

***EDUCATION AND WORKFORCE DEVELOPMENT CABINET***  
**Department of Workforce Investment**  
**Office of Employment and Training**

**Grievance and Appeals Procedures for  
Kentucky's  
Workforce Investment Act Program**

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## Introduction

The Workforce Investment Act of 1998, 29 U.S.C. Sections 2831(a)(5), 2842(g), 2871(h)(2)(B), 2931(c), 2931(f)(2)(B), (2934)(b)(2), and 2938 requires the Commonwealth to establish grievance and appeals procedures for participants and interested parties affected by the Workforce Investment Act of 1998.

*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 process established in the State Plan.
- **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 or the state agency.
- **Appeals by local area of reorganization due to failure to meet performance measures.**  
A local area that has been found in substantial violation of WIA 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 within thirty days of receipt of the Governor's notification.
- **Appeals related to testing 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 WIA on the basis of age, disability, sex, race, color, national origin, religion, or political affiliation or belief may file a written complaint.
- **Grievances and appeals filed by participants against state operated programs.**  
This section applies to applicants for participation in WIA, Title I-funded programs or activities administered by the Office of Employment and Training.
- **Grievances and Appeals filed by Sub-grantees, Subcontractors and Other Interested Persons against a State agency.**  
This section applies to grievances from other than WIA participants. Grievous circumstances may include, but are not limited to, audit disallowances, imposition of sanctions with respect to audit findings, investigations, monitoring reports, etc.
- **Appeals of Grievances and Complaints from Participants and Other Interested Parties Affected by Local Workforce Investment Board Decisions**  
This section applies to the appeal of decisions issued by Local Workforce Investment Areas against participants or other interested parties.

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**Section 1. Definitions.**

- (1) “Administrative process” means meeting, review, investigation, hearing, appeal, deliberation, or exchange of documents or information between the agency and an applicant, participant, local area, Local Board, or an eligible provider.
- (2) “Agency” means the Office of Employment and Training within the Education and Workforce Development Cabinet.
- (3) “Applicant” means an individual who submits an application for services under WIA title I.
- (4) “Cabinet” means the Education and Workforce Development Cabinet.
- (5) “Date received” as defined in 787 KAR 1:230 means a contribution payment, report, protest, or appeal shall be considered received by the Education and Workforce Development Cabinet as of the date it is delivered to any office or department of the Cabinet or deposited in the mail or with commercial postal service on or before the due date, as indicated by the postmark applied by the U.S. Postal Service or official mark applied by a commercial postal service. The mark made by a privately-held postage meter shall not be considered in determining the date of receipt. When a due date falls on a day the Cabinet is closed, the next day the Cabinet is opened shall be considered the due date.
- (6) “Exclusion” means the termination of eligibility of a provider to perform services under WIA Title I.
- (7) “Fiscal agent” means the entity selected by the Local Board to administer sub-grants awarded by the agency.
- (8) “Hearing officer” means an individual who:
  - (a) Has not been involved in previous decisions regarding the subject matter of the appeal or grievance;

- (b) Has knowledge of the federal and state laws and administrative regulations governing the Workforce Investment Act of 1998;
  - (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.
- (9) “Local area” means a local workforce investment area as established by Executive Order 99-591 (May 5, 1999).
- (10) “Local Board” means a local workforce investment board established under WIA sec. 117, to set policy for the local workforce investment system.
- (11) “One-Stop Operator” means an entity designated or certified under WIA section 121(d).
- (12) “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 WIA 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 WIA title I.
- (13) “State Board” means the Kentucky Workforce Investment Board, established by Executive Order 99-226 (Feb. 17, 1999).
- (14) “State Plan” means the current Strategic Five Year State Workforce Investment Plan, as approved by the U.S. Department of Labor Secretary.
- (15) “Training provider” means as defined by WIA section 101(12).
- (16) “WIA” means the federal Workforce Investment Act of 1998, 29 U.S.C. Section 2801, et seq. (Pub. L. 105-220, Aug. 7, 1998), and its implementing regulations (20 CFR Part 652, et al.).

**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 pursuant to the process established in the State Plan.

(2) The appeal shall be filed no later than thirty 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 hearings 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 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, U.S. 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, Office of Employment and Training, 275 East Main, Frankfort, Kentucky 40621.

