Grievance, Complaint, and Appeal Procedures for Kentucky’s Workforce Innovation and Opportunity Act Program
Introduction

The Workforce Innovation and Opportunity Act, 29 U.S.C. 3101, et seq. requires the Commonwealth of Kentucky to establish grievance, complaint, and appeals procedures for participants and interested parties affected by the Workforce Innovation and Opportunity Act.

The procedures for filing grievances related to the following situations are included herein:

- **Appeals of denial of request for designation as local area.** A unit or combination of units of local government or a rural concentrated employment program grant recipient that requests but is not granted designation of an area as a local area by the Governor may submit an appeal to the State Board pursuant to the appeal process established in the State Plan.

- **Appeals relating to determinations of infrastructure funding.** A required one-stop partner may appeal a determination regarding the portion of funds to be provided for infrastructure funding.

- **Appeals of denial or termination of eligibility as a training provider.** State and local area procedures shall establish and maintain grievance and appeal procedures for training providers whose eligibility has been terminated or denied by the Local Board, the state agency, or one-stop operator.

- **Appeals by local area of reorganization due to failure to meet local performance accountability measures.** A local board and chief elected official for a local area that is subject to a reorganization plan due to the failure to meet local performance measures may appeal to the Governor within thirty (30) days of receipt of notice of the reorganization plan. The Governor’s decision is subject to appeal to the U.S. Department of Labor Secretary.

- **Appeals by local area of intent to revoke approval of all or part of the local plan or to impose a reorganization plan due to a substantial violation.** A local area that has been found in substantial violation of WIOA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal to the U.S. Department of Labor Secretary.

- **Appeals related to testing and sanctioning of participants for substance abuse.** A participant who is subject to testing for controlled substances or who has been sanctioned by the state agency after testing positive for the use of controlled substances may file a written appeal.

- **Grievances and appeals based on complaints of discrimination.** A person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited under WIOA on the basis of age, disability, sex, race, color, national origin, religion, or political affiliation or belief or any other protected class may file a written complaint.

- **Grievances, Complaints and Appeals by Participants and Other Interested Parties affected by State Sub-Grantees, Subcontractors, and Local Workforce Boards.** This section outlines the grievance, complaint and appeals process for the designated participants and other interested or affected parties.
• **Grievances, Complaints and Appeals by Participants and Other Interested Parties affected by Statewide Workforce Investment Programs filed directly with the state.** This section outlines the grievance, complaint and appeals process for the designated participants and other interested parties. Grievous circumstances may include, but are not limited to, audit disallowances, imposition of sanctions with respect to audit findings, investigations, monitoring reports etc.

• **Appeals related to administrative regulations promulgated by the Department of Workforce Investment.** A local workforce board or chief elected official may file an appeal related to administrative regulation promulgated by the Department of Workforce Investment.

• **Appeals related to rights of Migrant and Seasonal Farm Worker Program.** This section outlines the grievance, complaint and appeals process for issues related to Migrant and Seasonal Farm Workers.
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Section 1. Definitions.

(1) “Agency” or “State Agency” means the Department of Workforce Investment within the Education and Workforce Development Cabinet.

(2) “Applicant” means an individual who submits an application for services under WIOA title I.

(3) “Cabinet” means the Education and Workforce Development Cabinet.

(4) “Hearing officer” means an individual who:

(a) Has not been involved in previous decisions regarding the subject matter of the appeal, complaint or grievance;

(b) Has knowledge of the federal and state laws and administrative regulations governing the Workforce Innovation and Opportunity Act;

(c) Has training with respect to performance of official duties; and

(d) Has no personal or financial interest that would be in conflict with the objectivity of the individual.

(5) “Local area” means a local workforce investment area as established by an Executive Order in accordance with WIOA sec. 106.

(6) “Local Board” means a local workforce development board established under WIOA sec. 107, to set policy for the local workforce investment system.

(7) “One-Stop Operator” means one or more entities designated or certified under WIOA section 121(d).

(8) “Participant” means an individual who has registered and has been determined to be eligible to participate in and who is receiving services (except for follow-up services) under a program authorized by WIOA title I. Participation commences on the first day, following determination of eligibility, on which the individual begins receiving core, intensive, training or other services provided under WIOA title I.
(9) “State Board” means the Kentucky Workforce Innovation Board, established by Executive Order 2017-0643.

