

CHAPTER 42

WORKFORCE INVESTMENT ACT RULES

Authority

N.J.S.A. 34:1-20 and 34:1A-3(e); 29 U.S.C. §§2801 et seq.; and 20 CFR §§667.600 et seq.

Source and Effective Date

R.2007 d.278, effective August 1, 2007.
See: 39 N.J.R. 838(a), 39 N.J.R. 3743(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 42, Workforce Investment Act Rules, expires on August 1, 2014. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 42, Workforce Investment Act Rules, was adopted as R.2002 d.46, effective February 4, 2002. See: 33 N.J.R. 2613(b), 34 N.J.R. 771(a).

Chapter 42, Workforce Investment Act Rules, was readopted as R.2007 d.278, effective August 1, 2007. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. WORKFORCE INVESTMENT ACT (WIA): NON-CRIMINAL COMPLAINT/GRIEVANCE, HEARING AND REVIEW PROCEDURES AT THE LOCAL AREA, STATE AND FEDERAL LEVEL

12:42-1.1 Purpose

The purpose of this subchapter is to set forth the grievance, hearing and review procedures required under the Federal Workforce Investment Act (WIA), 29 U.S.C. §§ 2801 et seq.

12:42-1.2 Scope

(a) Each local area shall follow, at a minimum, the grievance and hearing procedures set forth at N.J.A.C. 12:42-1.4. The local area grievance and hearing procedures shall apply to the following:

1. Grievances or complaints from participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers, which allege violations of the requirements of the WIA and/or provisions of a related agreement(s); and

2. Individuals alleging labor standards violations under 29 U.S.C. § 2931(b). An individual alleging a labor standards violation may submit his or her grievance to binding arbitration in lieu of the grievance and hearing procedures established by the local area pursuant to this section, in the event that a collective bargaining agreement covering the parties to the grievance so provides.

(b) The State review procedures for appeals of local level decisions set forth at N.J.A.C. 12:42-1.5 shall apply to the following:

- 1. Participant appeals from decisions at the local area level;
- 2. Local recipient appeals from decisions at the local area level; and
- 3. Appeals by other interested persons from decisions at the local area level.

(c) The State review procedures for matters initiated at the State level set forth at N.J.A.C. 12:42-1.6 shall apply to the following:

1. Grievances or complaints alleging a violation(s) of the requirements of the WIA and/or provisions of a related agreement(s), filed by interested parties who have no recourse to the grievance and hearing procedures of a local area, but who are affected by the Statewide Workforce Investment programs;

2. Grievances or complaints from providers of training services:

- i. Who are denied eligibility by a local Workforce Investment Board or the designated State agency pursuant to 29 U.S.C. § 2842(b), (c), or (e);
- ii. Whose eligibility is terminated or otherwise adversely affected by a local board or State agency pursuant to 29 U.S.C. § 2842(f); or
- iii. Who are denied eligibility as a provider of on-the-job training or customized training by a one-stop operator under 29 U.S.C. § 2842(h).

3. Grievances or complaints from participants subject to testing for the use of controlled dangerous substances and participants who are sanctioned after testing positive for the use of a controlled dangerous substance.

(d) The State Board review procedures set forth at N.J.A.C. 12:42-1.7 shall apply to appeals by a unit or combination of units of general local government or a rural concentrated employment program grant recipient (as described at 29 U.S.C. § 2831(a)(2)(B)) that requests, but is not granted, automatic or temporary and subsequent designation as a local workforce investment area pursuant to 29 U.S.C. § 2831(a)(2) or (a)(3).

(e) All local areas shall provide their participants, upon enrollment, with a copy of the State review procedures.

(f) All local areas shall provide local recipients with a copy of the State review procedures no later than the date of the contract between the local area and the local recipient.