(6) To prevail, the appellant shall establish that:

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

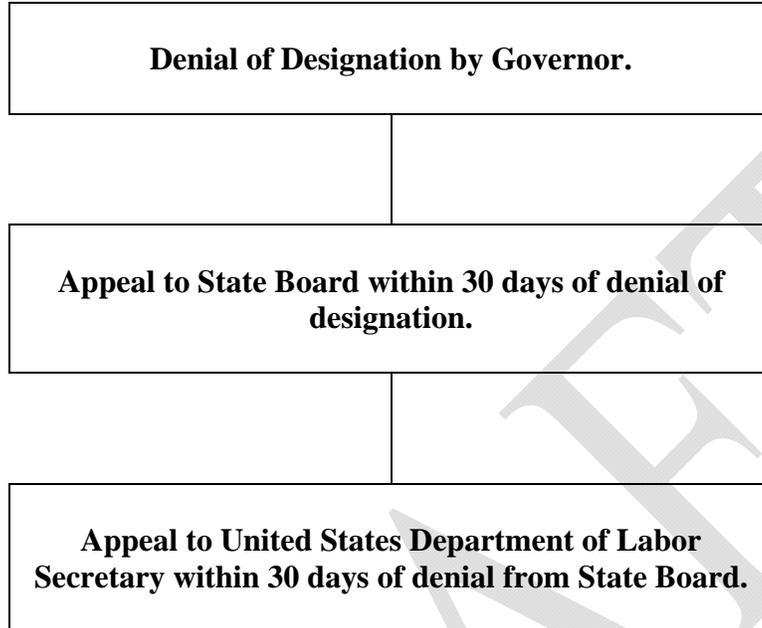
(ii) it meets the requirements for designation as a local area under WIA sections 116(a)(2) or (a)(3). The State Board may submit comments to the U.S. Department of Labor Secretary in response to the appeal.

- (7) The appeal shall be conducted in accordance with procedures established by the U.S. Department of Labor Secretary.

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## PROCESS FLOW

### Appeals of denial of request for designation as local area (Section 2)



**Section 3. 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 by the Local Board. 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 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 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:

(i) The local area has denied or terminated the training provider's eligibility and the training provider has exhausted the administrative remedies described in the local area plan; or

(ii) The state agency has denied or terminated the eligibility of the training provider for a substantial violation of any requirement under WIA, for failure to meet established performance levels or for intentionally supplying inaccurate information required to be furnished under WIA.

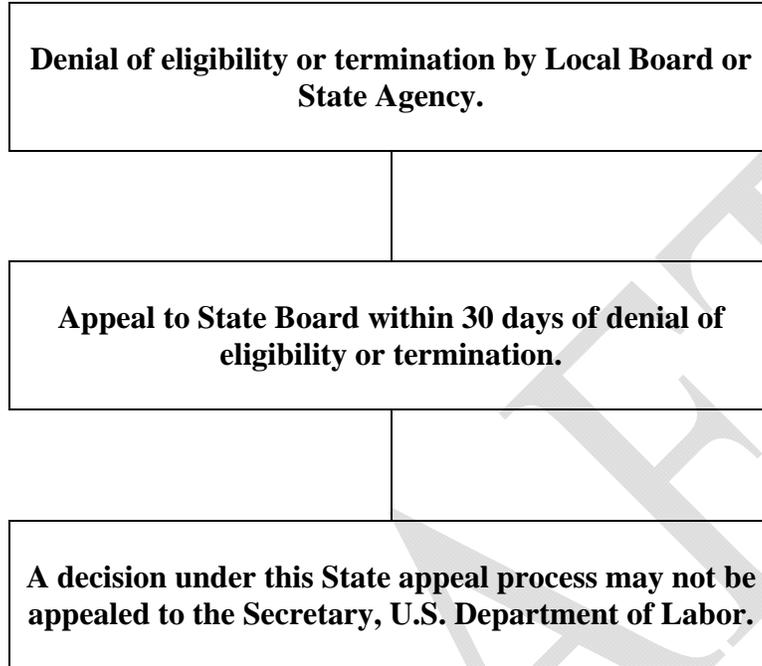
(b) An appeal under this paragraph shall be filed with the State Board no later than thirty days after receipt of the final notice of denial or termination of eligibility from the Local Board or the state agency. The statement of appeal shall be addressed to the Kentucky Workforce Investment Board, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Frankfort KY 40621.