(10) “State Plan” means the current unified state plan under section 102 or a combined state plan under section 103, as approved by the U.S. Department of Labor Secretary.

(11) “Training provider” means providers of training services as provided for in WIOA section 122.

Section 2. Appeals of denial of request for designation as local area.

(1) A unit or combination of units of local government or a rural concentrated employment program grant recipient that requests but is not granted designation of an area as a local area by the Governor may submit an appeal to the State Board. 29 U.S.C. § 3121(b)(6)

(2) The appeal shall be filed no later than thirty (30) days after receipt of the denial of designation of an area as a local area by the Governor.

(3) The appeal shall be conducted pursuant to the administrative hearing requirements in KRS Chapter 13B.

(4) A unit or combination of units of local government or a rural concentrated employment program grant recipient that is dissatisfied with the decision of the State Board may request a review by the United States Department of Labor Secretary.

(5) The appeal shall be filed no later than thirty (30) days after receipt of written notification of the denial from the State Board. The appeal shall be submitted by certified mail, return receipt requested, to the Secretary, United States Department of Labor, Washington, D.C. 20210, Attention: ASET. A copy of the appeal shall be simultaneously provided to the State Board in care of the Executive Director, Kentucky Workforce Innovation Board, 500 Mero Street, Frankfort, Kentucky and the Department of Workforce Investment, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601

(6) On appeal, the United States Department of Labor Secretary shall consider whether:

(i) the unit or grant recipient was not accorded procedural rights under the appeal process set forth in the State Plan, or

(ii) the unit or grant recipient meets the requirements for designation as a local area under 29 U.S.C. § 3121, as appropriate.

(7) The appeal shall be conducted in accordance with procedures established by the United States Department of Labor Secretary.
(8) The United States Department of Labor has confirmed that there is no appeal available regarding determinations under WIOA Section 106(b)(4).
Appeals of denial of request for designation as local area (Section 2)

Denial of Designation by Governor.

Appeal to State Board within 30 days of receipt of denial of designation.

Appeal to United States Department of Labor Secretary within 30 days of receipt of denial from State Board.
Section 3. Appeals relating to determinations for infrastructure funding.

The appeals process relating to determinations for infrastructure funding are as follows:

1. The Governor, through assistance of the Kentucky Workforce Innovation Board, will make the final determination of each required partner’s proportionate share of statewide infrastructure costs under the State funding mechanism.

2. Any required partner may appeal the Governor’s determination on the basis of a claim that:

   a) The Governor’s determination is inconsistent with the proportionate share requirements of 20 CFR 678.735(a) or;

   b) The Governor’s determination is inconsistent with the cost contribution caps described in 20 CFR 678.735(c) and 678.738.

3. The process will ensure resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of 20 CFR 683.630.

4. An appeal must be made within twenty-one (21) days of the Governor’s determination and must be submitted formally, in writing, by registered mail no later than the 21st day from the date of receipt of the notice of denial or revocation. The appeal must be submitted to the State Board in writing.

5. The appeal must be signed/submitted by the chief executive officer of the one-stop partner submitting the appeal.

6. The appeal must specify the circumstances and details of the appeal.

7. The appeal may be made only on the ground that the Governor’s determination is inconsistent with proportionate share requirements in NPRM §678.735(a), the cost contribution limitations in §678.735(b), or the cost contribution caps in §678.735(c).

8. The State Board will consider and rule on the appeal in writing within thirty (30) days of receipt.
Appeals relating to determinations for infrastructure funding (Section 3)

Governor’s determination regarding one-stop partner’s portion of funds for one-stop infrastructure costs.

Appeal to State Board within 21 days of Governor’s determination.

State Board will consider and rule on appeal within 60 days of receipt.
Section 4.  Appeals of denial or termination of eligibility as a training provider.

(1) Local area procedures shall establish and maintain grievance and appeal procedures for training providers whose eligibility has been terminated or denied or other action by the Local Board or one-stop operator. Systems for resolving grievances and appeals shall conform to applicable state and federal requirements and shall provide:

(a) An opportunity for an informal resolution and hearing to be completed within sixty (60) days of the filing of the grievance or complaint; and

(b) An opportunity for appeal to the State Board if:

(i) No decision is reached within sixty (60) days; or

(ii) Either party is dissatisfied with the local hearing decision.

