

ARIZONA DEPARTMENT OF ECONOMIC SECURITY



**WORKFORCE INNOVATION AND
OPPORTUNITY ACT POLICY
MANUAL**

CHAPTER 2 – SECTION 1400

SUBJECT: Grievances, Complaints, and Appeals Under WIOA Title I

1400 BACKGROUND AND PURPOSE

This policy applies to general grievances, complaints, and appeals alleging violations of Title I of WIOA and is issued pursuant to the Department of Economic Security's (DES) responsibilities as the state grant recipient of Title I funds from the U.S. Department of Labor (DOL). The policy does not apply to grievances or complaints alleging violation of the nondiscriminatory provisions of WIOA sec. 188 which are addressed in [Chapter 700 of the Policy and Procedures Manual](#). The policy also does not apply to appeals filed by training providers regarding the Eligible Training Provider List (ETPL) which are addressed in [Chapter 600 of the Policy and Procedures Manual](#).

References: Workforce Innovation and Opportunity Act (WIOA) of 2014 ([P.L. 113-128](#)), Section 181(c), [Title 20, Chapter V, Part 683, Subpart F of the Code of Federal Regulations](#), [Title 6, Chapter 11 of the Arizona Administrative Code](#), [29 CFR 37.35](#)

1401 COMPLAINTS AND GRIEVANCES IN GENERAL

An interested party affected by individuals or entities representing the state or local workforce development system, including one-stop partners and service providers, shall have the right to file a grievance or complaint alleging violations of the requirements of Title I of WIOA, pursuant to 20 CFR § 683.600(b).

1402 COMPLAINTS AND GRIEVANCES AT THE TITLE I SUBRECIPIENT LEVEL

- A. Local Workforce Development Boards (LWDBs) and subrecipients/fiscal agents of Title I WIOA funds are required to have a policy and procedures in compliance with 20 CFR § 683.600(c) to address complaints and grievances from participants and other interested parties affected by the local workforce development system, including one-stop partners and

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service providers. There may be one policy procedure between the LWDB and subrecipient/fiscal agent, or each may have their own policy and procedures.

- B. LWDBs and subrecipients/fiscal agents of Title I WIOA funds are required to maintain all records related to grievances and complaints received from participants and designate a grievance officer that would be responsible for receiving and processing claims.
- C. Upon request, LWDBs and subrecipients/fiscal agents shall provide participants and other interested parties a written explanation on complaint procedures, a reminder of the participants right to file a grievance, and instruction on how to file a claim. Reasonable efforts must be made to ensure that the information will be understood by participants and others who are limited-English speaking individuals. These efforts are to comply with the language requirements pursuant to 29 CFR § 37.35.
- D. Complaints are to be submitted in writing, which may be submitted and processed electronically, and the process shall require the following:
 - 1. The name and address of the organization or person that is the focus of the complaint;
 - 2. The name, address and signature of the person filing the complaint;
 - 3. The date and signature by the official agent receiving the complaint;
 - 4. LWDBs and subrecipients/fiscal agent must provide written notice of a complaint hearing with details of the containing the date, time, location and a statement affirming the opportunity to provide evidence;

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5. Official hearings are to be conducted within 30 business days upon receipt of the complaint and a written decision provided within 60 calendar days upon receipt of the complaint; and
 6. Decisions are to include a notice of the right to appeal to the Department.
- E. Parties may file complaints directly to the DES and must receive information on how to contact the nearest office and appropriate ARIZONA@WORK office.
1. DES will post a notice on its website on how to file a grievance or complaint alleging a violation of Title I.
 2. In general, DES shall refer grievances and complaints alleging violations of Title I by a LWDB or subrecipient/fiscal agent or their contractor to the LWDB or subrecipient/fiscal agent for handling, but DES reserves the right to address the grievance or complaint following the procedures outlined in Section 1304.
- F. The LWDB and subrecipient/fiscal agent policy must also include the following:
1. Notice to DES and the State Workforce Board when a grievance or complaint has been filed, and outcome of the complaint or grievance upon completion of the process.
 2. An opportunity for informal resolution and completion of the hearing process within 60 days of the filing of the grievance or complaint;
 3. A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure,

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if a collective bargaining agreement covering the parties to the grievance so provides; and

4. An opportunity for a State level appeal when:
 - a. No decision is reached at the local level within 60 days; or
 - b. Either party is dissatisfied with the local hearing decision.