(c) An opportunity for an informal resolution and a hearing shall be conducted under this section within sixty 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.

## PROCESS FLOW

### Appeals of denial or termination of eligibility as a training provider (Section 3)



**Section 4. Appeals by local area of reorganization due to failure to meet performance measures.**

(1) A local area that has been found in substantial violation of WIA 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 within thirty 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 U.S. Department of Labor Secretary has issued a decision.

(2) A local area which has failed to meet local performance measures for two consecutive years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal such sanctions to the U.S. Department of Labor Secretary.

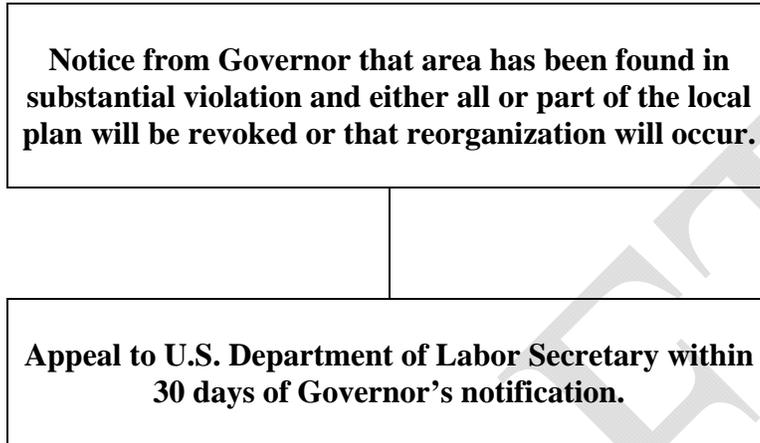
(3) Appeals made under paragraphs (1) or (2) of this section shall be filed no later than thirty days after receipt of written notification of the revoked plan or imposed reorganization, and shall be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, D.C. 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(4) The Governor may submit comments to the U.S. Department of Labor Secretary in response to the appeal.

(5) The appeal shall be conducted in accordance with procedures established by the U.S. Department of Labor Secretary.

## PROCESS FLOW

### Appeals by local area of reorganization due to failure to meet performance standards (Section 4)



**Section 5. Appeals related to testing of participants for substance abuse.**

(1) 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 no later than thirty 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 Executive Director, Office of Employment and Training, 275 East Main Street, Frankfort, Kentucky 40621. 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;

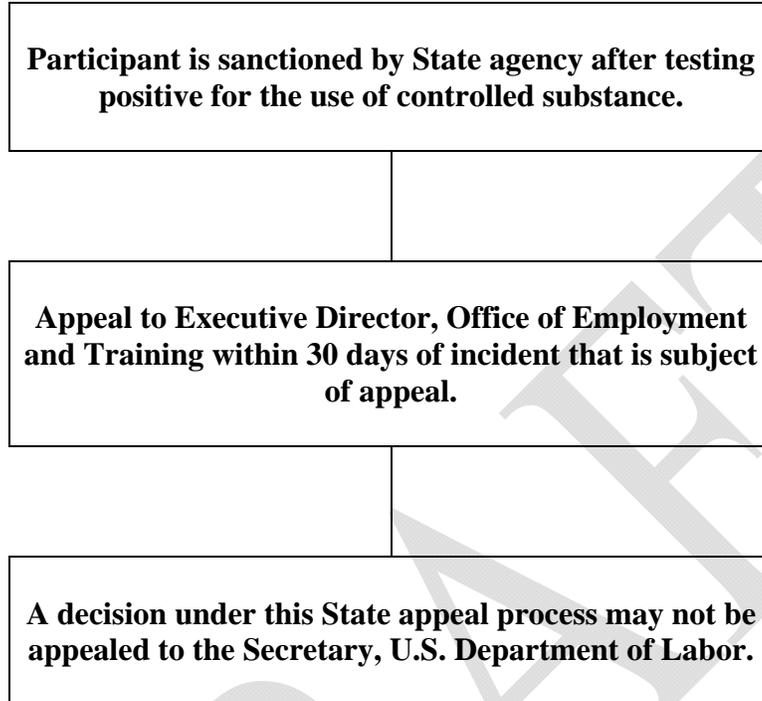
(c) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation; and

(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.