(2) The local area shall describe the grievance and appeal procedures in the local area plan.

(3) (a) A training provider may submit an appeal to the State Board if the state agency has denied, terminated, or taken other action regarding the eligibility of the training provider for a substantial violation of any requirement under WIOA, for failure to meet established performance levels or for intentionally supplying inaccurate information required to be furnished under WIOA.

(b) An appeal under this paragraph shall be filed with the State Board no later than thirty (30) days after receipt of the final notice of denial, termination, or other action regarding eligibility from the state agency. The statement of appeal shall be addressed to the Kentucky Workforce Innovation Board, 500 Mero Street, 4th Floor, Frankfort, Kentucky.
(c) An opportunity for an informal resolution and a hearing shall be conducted under this section within sixty (60) days of the State Board’s receipt of the request for appeal.

(d) The appeal shall be conducted pursuant to the administrative hearings requirements in KRS Chapter 13B.
Appeals of denial or termination of eligibility as a training provider (Section 4)

- Denial of eligibility or termination or other action by Local Board or State Agency or One-Stop Operator.
- Appeal to State Board within 30 days of denial of eligibility or termination or other action.
- A decision under this State appeal process may not be appealed to the Secretary, U.S. Department of Labor.
Section 5. Appeals by local area of reorganization due to failure to meet local performance accountability measures.

(1) A local area subject to a reorganization plan due to the failure to meet local performance accountability measures pursuant to 29 U.S.C. § 3141, may appeal to the Governor to rescind or revise the reorganization plan. The appeal shall be filed within thirty (30) days of receipt of the notification. A final decision shall be issued by the Governor no later than thirty (30) days after the receipt of the appeal.

(2) A local area may, no later than thirty (30) days after receiving notification from the Governor, file an appeal with the United States Department of Labor Secretary, Washington, D.C. 20210, Attention: ASET. A copy of the appeal shall be simultaneously provided to the Governor and the Department of Workforce Investment, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601.

(3) The United States Department of Labor Secretary shall make a final decision no later than thirty (30) days after the receipt of the appeal.

(4) The appeal shall be conducted in accordance with procedures established by the United States Department of Labor Secretary.
Appeals by local area of reorganization due to failure to meet performance standards (Section 5)

Notice from Governor that local area is subject to a reorganization plan.

Appeal to Governor within 30 days of receiving notice.

Appeal to U.S. Department of Labor Secretary within 30 days of Governor’s decision.
Section 6. Appeals by local area of intent to revoke approval of all or part of the local plan or to impose a reorganization plan due to a substantial violation.

(1) A local area that has been found in substantial violation of WIOA title I, and corrective action has not been taken shall receive from the Governor notice that either all or part of the local plan will be revoked or that a reorganization shall be imposed in accordance with 29 U.S.C. § 3244.

(2) The actions taken by the Governor may be appealed to the United States Department of Labor Secretary within thirty (30) days of receipt of the Governor’s notification. The Governor’s actions shall not become effective until:

(a) The time for appeal has expired; or

(b) The United States Department of Labor Secretary has issued a decision.

(3) An appeal shall be submitted by certified mail, return receipt requested, to the Secretary, United States Department of Labor, Washington, D.C. 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor and the Department of Workforce Investment, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601.

(4) The Secretary shall make a final decision no later than forty-five (45) days after receipt of the appeal.

(5) The appeal shall be conducted in accordance with procedures established by the United States Department of Labor.
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Appeals by local area of intent to revoke approval of all or part of local plan or to impose a reorganization plan due to a substantial violation (Section 6)

Notice from Governor that area has been found in substantial violation and either all or part of the local plan will be revoked or that reorganization plan shall be imposed.

Appeal to U.S. Department of Labor Secretary within 30 days of Governor’s notification.
Section 7. Appeals related to testing and sanctioning of participants for substance abuse.

(1) A participant who is subject to testing for controlled substances and the imposition of sanctions pursuant to 29 U.S.C. § 3241 by the state agency after testing positive for the use of controlled substances may file a written appeal no later than thirty (30) days after the date of the incident that is the subject of the appeal.