1403 APPEALS, COMPLAINTS, GRIEVANCES FILED AT THE STATE LEVEL

- A. Right to Appeal. Any interested party shall have the right to appeal a determination, decision, order, or other action or inaction of either the LWDB or subrecipient/fiscal agent, pursuant to 20 CFR 683.600(c)(4).
 1. Interested parties are encouraged to pursue any informal resolution remedies available such as arbitration and mediation with the LWDB or subrecipient/fiscal agent prior to submitting a formal appeal.
 2. If the interested party is appealing a determination, order, or other action or inaction of a LWDB or subrecipient/fiscal agent, the interested party is encouraged to first pursue the local area process and procedures as required pursuant to 20 CFR 683.600(c)(1).
- B. Hearing Request. Any interested party shall have the right to request a hearing by DES to appeal a determination, decision, order, or other action or inaction of the Department, a LWDB, or subrecipient/fiscal agent.
 1. A request may be oral or written. If oral, DES shall prepare a written request on behalf of the individual and obtain the individual's signature on the request.

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2. The request shall include the following information:
 - a. The name, address, and signature of the complainant;
 - b. The name, address, and organization or individual who made the determination, decision, order or action, or who failed to provide required action, which is the basis of the appeal;
 - c. The determination, decision, order, or other action or inaction which is the basis of the appeal and the date of the occurrence; and
 - d. The alleged violation of WIOA Title I which is the basis of the appeal.

3. The request for hearing shall be filed with the Department's designated grievance officer within the following time limits:
 - a. Within ten business days of the date of the adverse decision when the request is an appeal of an adverse decision resulting from the LWDB or subrecipient/fiscal agent grievance procedure;
 - b. Within ten business days of the date of that the subrecipient failed to hold a hearing or issue a decision within the required time limit; or
 - c. In all other cases, within one year (calendar days) of the date of the alleged adverse occurrence.

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- C. DES will provide notice to the State Workforce Board when a grievance or complaint has been filed and the outcome of the complaint upon completion.

1404 HEARINGS AT THE STATE LEVEL

- A. The following applies to the hearing notice:
1. The Department will provide notice to all interested parties at least 10 business days prior to the hearing date. The notice will include:
 - a. The time, date, and location of the hearing;
 - b. The name, mailing address, email address, and telephone number of the person to notify in the event of a change in the time, date, and location of the hearing;
 - c. The hearing procedures, a statement of issues, and any other information regarding the actions which is the basis of the appeal; and
 - d. An explanation that the parties or their legal counsel may examine the case file prior to the hearing.
 2. Any interested party may waive, in writing, the right to notice.
- B. Hearing officers will be a state employee, with experience serving as a hearing officer, who is an impartial official with no personal involvement in the case and has not been involved in the initial determination of the action which is the subject of the appeal.
1. The hearing officer will conduct the hearing as follows:

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- a. Administer oaths or affirmations;
 - b. Regulate and conduct the course of the hearing consistent with due process;
 - c. Request, receive and make part of the record all evidence determined necessary to decide the issues raised in the appeal;
 - d. Ensure all relevant issues are considered, and evidence not related to the issues are not permitted to become part of the record;
 - e. Take notice of judicially cognizable facts or generally recognized technical or scientific facts within the agency's specialized knowledge; and
 - f. Make a recommendation to the Director pursuant to A.R.S. § 41-1992(C).
2. Challenges to the interest of any hearing officer may be heard and decided by that hearing officer, or upon written request, referred to the hearing officer's immediate supervisor.
- a. Not later than five business days prior to the date set for the hearing, any interested party may file a written request for a change of hearing officer.
 - b. If the request for a change of hearing officer is granted, the hearing officer shall immediately transfer the matter to another hearing officer to conduct the hearing.

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- c. No more than one change of hearing officer shall be granted to any one party.
- C. All interested parties shall be ready and present with all witnesses and documents at the time and place specified in the hearing notice and shall be prepared at such time to dispose of all issues and questions involved in the appeal or petition.
 1. All hearings shall be open to the public, but the hearing officer may close the hearing to other than the interested parties to the extent necessary where confidential information which is protected by statute or court order is offered into evidence.
 2. Hearings may be conducted via electronic means.
 3. Interested parties shall arrange for the presence of witnesses to provide testimony relevant to all issues and questions involved in to support their position in the appeal or petition.
 4. An interested party may submit an application to the hearing officer to issue a subpoena requiring the attendance of a witness and/or to compel the production of documents.
 - a. The application shall include the name of the individual and/or the documents desired, the address at which the subpoena may be served, and a brief statement of the facts which the applicant seeks to prove by the individual and/or the documents requested.
 - b. The application shall be submitted to DES in sufficient time prior to the hearing to permit preparation and service of the subpoena before the hearing.

