Initials

NOTIFICATION OF HEARING

Date

Inside Address

Dear _____:

The _____ WIA program has designated me to conduct a hearing in the matter of _____ v. _____. The issue(s) appear(s) to be _____.

Listed below is an summary of the responsibilities assigned to me 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.

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.

State law gives the Hearing Officer subpoena power to call witnesses for testimony (Ohio Revised Code § 5101). 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.

You are, therefore, directed to appear at the hearing scheduled for _____
@ _____ a.m. The location for the hearing will be _____
_____. If you have questions, please call _____
_____, Equal Opportunity Officer, @ _____.

Sincerely,

_____, Hearing Officer

Reference initials

Attachment G

WITNESS NOTIFICATION

Date

Inside Address

Dear _____:

The _____, local recipient of WIA funding, has appointed me to conduct a hearing in the matter of _____, Complainant v. _____, Respondent. After reviewing the subject case file in preparation for the hearing, I find it necessary to call you to present testimony. You are therefore directed to appear at the hearing scheduled for _____, @ _____ a.m. The location of the hearing will be _____.

Sincerely,

_____, Hearing Officer

Reference Initials

(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 this violative 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 preponderance of 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 prevailing evidence and arguments it is appropriate to fashion a remedy, if there is clearly a means of doing so: reinstatement into a program; retrospective and/or prospective relief, etc. If, on the other hand, Respondent has produced clear and convincing 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, Bureau of Civil Rights, 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.) BCR is located at the following address:

Ohio Department of Job and Family Services
Bureau of Civil Rights
30 East Broad Street, 37th floor
Columbus, Ohio 43215-3414

The Hearing Officer shall sign and date the decision.