(2) The participant who wishes to file an appeal under this section shall submit a written statement to the Commissioner, Department of Workforce Investment, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601. The statement shall be signed and dated by the person submitting the appeal, and shall contain:

(a) The full name, address and telephone number (if any) of the person submitting the appeal;
(b) The full name and address of the person or entity against whom the complaint is made;
(c) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation; and
(d) The provisions of the law, regulations or other agreement believed to have been violated.

(3) Appeals under this section shall be conducted pursuant to the administrative hearings requirements in KRS Chapter 13B.
Appeals related to testing and sanctioning of participants for substance abuse (Section 7)

Participant is sanctioned by State agency after testing positive for the use of controlled substance.

Appeal to Commissioner, Department of Workforce Investment within 30 days of incident that is subject of appeal.

A decision under this State appeal process may not be appealed to the Secretary, U.S. Department of Labor.
Section 8. Grievances and appeals based on complaints of discrimination.

(1) This section applies to applicants for WIOA participation or employment, participants or employees of any WIOA, Title I-funded entity, and applicants for WIOA funding.

(2) Definitions. The following definitions apply to grievances and appeals filed under this section:

(a) “Beneficiary” means an individual intended by the United States Congress to receive aid, benefits, services, or training from a recipient.

(b) “Director” means the director of the Civil Rights Center, United States Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(c) “Recipient” means an entity that receives financial assistance under WIOA Title I, either directly from the United States Department of Labor or through the Commonwealth of Kentucky or another recipient. “Recipient” includes, but is not limited to:

(i) State agencies that administer, or are financed in whole or in part with, WIOA Title I funds;

(ii) The Department of Workforce Investment;

(iii) The Kentucky Workforce Innovation Board;

(iv) Local Boards;

(v) Local workforce development area grant recipients;

(vi) One-stop operators;

(vii) Service providers, including eligible training providers;

(viii) On-the-job training employers;

(ix) Job Corps contractors and center operators, excluding the operators of federally-operated Job Corps centers;

(x) Outreach and admissions agencies, including Job Corps contractors that perform these functions;
(xi) One-stop partners, as described in WIOA section 121(b), to the extent that the one-stop partner participates in the one-stop delivery system.

(3) (a) A person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited under WIOA on the basis of age, disability, sex, race, color, national origin, religion, or political affiliation or belief or other protected class may file a written complaint with the recipient or with the Civil Rights Center, United States Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, D.C. 20210 within one hundred and eighty (180) days of the alleged discrimination. The complaint may be filed by a representative. The Director of the Civil Rights Center may extend the filing date for good cause shown.

(b) A beneficiary who believes that he or she has been denied participation in programs or activities financially assisted in whole or in part under WIOA Title I on the basis of citizenship may file a written complaint with the recipient or with the Civil Rights Center, United States Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, D.C. 20210 within one hundred and eighty (180) days of the alleged discrimination. The complaint may be filed by a representative. The Director of the Civil Rights Center may extend the filing date for good cause shown.

(4) A complaint shall contain the following information:

(a) The full name, address, email address (if available) and telephone number (or message number) of the person making the complaint (the complainant);

(b) The full name and address of the entity or individual against whom the complaint is made (respondent);

(c) A description of the complainant’s allegations in sufficient detail to allow determinations to be made regarding jurisdiction, timeliness, and apparent merit (whether the allegations, if true, would violate any nondiscrimination and equal opportunity provisions under WIOA).
(d) The complaint shall be signed and dated by the complainant or the complainant’s authorized representative.

(5) The recipient shall forward a copy of a complaint filed with the recipient to the Equal Opportunity (EO) officer of the Commissioner, Department of Workforce Investment, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601. If the complaint is filed with the Civil Rights Center (CRC), the complainant may complete and submit the CRC’s Complaint Information and Privacy Act Consent Form, which may be obtained from the recipient’s EO Officer, or from the Civil Rights Center at the United States Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(6) The local board shall designate an EO officer who is responsible for receiving, investigating, and offering resolutions of complaints, and for assuring all WIOA Title I applicants are advised of their rights. 29 CFR § 38.28. Service providers shall follow the procedures established within the local workforce investment area. The local board must establish grievance procedures that shall contain the following minimum requirements:

(a) Upon receipt of a complaint, the recipient shall provide written acknowledgment to the complainant that the recipient has received the complaint, and shall notify the complainant of the right to be represented in the complaint process;

(b) The recipient shall thereafter provide a written statement of the issue(s) to the complainant that includes the following:

   (i) A list of the issues raised in the complaint, and

   (ii) For each such issue, a statement whether the recipient accepts the issue for investigation or rejects the issue, and the reasons for each rejection;

(c) A period for fact-finding or investigation of the circumstances underlying all complaints.