(g) N.J.A.C. 12:42-1.12 outlines the remedies that may be imposed under any local or State grievance procedure, which include suspension or termination of payments, prohibition of placement of a participant with an employer that has violated any requirement under WIA, payment of lost wages and benefits and other equitable relief.

12:42-1.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner, New Jersey Department of Labor and Workforce Development or his or her authorized designee.

“Complainant” means an individual, group or agency that files a formal grievance or complaint alleging violation(s) of the WIA and/or the provisions of a related agreement(s).

“Director” means the Director of the Division of One-Stop Coordination and Support, Workforce New Jersey, New Jersey Department of Labor and Workforce Development.

“Eligible training provider” means a training provider identified in accordance with 29 U.S.C. § 2842(e)3.

“Local area” means a local workforce investment area designated under 29 U.S.C. § 2831.

“Local board” means a local Workforce Investment Board as described in 29 U.S.C. § 2832(b).

“Local recipient” means any person or government department, agency or establishment (private-for-profit/nonprofit) that receives Federal WIA funds through a local area in order to carry out WIA programs, but does not include an individual who is a beneficiary of such a program.

“One-stop partner” means an entity described at 29 U.S.C. § 2841(d).

“Participant” means an individual who has been determined to be eligible to participate in and who is receiving services (except follow-up services authorized under the WIA) under a program authorized by the WIA. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the individual began receiving subsidized employment, training, or other services provided under the WIA.

“Recipient” means the State of New Jersey.

“Respondent” means the individual, group or agency against whom a complaint has been filed and to whom the opportunity to participate in the complaint resolution process is provided.

“Secretary” means the United States Secretary of Labor.

“State Board” means the State Workforce Investment Board established pursuant to 29 U.S.C. § 2821 which is the State Employment and Training Commission established pursuant to N.J.S.A. 34:15C-1 et seq.

“State Employment and Training Commission” means the Commission established pursuant to N.J.S.A. 34:15C-1 et seq.

“WIA” means the Workforce Investment Act of 1998, 29 U.S.C. §§ 2801 et seq.

Amended by R.2007 d.278, effective September 4, 2007.

See: 39 N.J.R. 838(a), 39 N.J.R. 3743(a).

In definitions “Commissioner” and “Director”, inserted “and Workforce Development”; and in definition “Director”, substituted “One-Stop Coordination and Support” for “Employment and Training”.

12:42-1.4 Grievance and hearing procedures at the local area level

(a) The grievance and hearing procedures at the local area level shall contain, at a minimum, the following requirements:

1. Upon a participant’s enrollment into a WIA program, the local area shall provide the participant with a written description of the grievance and hearing procedures which shall include the requirements set forth in (a)4 through 7 below. The local area shall also provide local recipients with these procedures no later than the date of execution of the contract or individual training account between the local area and the local recipient. The local area shall also provide a written description of the grievance and hearing procedures to all complainants at the time a complaint is filed.

2. The local area shall maintain evidence that the grievance and hearing procedures have been provided to participants, local recipients, and complainants as required in (a)1 above.

3. The grievance and hearing procedures shall provide that the identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of the WIA shall be kept confidential to the extent possible, consistent with a fair determination of the issues.

4. The local area may provide for an informal resolution of a complaint/grievance which, if provided, shall be completed prior to the hearing date.

5. The local area shall provide for the completion of the hearing and a written decision on a complaint/grievance to be conducted in the locale of the complainant within 60 days of the filing of the grievance or complaint.

6. The local area shall provide participants and local recipients with the name, address and telephone number of the local official to whom complaints and grievances can be directed.