## PROCESS FLOW

### Appeals related to testing of participants for substance abuse (Section 5)



## **Section 6. Grievances and appeals based on complaints of discrimination.**

- (1) This section applies to applicants for WIA participation or employment, participants or employees of any WIA, Title I-funded entity, and applicants for WIA 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, U.S. 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 WIA 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, WIA Title I funds;
    - (ii) The Office of Employment and Training;
    - (iii) The Kentucky Workforce Investment Board;
    - (iv) Local Workforce Investment Boards;
    - (v) Local workforce investment 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 defined in WIA 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 WIA on the basis of age, disability, sex, race, color, national origin, religion, or political affiliation or belief may file a written complaint with the recipient or with the Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, D.C. 20210 within 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 WIA, Title I on the basis of citizenship may file a written complaint with the recipient or with the Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, D.C. 20210 within 180 days of the alleged discrimination. The complaint may be filed by a representative. Only 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 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 WIA).

(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 EO officer of the state agency. 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 U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(6) The local workforce investment board shall designate an EO officer who is responsible for receiving, investigating, and offering resolutions of complaints, and for assuring all WIA Title I applicants are advised of their rights. Service providers shall follow the procedures established within the local workforce investment area. The local workforce investment board grievance procedures 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. If the recipient breaches an agreement reached under ADR, the complainant may file a discrimination complaint with the

CRC Director. 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 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 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.

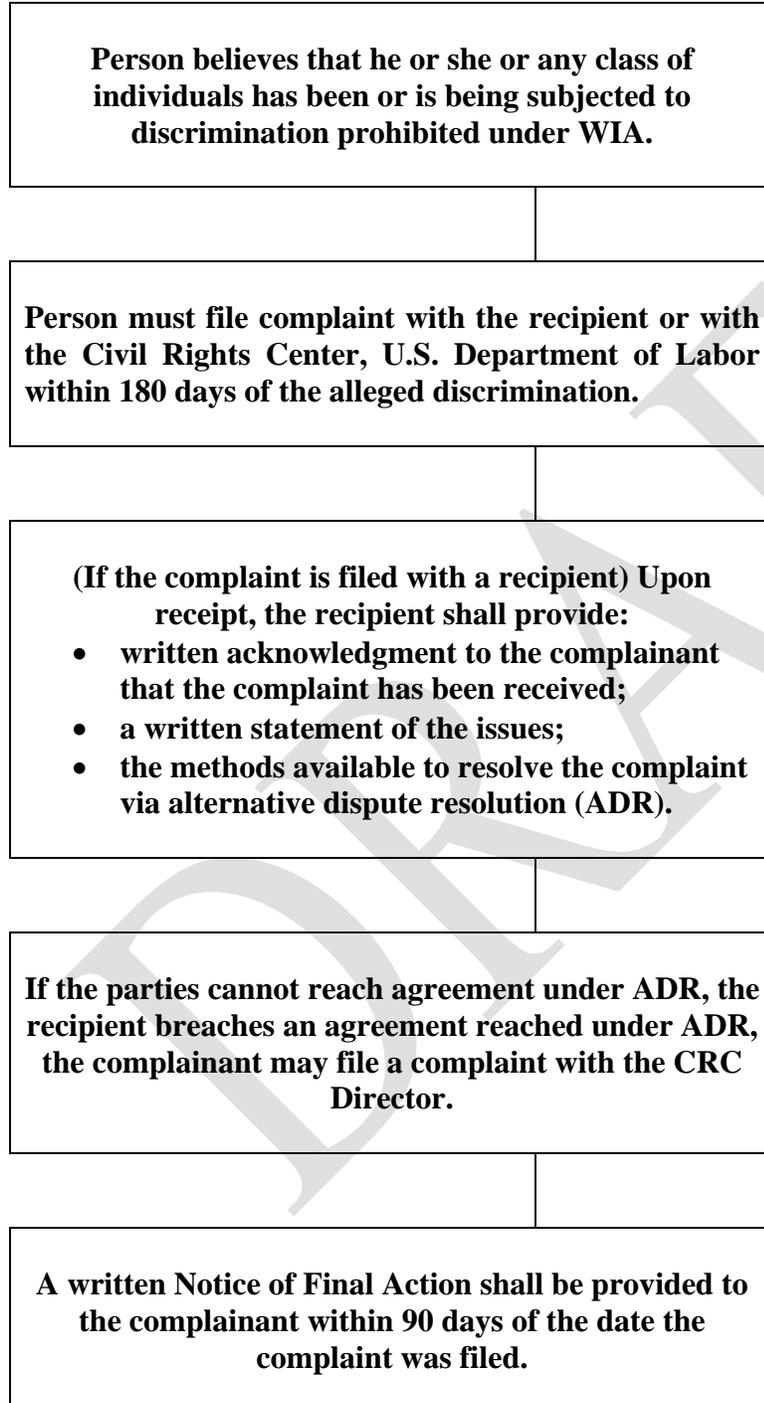
(f) The EO officer shall notify the complainant in writing immediately if it is determined that the local workforce area does not have jurisdiction over a complaint. The notification shall include the basis for the determination as well as a statement of the complainant's right to file a written complaint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