(d) A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint shall include an alternative dispute resolution (ADR) method.
The complainant shall be given the choice whether to use ADR or the customary process. If the recipient breaches an agreement reached under ADR, the complainant may file a discrimination complaint with the CRC Director within thirty (30) days of the date on which the complainant learns of the alleged breach. If the parties cannot reach agreement under ADR, the complainant may file a discrimination complaint with the CRC Director.

(e) A written Notice of Final Action shall be provided to the complainant within ninety (90) days of the date on which the complaint was filed. The Notice of Final Action shall include, for each issue raised in the complaint, a statement of either (i) the recipient's decision on the issue and an explanation of the reasons underlying the decision, or (ii) a description of the way the parties resolved the issue. The Notice of Final Action shall include notice that the complainant has a right to file a complaint with CRC within thirty (30) days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.

(f) The EO officer shall notify the complainant in writing immediately if it is determined that the local workforce area does not have jurisdiction over a complaint. The notification shall include the basis for the determination as well as a statement of the complainant’s right to file a written complaint with the Civil Rights Center within thirty (30) days of the date on which the complainant receives the notice.

(g) The complainant shall be notified of the right to file a complaint with the Civil Rights Center if the local workforce investment board representative has not completed processing the complaint or if no resolution has been offered within ninety days following receipt of the complaint. The complainant has the right to file a complaint with the Civil Rights Center within thirty (30) days of the expiration of the ninety-day period.

(7) The recipient shall maintain records of complaints for at least three years from the date of resolution of the complaint.
Grievances and appeals based on complaints of discrimination (Section 8)

- Person believes that he or she or any class of individuals has been or is being subjected to discrimination prohibited under WIOA.

- Person shall file complaint with the recipient or with the Civil Rights Center, U.S. Department of Labor within 180 days of the alleged discrimination.

- (If the complaint is filed with a recipient) Upon receipt, the recipient shall provide written acknowledgment to the complainant that the complaint has been received and shall notify the complainant of the right to be represented in the complaint process.

- If the parties cannot reach agreement under ADR or the recipient breaches an agreement reached under ADR, the complainant may file a complaint with the CRC Director.

- A written Notice of Final Action shall be provided to the complainant within 90 days of the date the complaint was filed.
Section 9. Grievances, Complaints and Appeals by Participants and Other Interested Parties affected by State Sub-Grantees, Subcontractors, and Local Boards.

This section does not apply to complaints of discrimination under WIOA Section 188 or 20 CFR Part 683, fraud or criminal activity.

(1) State sub-grantee, subcontractor and local area procedures.

(a) A state sub-grantee, subcontractor and local area shall establish and maintain a system for resolving grievances, complaints, and appeals by participants and other interested parties affected by the local workforce investment system, including one-stop partners and service providers. At a minimum, the sub-grantee’s, state subcontractor’s and local area’s procedure shall provide:

1. A participant or other interested party affected by the statewide workforce investment system shall have the right to file a complaint with state sub-grantee, subcontractor, or local area within thirty (30) days of the alleged occurrence.

2. An opportunity for an informal resolution and hearing to be completed within sixty (60) days of the filing of the grievance or complaint, which may be extended by agreement of the parties;

3. A process to allow an individual alleging a labor standards violation to submit the grievance to binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance provides for binding arbitration.

and

4. An opportunity for appeal to the state agency if:

a. No decision is reached within sixty (60) days and no agreement to extend has been reached;

or

b. Either party is dissatisfied with the state sub-grantee, subcontractor or local area hearing decision.
(b) The state sub-grantee, subcontractor and local area shall provide information about its grievance procedure to participants and other interested parties.

(2) State procedures.

(a) Appeals from decisions of the state-subgrantee, subcontractor or local area.

1. The participant or other interested party may appeal the state-subgrantee, subcontractor or local area’s hearing decision by submitting a written request for appeal to the Department of Workforce Investment, Attention: Commissioner, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601 within ten (10) business days of receipt of the hearing decision or within fifteen (15) business days of the date the complainant should have received the hearing decision.