7. At a minimum, the local area shall also provide participants and local recipients with the following:

i. A written notice of the date, time and place of the hearing;

ii. An opportunity to be represented by an attorney or other representative of the complainant's choice;

iii. An opportunity to present witnesses and documentary evidence. Local area recipients and other subrecipients shall cooperate in making available to testify any persons under their control or employ, if such persons are requested to testify by the complainant, and to release requested documents unless privacy laws and other laws intervene to take precedence;

iv. An opportunity to question any witnesses or parties;

v. An impartial hearing;

vi. A verbatim transcript or tape recording of the hearing;

vii. Written notice that the complainant is entitled to a hearing and that a written decision shall be made by the hearing officer or designated representative of the local area within 60 days of the filing of the complaint/grievance;

viii. Written notice that the complainant has a right to appeal to the Commissioner if the decision is adverse or is not made within 60 days of the filing of the complaint;

ix. The name and address of the State agency to whom the appeal is to be addressed and other information needed to file the appeal with the State;

x. Written notice that the complainant must file the appeal with the Director within 30 days of receiving the adverse decision or the date the decision should have been made;

xi. Written notice that the complainant may submit a complaint alleging violations of 29 U.S.C. § 2931(b) labor standards to the Secretary of Labor when the complainant has exhausted the local and State grievance and hearing procedures, or when the 60 day time period specified for reaching a decision has elapsed without a decision. The complainant shall also be informed that he or she has a right to submit the complaint to binding arbitration if a collective bargaining agreement covering the parties to the grievance so provides;

xii. Written notice that when a decision is made at the State level regarding an appeal of a determination made at the local area level, the party to which the decision is adverse may appeal to the Secretary;

xiii. Written notice of the appeal procedures at the State level contained at N.J.A.C. 12:42-1.5; and

xiv. Written notice that the complainant must exhaust the remedies at each level prior to making an appeal to the next higher level.

8. The local area may require the complainant to notify it when an appeal is made to the State or to the United States Department of Labor.

12:42-1.5 Appeal of local level decisions to the State

(a) If a participant, local recipient or other interested persons affected by local Workforce Investment programs does not receive a decision at the local area level within 60 days of filing the complaint or if either party is dissatisfied with the local hearing decision, either party may appeal to the State.

1. A Notice of Appeal shall be filed within 30 days of receipt of the adverse decision or the date on which the complainant and respondent should have received a decision.

(b) Each appeal shall be submitted to:

New Jersey Department of Labor and Workforce
Development
Director, Division of One-Stop Coordination and
Support
Workforce New Jersey
PO Box 055
Trenton, New Jersey 08625-0055

(c) Along with the Notice of Appeal, the appellant shall simultaneously submit in writing the following information to the Director of the Division of One-Stop Coordination and Support:

1. The full name, address, and telephone number of person(s) making the complaint/grievance;

2. The full name and address of the respondent (if any) against whom the complaint or grievance was made;

3. A clear and concise statement of the facts of the grievance;

4. Pertinent dates, including the date on which the grievance was filed at the local level, the date of the alleged occurrence or act for which the complaint was filed and the date a written decision was issued or should have been issued;

5. If applicable, citations to the provisions of the WIA, the regulations promulgated in accordance therewith, or the agreements entered thereunder, which are believed to have been violated;

6. A statement disclosing other steps pursued at any level regarding the complaint/grievance in question; and

7. A copy of the local written decision if such was rendered.

(d) Upon receipt of the appeal and all pertinent information set forth in (c) above, the Commissioner shall either:

1. Within 30 days, issue a written decision accepting, rejecting or modifying the determination of the local area based upon a review of the written record, where there has been a hearing at the local level;

2. Within 30 days, issue a written decision remanding the grievance or complaint to the local level for further proceedings in accordance with N.J.A.C. 12:42-1.4; or

3. Within 10 days, transmit the matter to the Office of Administrative Law for hearing as a contested case pursuant to the Administrative Procedures Act (APA), N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

i. The hearing before the Office of Administrative Law shall be completed within 60 days of the date upon which the Commissioner received the appeal and all pertinent information set forth in (c) above.

ii. Upon transmittal of the matter to the Office of Administrative Law, the Commissioner shall inform the Office of Administrative Law of the date upon which the appeal and all pertinent information was received.