(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 may file a complaint with the Civil Rights Center within thirty 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.

## PROCESS FLOW

### Grievances and appeals based on complaints of discrimination (Section 6)



## **Section 7 Grievances and appeals filed by participants against state operated programs.**

This section does not apply to complaints of discrimination under WIA Section 188 or 29 CFR Part 37, fraud or criminal activity.

(1) State subcontractor procedures.

(a) A state subcontractor shall establish and maintain a system for resolving grievances 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 state subcontractor's procedure shall provide:

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

2. 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

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

a. No decision is reached within sixty days; or

b. Either party is dissatisfied with the state subcontractor hearing decision.

(b) The state subcontractor shall provide information about its grievance procedure to participants and other interested parties.

(2) State procedures.

(a) Appeals from decisions of the state subcontractor.

1. The participant or other interested party may appeal the state subcontractor's hearing decision by submitting a written request for appeal to the Office of Employment and Training, 275 East Main Street, 2WA, Frankfort, Kentucky 40621 within ten workdays of receipt of the

state subcontractor's hearing decision or within fifteen workdays of the date the complainant should have received the state subcontractor's hearing decision.

2. The state agency shall conduct an investigation and issue a decision within thirty 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, within ten workdays of the date of receipt of the state agency's decision or within fifteen workdays of the date the complainant should have received 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:

a. KRS Chapter 13B; and

b. This administrative regulation.

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.

4. The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record within thirty (30) days of receipt of the transcript of the hearing unless both parties agree to a time extension.

5. Exceptions. The parties shall be granted the right to file within fourteen (14) days of receipt of said report and recommended order, exceptions thereto. Within five (5) days of receipt of the exceptions, responses to exceptions shall be filed.

a. Filing exceptions. Exceptions shall comply with the requirements as set forth in 400 KAR 1:090, Section 14.

b. Filing with Office of Attorney General. Any party filing exceptions to the hearing officer's report and recommendation or a response to such exceptions as provided for by statute or administrative regulation shall file the exceptions or responses of the record of the case in the Office of Attorney General. All such exceptions and responses shall conform to the format for motion memoranda specified in section 9(6) of 400 KAR 1:090.

c. Draft order of the secretary. All parties filing exceptions to a hearing officer's report and recommendation shall tender with their exceptions a draft order for the Secretary of the Education and Workforce Development Cabinet. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the cabinet is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.

d. Good cause exception. The Secretary of the Education and Workforce Development Cabinet may exempt a party from compliance with the formatting requirements of subsection (1) and (2) of 400 KAR 1:090, section 9, upon showing of good cause or undue hardship.

6. The Secretary of the Education and Workforce Development Cabinet shall consider the report and recommended order, any exceptions filed, and any responses to exceptions, and pass upon the matter within a reasonable time. 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 thirty (30) days from issuance of the report and recommended order by the hearing officer.

7. Reconsideration. A party adversely affected by a decision of the Secretary of the Education and Workforce Development Cabinet may, within five (5) days of receipt of the final decision, file application for reconsideration of the Secretary of the Education and Workforce Development Cabinet's decision. The Secretary of the Education and Workforce Development

Cabinet may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230 (*See “date received” definition in Section 1, Definitions, to these policies and procedures.*) The Secretary of the Education and Workforce Development Cabinet shall respond to requests for reconsideration by mail within three (3) working days after they are received by the Cabinet.

8. Either party may appeal the decision 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 submitted by certified mail, return receipt requested, within sixty days of receipt of the final order. 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, Room 6M12, Atlanta, Georgia 30303.