2. The state agency shall conduct an investigation and issue a decision within fifteen (15) business days of receipt of the written request for appeal.

(b) 1. The complainant may appeal the state agency’s decision by submitting a written request for appeal to the Office of the Secretary, Education and Workforce Development Cabinet, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601 within ten (10) days of the date of receipt of the state agency’s decision or within ten (10) days of the date the state agency should have issued a decision. The request for appeal shall:

a. Indicate the name, address, and telephone number of the complainant; and

b. Include the reason for appeal.

2. The hearing shall be conducted pursuant to KRS 13B.080 and KRS 13B.090.

3. A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General or an impartial hearing officer appointed by the Cabinet.

4. The hearing officer’s recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record within thirty (30) business days of the hearing, which may be extended by agreement of the parties.
5. Exceptions. The parties shall be granted the right to file exceptions within fifteen (5) business days of receipt of the recommended order.

6. The Secretary of the Education and Workforce Development Cabinet shall consider the record and recommended order, any exceptions filed, and issue an order upon the matter. The Secretary may remand the matter to the hearing officer, adopt the recommended order of the hearing officer as the final order, or issue his own final order within forty-five (45) business days from issuance of the recommended order by the hearing officer.

7. Either party may appeal the final order of the Secretary of the Education and Workforce Development Cabinet to the Secretary, United States Department of Labor, Washington, D.C. 20210, Attention: ASET. The appeal shall be filed within sixty (60) days of the receipt of the final order and must be submitted by certified mail, return receipt requested. A copy of the appeal shall be simultaneously provided to the opposing party and to the Regional Administrator, U.S. Department of Labor, Employment and Training Administration, 61 Forsythe Street SW, Room 6M12, Atlanta, Georgia 30303.

8. If no decision has been reached within sixty (60) days of receipt of the request for approval of a local level grievance and there was no agreement between the parties to extend this timeframe, either party may appeal to the Secretary, United States Department of Labor, Washington, D.C. 20210, Attention: ASET. The appeal shall be filed within 120 days of the filing of the grievance with the State or the filing of the appeal of a local grievance with the State. The appeal must be submitted by certified mail, return receipt requested. A copy of the appeal shall be simultaneously provided to the opposing party and to the Regional Administrator, U.S. Department of Labor, Employment and Training Administration, 61 Forsythe Street SW, Room 6M12, Atlanta, Georgia 30303.
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Grievances, Complaints and Appeals by Participants and Other Interested Parties affected by State Sub-Grantees, Subcontractors and Local Workforce Investment System Boards (Section 9)

Participant or other interested party files grievance within 30 days of the alleged occurrence. State Sub-Grantee, subcontractor and local area must complete informal resolution and hearing and issue decision within 60 days of grievance or complaint being filed, absent an agreement between the parties extending this timeframe.

The participant or other interested party may appeal the state, sub-grantee’s subcontractor’s or local areas hearing decision to the Department of Workforce Investment within 10 business days of receipt of state sub-grantee’s, subcontractor’s or local area’s hearing decision or within 15 business days of the date the complainant should have received the state sub-grantee’s subcontractor’s or local area’s hearing decision.

The Department of Workforce Investment shall conduct an investigation and issue a decision within 15 business days of receipt of the written request for appeal.

The complainant may appeal the Department of Workforce Investment’s decision with the Secretary, Education and Workforce Development Cabinet within 10 days of receipt of the Department of Workforce Investment’s decision or within 10 days of the date the Department of Workforce Investment should have issued a decision.
Hearing Officer shall issue written recommended order within 30 business days of the hearing, absent an agreement between the parties extending this timeframe.

The Secretary, Education and Workforce Development Cabinet shall issue a final order within 45 business days from issuance of recommended order.

Either party may appeal the Secretary, Education and Workforce Development Cabinet’s final order to Secretary, U.S. Department of Labor within 60 days of receipt of final order.
Section 10. Grievances, Complaints and Appeals by Participants and Other Interested Parties affected by Statewide Workforce Investment Programs filed directly with the state.

This section does not apply to complaints of discrimination under WIOA Section 188 or 20 CFR Part 683, fraud or criminal activity. This section may include, but are not limited to, complaints regarding audit disallowances, imposition of sanctions with respect to audit findings, investigations, monitoring reports, etc.