(e) The Commissioner's decision shall constitute the final administrative determination.

(f) Appeals to the Secretary of final Commissioner decisions under this section shall be made in accordance with Federal review procedures set forth at N.J.A.C. 12:42-1.8.

Amended by R.2007 d.278, effective September 4, 2007.

See: 39 N.J.R. 838(a), 39 N.J.R. 3743(a).

In (b), inserted "and Workforce Development"; and in (b) and (c), substituted "One-Stop Coordination and Support" for "Employment and Training".

12:42-1.6 Review procedures for matters initiated at the State level

(a) Any interested parties who do not have recourse to the grievance and hearing procedures of a local area and who are affected by the Statewide Workforce Investment program, may submit to the Commissioner any grievances or complaints alleging a violation(s) of the requirements of the WIA and/or provisions of a related agreement(s).

(b) Any providers of training services who have been denied eligibility by a local board or the designated State agency pursuant to 29 U.S.C. § 2842(b), (c) or (e); whose eligibility has been terminated or otherwise adversely affected by a local board or State agency pursuant to 29 U.S.C. § 2842(f); or who has been denied eligibility as a provider of on-the-job training or customized training by a one-stop operator under 29 U.S.C. § 2842(h), may submit to the Commissioner any grievances or complaints regarding such actions.

(c) Any participants subject to testing for the use of controlled dangerous substances and participants who are sanctioned after testing positive for the use of controlled dangerous substances may submit to the Commissioner any grievances or complaints regarding such actions.

(d) Upon receipt of the written request for review, the agency shall provide the complainant and respondent with written acknowledgment of the request. The written acknowledgment shall set forth that the complainant and respondent may present documentary evidence within five business days of receipt of the acknowledgment, that they deem necessary in order for the agency to render a decision. The agency shall review the documentary evidence presented by the parties and shall request any additional information or conduct any investigation necessary to render a decision.

(e) The agency's decision shall be based on the written record and rendered within 20 days after receipt of the request for review submitted by the parties. The decision shall advise the parties of the right to an impartial hearing.

1. The agency shall offer the parties the opportunity to resolve the complaint informally prior to rendering a decision based on the written record.

(f) The complainant or respondent may request an impartial hearing if the decision of the agency is deemed adverse by either party or if the decision has not been made within 20 days.

1. The request for an impartial hearing shall be submitted in writing to the Commissioner within 10 days of receipt of the adverse decision or 35 days from the date upon which the Commissioner received the request for review, whichever is sooner.

(g) Upon receipt of the request for a hearing, the Commissioner shall transmit the matter to the Office of Administrative Law for hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The hearing shall be completed within 60 days of the complaint or grievance. The Commissioner's decision shall constitute the final administrative determination.

(h) The complainant or respondent may appeal to the Secretary, utilizing the procedures set forth at N.J.A.C. 12:42-1.8, if the Commissioner fails to issue a written decision

within 60 days of receipt of the initial complaint, or if the decision relating to the complaint or grievance has been reached and the party to which such decision is adverse wishes to seek review by the United States Department of Labor pursuant to 20 C.F.R. 667.610.

(i) The Secretary will not review appeals from complaints at the State level from complainants subject to testing and sanctioning for the use of controlled substances or from training providers denied eligibility or terminated as an eligible training provider.

12:42-1.7 Review procedures for matters before the State Board

(a) Any unit or combination of units of general local government or a rural concentrated employment program grant recipient (as described at 29 U.S.C. § 2831(a)(2)(B)) that requests, but is not granted, automatic or temporary and subsequent designation as a local workforce investment area pursuant to 29 U.S.C. § 2831(a)(2) or 2831(a)(3) may submit to the State Board an appeal of such an action. All appeals must be submitted in writing.

(b) Upon receipt of the written appeal, the agency shall provide the appellant with the opportunity to present documentary evidence. The agency shall review the documentary evidence presented by the appellant and shall request any additional information or conduct any investigation necessary to render a decision.

