

CHAPTER 42

WORKFORCE INVESTMENT ACT RULES

Authority

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

Source and Effective Date

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See: 33 N.J.R. 2613(b), 34 N.J.R. 771(a).

Chapter Expiration Date

Chapter 42, Workforce Investment Act Rules, expires on February 4, 2007.

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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 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 Employment and Training, Workforce New Jersey, New Jersey Department of Labor.

“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/non-profit) 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.

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.