(1) A participant or other interested party affected by the statewide workforce investment system shall have the right to file a complaint with the state agency within thirty (30) days of the alleged occurrence. The complainant shall submit the complaint to the Secretary, Education and Workforce Development Cabinet, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601. The complaint shall contain:

(a) The full name, address and telephone number of the person or agency filing the complaint; and
(b) A clear and concise statement of the facts, including pertinent dates, constituting the grievous action.

(2) The complainant shall have the opportunity for an informal resolution and a hearing to be completed within sixty (60) days of the filing of the grievance or complaint, which may be extended by agreement of the parties. An individual alleging a labor standards violation is allowed to submit the grievance to a binding arbitration process if a collective bargaining agreement covering the parties to the grievance provides for binding arbitration.

(3) The hearing shall be conducted pursuant to KRS 13B.080 and KRS 13B.090.

(4) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General or an impartial hearing officer appointed by the Cabinet.
The hearing officer’s report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record within thirty (30) business days of the hearing, which may be extended by agreement of the parties.

Exceptions. The parties shall be granted the right to file exceptions within fifteen (15) business days of receipt of the recommended order.

The Secretary of the Education and Workforce Development Cabinet shall consider the record and recommended order and any exceptions filed, and issue an order upon the matter. The Secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the final order, or issue his own final order within forty-five (45) business days from issuance of the recommended order by the hearing officer.

Either party may appeal the final order of the Secretary of the Education and Workforce Development Cabinet to the Secretary, United States Department of Labor, Washington, D.C. 20210, Attention: ASET. The appeal shall be filed within sixty (60) days of the receipt of the final order and must be submitted by certified mail, return receipt requested. A copy of the appeal shall be simultaneously provided to the opposing party and to the Regional Administrator, U.S. Department of Labor, Employment and Training Administration, 61 Forsythe Street SW, Room 6M12, Atlanta, Georgia 30303.

If no decision has been reached within sixty (60) days of filing the grievance or complaint and there was no agreement between the parties to extend this timeframe, either party may appeal to the Secretary, United States Department of Labor, Washington, D.C. 20210, Attention: ASET. The appeal shall be filed within 120 days of the filing of the grievance with the state. The appeal shall be submitted by certified mail, return receipt requested. A copy of the appeal shall be simultaneously provided to the opposing party and to the Regional Administrator, United States Department of Labor, Employment and Training Administration, 61 Forsythe Street SW, Room 6M12, Atlanta, Georgia 30303.
(11) The state agency may remand a grievance or complaint related to a local WIOA program for resolution at the local level.
Grievances, Complaints and Appeals by Participants and Other Interested Parties affected by Statewide Workforce Investment Programs filed directly to state agency (Section 10)

Participants and Other Interested Parties shall file complaint within thirty (30) days from alleged occurrence to file a grievance.

Grievance filed with Office of the Secretary, Education and Workforce Development Cabinet who provides an opportunity for informal resolution or hearing within 60 days of filing of grievance, absent an agreement between the parties extending this timeframe.

Hearing Officer shall issue written recommended order within (30) business days of the hearing, absent an agreement between the parties extending this timeframe.

Secretary of Education and Workforce Development Cabinet shall issue a final order within 45 business days from issuance of recommended order.

Either party may appeal Secretary of Education and Workforce Development Cabinet’s final order to Secretary, U.S. Department of Labor within 60 days of receipt of final order.
Section 11. Appeals related to administrative regulations promulgated by the Department of Workforce Investment.

(1) The Department of Workforce Investment will promulgate administrative regulations in accordance with KRS Chapter 13A. As such, there will be a public comment period and a public hearing during which affected individuals or entities may provide comments. In addition to this, an entity impacted by the administrative regulation may request a hearing prior to promulgation of the proposed regulation to the Kentucky Workforce Innovation Board (“KWIB”) regarding the entity’s concerns with the administrative regulation. The KWIB will take into consideration all issues raised at either hearing and any written comments received and will decide whether to amend the proposed administrative regulation. The requirements of KRS 13B shall not apply to the hearing rights provided in this Section.

(2) After the administrative regulation process has been completed and the administrative regulation has taken effect, no further hearings on the administrative regulation will be granted.