(c) The agency's decision shall be based on the written record and rendered within 20 days after receipt of the request for review. The decision shall advise the parties of the right to an impartial hearing.

1. The agency shall offer the parties the opportunity to resolve the complaint informally prior to rendering a decision based on the written record.

(d) If the decision of the agency is adverse to the appellant, or the decision is not made within 20 days, the appellant may request an impartial hearing.

1. The request for an impartial hearing shall be submitted in writing to the State Board within 10 days of receipt of the adverse decision or 35 days from the date upon which the Board received the request for review, whichever is sooner.

(e) Upon receipt of the request for a hearing, the State Board shall transmit the matter to the Office of Administrative Law for hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Following the issuance of an Initial Decision by the Office of Administrative Law, the State Board shall render a written final administrative determination in the matter.

(f) If the appeal to the State Board does not result in designation as a local workforce investment area, the appellant may request review by the Secretary under 20 C.F.R. 667.645.

12:42-1.8 Federal review procedures

(a) The Secretary investigates allegations arising through the grievance procedures described in N.J.A.C. 12:42-1.5 and 1.6, with the exception of complaints at the State level from complainants subject to testing and sanctioning for the use of controlled dangerous substances or from training providers denied eligibility or terminated as eligible training providers, when:

1. A decision relating to a grievance or complaint under N.J.A.C. 12:42-1.5 or 1.6 has not been reached within 60 days of receipt of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

2. A decision relating to a grievance or complaint under N.J.A.C. 12:42-1.5 or 1.6 has been reached and the adversely affected party seeks an appeal to the Secretary.

(b) Appeals made under (a)2 above shall be filed within 60 days of the receipt of the decision being appealed.

(c) Appeals under (a)1 above 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.

(d) All appeals shall be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal shall be simultaneously provided to the below listed Employment and Training Administrator (ETA) and to the opposing party.

ETA Administrator
 Employment and Training Administration
 201 Varick Street
 New York, New York 10014

12:42-1.9 Discrimination against participants

(a) Complaints of discrimination from participants and other interested parties shall be handled in accordance with 29 U.S.C. § 2938(b), and the United States Department of Labor nondiscrimination regulations implementing that section. See 29 C.F.R. § 37.

(b) Questions about or complaints alleging a violation of the nondiscrimination provisions of 29 U.S.C. § 2938 may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, D.C. 20210, for processing.

12:42-1.10 Protection against reprisal

If the Secretary determines that any recipient under WIA, 29 U.S.C. §§ 2801 et seq., has discharged or in any other manner discriminated against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or investigation under or related to this chapter, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of this chapter or the Secretary's regulations, the Secretary shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

12:42-1.11 Disclosure of information regarding grievance and complaint procedures

(a) Each local area and the State shall:

1. Provide information about the content of the grievance and complaint procedures required by this subchapter to participants and other interested parties affected by the local Workforce Investment System, including One Stop partners and service providers;

2. Require that every entity to which it awards WIA funds must provide the information referred to in (a)1 above to participants receiving WIA-funded services from such entities; and

3. Must make reasonable efforts to assure that the information referred to in (a)1 above will be understood by affected participants and other individuals, including youth and those who are limited, English-speaking individuals. Such efforts must comply with the language requirements of 29 C.F.R. § 37.35 regarding the provision of services and information in languages other than English.

12:42-1.12 Remedies

(a) The remedies that may be imposed under local or State grievance procedures are enumerated at 29 U.S.C. § 2931(c)(3). Such remedies that may be imposed under this chapter for violation of any requirement under 20 U.S.C. § 2801 et seq. shall be limited to:

1. Suspension or termination of payments under the WIA;

2. Prohibition of placement of a participant with an employer that has violated any requirement under the WIA;

3. Where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and

4. Where appropriate, other equitable relief.