9. If no decision has been reached within sixty days of filing the initial complaint, the complainant may appeal to the Secretary, United States Department of Labor, Washington, D.C. 20210, Attention: ASET. The appeal shall be submitted by certified mail, return receipt requested, within 120 days of filing the initial complaint. 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, Room 6M12, Atlanta, Georgia 30303.

## PROCESS FLOW

Grievances and appeals filed by participants against state operated programs (Section 7).

**Participant or other interested party files grievance. State subcontractor must complete informal resolution and hearing and issue decision within 60 days of grievance being filed.**

**The participant or other interested party may appeal the state subcontractor's hearing decision to the Office of Employment and Training within 10 workdays of receipt of state subcontractor's hearing decision or within 15 workdays of the date the complainant should have received the state subcontractor's hearing decision.**

**The Office of Employment and Training shall conduct an investigation and issue a decision within 30 days of the written request for appeal.**

**The complainant may appeal the Office of Employment and Training's decision with the Secretary, Education and Workforce Development Cabinet within 10 days of receipt of the Office of Employment and Training's decision or within 15 workdays of the date the complainant should have received a decision.**

**Hearing Officer shall issue written recommended order within 30 days of the hearing.**

**The Secretary, Education and Workforce Development Cabinet shall issue a final order within 30 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.**

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**Section 8 Grievances and appeals filed by Sub-grantees, Subcontractors and Other Interested Persons against a State Agency.**

This section does not apply to complaints of discrimination under WIA Section 188 or 29 CFR Part 37, fraud or criminal activity.

(1) A participant or other interested party affected by the statewide workforce investment system may file a complaint with the state agency within one year of the alleged occurrence.

The complainant shall submit the complaint to the Secretary, Education and Workforce Development Cabinet. 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 60 days of the filing of the grievance or complaint. 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:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(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.

- (5) The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record within thirty (30) days of receipt of the transcript of the hearing unless both parties agree to a time extension.
- (6) Exceptions. The parties shall be granted the right to file within fourteen (14) days of receipt of said report and recommended order, exceptions thereto. Within five (5) days of receipt of the exceptions, responses to exceptions shall be filed.
- (a) Filing exceptions. Exceptions shall comply with the requirements as set forth in 400 KAR 1:090, Section 14.
- (b) Filing with Office of Attorney General. Any party filing exceptions to the hearing officer's report and recommendation or a response to such exceptions as provided for by statute or administrative regulation shall file the exceptions or responses of the record of the case in the Office of Attorney General. All such exceptions and responses shall conform to the format for motion memoranda specified in section 9(6) of 400 KAR 1:090.
- (c) Draft order of the secretary. All parties filing exceptions to a hearing officer's report and recommendation shall tender with their exceptions a draft order for the Secretary of the Education and Workforce Development Cabinet. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the cabinet is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.
- (d) Good cause exception. The Secretary, Education and Workforce Development Cabinet may exempt a party from compliance with the formatting requirements of subsection (1) and (2) of 400 KAR 1:090, section 9, upon showing of good cause or undue hardship.
- (7) The Secretary, Education and Workforce Development Cabinet shall consider the report and recommended order, any exceptions filed, and any responses to exceptions, and pass upon

the matter within a reasonable time. 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 thirty (30) days from issuance of the report and recommended order by the hearing officer.

(8) Reconsideration. A party adversely affected by a decision of the Secretary of the Education and Workforce Development Cabinet may, within five (5) days of receipt of the final decision, file application for reconsideration of the Secretary of the Education and Workforce Development Cabinet's decision. The Secretary of the Education and Workforce Development Cabinet may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230 (*See "date received" definition in Section 1, Definitions, to these policies and procedures.*) The Secretary of the Education and Workforce Development Cabinet shall respond to requests for reconsideration by mail within three (3) working days after they are received by the Cabinet.

(9) Either party may appeal the decision 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 submitted by certified mail, return receipt requested, within sixty days of receipt of the final order. 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, Room 6M12, Atlanta, Georgia 30303.

(10) If no decision has been reached within sixty days of filing the initial complaint, the complainant may appeal to the Secretary, United States Department of Labor, Washington, D.C. 20210, Attention: ASET. The appeal shall be submitted by certified mail, return receipt requested, within 120 days of filing the initial complaint. A copy of the appeal shall be

simultaneously provided to the opposing party and to the Regional Administrator, U.S.