(3) Any appeal of an administrative regulation must be filed in the court of competent jurisdiction.
Appeals related to administrative regulations promulgated by the Department of Workforce Investment (Section 11)

- Affected individuals or entities may provide comments during the public comment period or may appear and provide comments during the public hearing or may request a hearing with the KWIB.

- The state agency and the KWIB will consider all comments received and will decide if the administrative regulation will be amended.

- After the administrative regulation becomes effective, the affected individual or entity may appeal it to the court of competent jurisdiction.
Section 12. Appeals related to rights of Migrant and Seasonal Farm Worker Program.

20 CFR § 658.400 et seq. governs this section and is hereby incorporated by reference.

(1) A participant or other interested party affected by the Migrant and Seasonal Farm Worker Program has the right to file a complaint with the state agency within thirty (30) days of the alleged occurrence. The complainant may submit the complaint to the Secretary, Education and Workforce Development Cabinet, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601 or the complaint may be made to any appropriate staff at a One-Stop Operator during regular office hours. The complaint shall contain:

   (a) The full name, address and telephone number of the person or agency filing the complaint;

   (b) The full name, address, and telephone number (if known) of the respondent, person, or entity to whom the complaint is directed;

   (c) A clear and concise statement of the facts, including pertinent dates, constituting the grievous action.

(2) The complainant shall have the opportunity for an informal resolution and a hearing to be completed within sixty (60) days of the filing of the grievance or complaint, which may be extended by agreement of the parties. An individual alleging a labor standards violation is allowed to submit the grievance to a binding arbitration process if a collective bargaining agreement covering the parties to the grievance provides for binding arbitration.

(3) The hearing shall be conducted pursuant to KRS 13B.080 and KRS 13B.090.

(4) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General or an impartial hearing officer appointed by the Cabinet. The hearing shall comply with 20 CFR § 658.417.

(5) The State hearing official may:

   (a) Rule that it lacks jurisdiction over the case;
(b) Rule that the complaint has been withdrawn properly in writing;

(c) Rule that reasonable cause exists to believe that the request has been abandoned; or

(d) Render such other rulings as are appropriate to resolve the issues in question.

However, the State hearing official does not have authority or jurisdiction to consider the validity or constitutionality of the regulations or of the Federal statutes under which they are promulgated.

(6) The State hearing official must prepare a written decision. The hearing officer’s report and recommended order shall be based on the entire record, including the investigations and determinations of the employment services offices and state agencies and any evidence provided at the hearing. The State hearing official must send a copy of the decision stating the findings of fact and conclusions of law, and the reasons therefor to the complainant, the respondent, entities serving as amicus capacity (if any), the State agency, the Regional Administrator, and the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Department of Labor, Room N2101, 200 Constitution Avenue NW., Washington, DC 20210. The notification to the complainant and respondent must be sent by certified mail or by other legally viable means.

(7) The hearing officer’s report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record within thirty (30) business days of the hearing, which may be extended by written agreement of the parties. All decisions of a State hearing official must be accompanied by a written notice informing the parties that they may appeal the judge's decision within twenty (20) business days of the certified date of receipt of the decision, and they may file an appeal in writing with the Regional Administrator of Migrant and Seasonal Farm Worker Program, Department of Workforce Investment, 500 Mero St., 4th Floor, Frankfort, Kentucky 40601.
(8) When a complainant is an English Language Learner (ELL), all written correspondence with the complainant under part 658, subpart E must include a translation into the complainant's native language. 20 CFR § 658.410 (n).

(9) A complainant may designate an individual to act as his/her representative throughout the filing and processing of a complaint. 20 CFR § 658.410 (o).
Appeals related to Migrant and Seasonal Farm Workers Program (Section 12)

Participants or other interested parties affected by the Migrant and Seasonal Farm Worker Program shall file complaint within thirty (30) days from alleged occurrence to file a grievance.

Grievance filed with Office of the Secretary, Education and Workforce Development Cabinet or to any appropriate staff at a One-Stop Operator during regular office hours.

Opportunity for informal resolution or hearing within 60 days of filing of grievance, absent an agreement between the parties extending this timeframe.

Hearing Officer shall issue written recommended order within 30 business days of the hearing, absent an agreement between the parties extending this timeframe.

Either party may appeal to the Regional Administrator within 20 business days of the certified date of receipt of the decision.