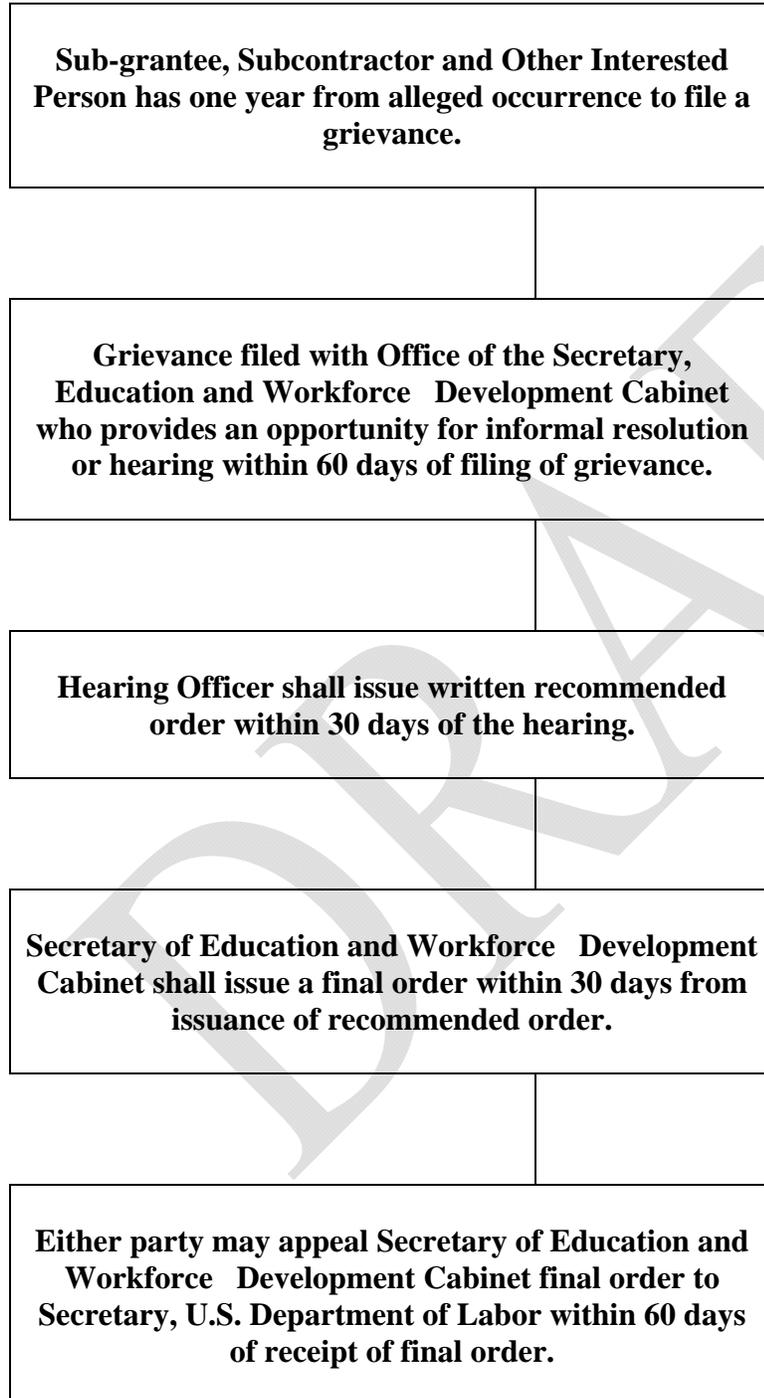
Department of Labor, Employment and Training Administration, 61 Forsythe Street, Room 6M12, Atlanta, Georgia 30303.

(11) The state agency may remand a grievance or complaint related to a local WIA program for resolution at the local level.

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## PROCESS FLOW

### Grievances and Appeals filed by Sub-grantees, Subcontractors and Other Interested Persons against a State Agency (Section 8)



**Section 9. Appeals of Grievances and Complaints from Participants and Other Interested Parties Affected by Local Workforce Investment Board Decisions.**

This section does not apply to complaints of discrimination under WIA Section 188 or 29 CFR Part 37, fraud or criminal activity.

(1) Local area procedures.

(a) A local area shall establish and maintain a system for resolving grievances 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 local procedure shall provide:

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

2. 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

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

a. No decision is reached within sixty days; or

b. Either party is dissatisfied with the local hearing decision.

(b) The local area shall provide information about its grievance procedure to participants and other interested parties.

(2) State procedures.

(a) Appeals from decisions of the local area.

1. The participant or other interested party may appeal the local hearing decision by submitting a written request for appeal to the Office of Employment and Training, 275 East Main Street, 2WA, Frankfort, Kentucky 40621 within ten workdays of receipt of the local hearing

decision or within fifteen workdays of the date the complainant should have received the local hearing decision.

2. The state agency shall conduct an investigation and issue a decision within thirty 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, within ten workdays of the date of receipt of the state agency's decision or within fifteen workdays of the date the complainant should have received 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:

a. KRS Chapter 13B; and

b. This administrative regulation.

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.

4. The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record within thirty (30) days of receipt of the transcript of the hearing unless both parties agree to a time extension.

5. Exceptions. The parties shall be granted the right to file within fourteen (14) days of receipt of said report and recommended order, exceptions thereto. Within five (5) days of receipt of the exceptions, responses to exceptions shall be filed.

a. Filing exceptions. Exceptions shall comply with the requirements as set forth in 400 KAR 1:090, Section 14.

b. Filing with Office of Attorney General. Any party filing exceptions to the hearing officer's report and recommendation or a response to such exceptions as provided for by statute or administrative regulation shall file the exceptions or responses of the record of the case in the Office of Attorney General. All such exceptions and responses shall conform to the format for motion memoranda specified in section 9(6) of 400 KAR 1:090.

c. Draft order of the secretary. All parties filing exceptions to a hearing officer's report and recommendation shall tender with their exceptions a draft order for the Secretary of the Education and Workforce Development Cabinet. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the cabinet is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.

d. Good cause exception. The Secretary of the Education and Workforce Development Cabinet may exempt a party from compliance with the formatting requirements of subsection (1) and (2) of 400 KAR 1:090, section 9, upon showing of good cause or undue hardship.

6. The Secretary of the Education and Workforce Development Cabinet shall consider the report and recommended order, any exceptions filed, and any responses to exceptions, and pass upon the matter within a reasonable time. 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 thirty (30) days from issuance of the report and recommended order by the hearing officer.

7. Reconsideration. A party adversely affected by a decision of the Secretary of the Education and Workforce Development Cabinet may, within five (5) days of receipt of the final decision, file application for reconsideration of the Secretary of the Education and Workforce Development Cabinet's decision. The Secretary of the Education and Workforce Development

Cabinet may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230 (*See “date received” definition in Section 1, Definitions, to these policies and procedures.*) The Secretary of the Education and Workforce Development Cabinet shall respond to requests for reconsideration by mail within three (3) working days after they are received by the Cabinet.

8. Either party may appeal the decision 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 submitted by certified mail, return receipt requested, within sixty days of receipt of the final order. 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, Room 6M12, Atlanta, Georgia 30303.

9. If no decision has been reached within sixty days of filing the initial complaint, the complainant may appeal to the Secretary, United States Department of Labor, Washington, D.C. 20210, Attention: ASET. The appeal shall be submitted by certified mail, return receipt requested, within 120 days of filing the initial complaint. 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, Room 6M12, Atlanta, Georgia 30303.

## PROCESS FLOW

### Appeals of Grievances and Complaints from Participants and Other Interested Parties Affected by Local Workforce Investment Board Decisions (Section 9)

**Participant or other interested party files grievance. LWIA must complete informal resolution and hearing and issue decision within 60 days of grievance being filed.**

**The participant or other interested party may appeal the local hearing decision to the Office of Employment and Training within 10 workdays of receipt of local hearing decision or within 15 workdays of the date the complainant should have received the local hearing decision.**

**The Office of Employment and Training shall conduct an investigation and issue a decision within 30 days of the written request for appeal.**

**The complainant may appeal The Office of Employment and Training's decision with Office of the Secretary, Education and Workforce Development Cabinet within 10 days of receipt of The Office of Employment and Training's decision or within 15 workdays of the date the complainant should have received a decision.**

**Hearing Officer shall issue written recommended order within 30 days of the hearing.**

**Secretary of Education and Workforce Development Cabinet shall issue a final order within 30 days from issuance of recommended order.**

**Either party may appeal Secretary of Education and Workforce Development Cabinet final order to Secretary, U.S. Department of Labor within 60 days of receipt of final order.**

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