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- c. A subpoena may be issued by the hearing officer on their own motion.
 - d. Witnesses subpoenaed who attend hearings shall be allowed fees at the same rate as paid by the superior court located in the county at the site of the hearing.
5. An interested party and/or its legal counsel must be given adequate opportunity to examine all documents and records to be used during the course of the hearing.
 - a. Upon request, all interested parties must receive a copy of relevant portions of the case file, without charge.
 - b. Documents and records must be available at a reasonable time and date before the hearing.
6. All interested parties will be provided the opportunity to present the case or have it presented by legal counsel, and:
 - a. Present witnesses;
 - b. Advance arguments without undue influence;
 - c. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
 - d. Submit evidence to establish all pertinent facts and circumstances in the case.

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7. The LWDB or subrecipient/fiscal agent which issued the adverse action shall proceed initially and have the burden of proof in presenting the case before the hearing officer.
 8. A full and complete record shall be kept of all proceedings, including properly identified exhibits, in connection with an appeal or petition.
 - a. Such record shall be open for inspection by any interested party.
 - b. When a transcript is made for the Department's use or for further proceedings, a copy may, upon request, be furnished to interested parties who shall be charged therefor, or the charge may be waived if evidence of inability to pay is presented.
 - c. When the same or similar evidence is relevant and material to the issues in more than one case, the proceedings may be conducted jointly, with one single record, unless the hearing officer determines that such consolidation would be prejudicial to the interests or rights of any interested parties.
- D. At the request of a party or on the initiative of the hearing officer, the hearing officer may order, orally or in writing, a hearing postponement. A requested postponement must be granted if:
1. The request is promptly made after the party received the notice of a hearing, or after the circumstance requiring the postponement arises; and
 2. The party has good cause for not attending the hearing at the time and date set.

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- a. Good cause exists when the circumstances causing the request are beyond the reasonable control of the requesting party; and
- b. Failure to grant the postponement would result in hardship for the requesting party.

1405 DECISION OF THE DEPARTMENT

- A. The hearing officer shall issue a recommendation in accordance with A.R.S. § 41-1992.
 1. All evidence which the hearing officer makes a part of the record shall be considered in the determination of the case.
 2. Every recommendation shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.
 3. The hearing officer's recommendation shall be issued no later than 50 calendar days after the filing of the request for a hearing unless the time limit is waived by all interested parties, in writing and on the record.
 4. A copy of the recommendation shall be delivered or mailed to each interested party or it's attorney of record. The notice must include the following:
 - a. A statement that the recommendation of the hearing officer will become the approved decision of the Department within 10 calendar days of the date of the notice.

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- i. The decision shall become final unless a request for reconsideration is filed within 10 calendar days after the decision is mailed or otherwise delivered to the interested parties.
 - ii. Prior to approving the recommendation, the Director may remand the case to the hearing officer for review or rehearing.
 - iii. The Director may issue a decision which differs from the hearing officer's recommendation without remanding the case for review or rehearing.
- b. An explanation of the rights of interested parties to request a rehearing and reconsideration by the Director, under State of Arizona rules.
- i. A party may request a rehearing or review by filing a written motion within ten days after the recommendation was mailed or otherwise delivered, specifying the particular grounds for the request.
 - ii. The process for rehearing is outlined in Section 205, subsection C of Title 6, Chapter 11, Article 2 of the Arizona Administrative Code.
- c. An explanation that interested parties may, in addition to a request for a rehearing and reconsideration by the Director, may submit an appeal to the Secretary of Labor pursuant to 20 CFR § 683.610 when:
- i. A final decision on an appeal filed pursuant to Title 6, Chapter 11, Article 2 of the Arizona Administrative

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Code has not been reached within 60 calendar days of the Department's receipt of the appeal.

- ii. A decision on an appeal filed with the Department has been reached and the decision is adverse to the party.

B. Director's Review and Reconsideration.

A party may request a Director's review when a recommendation has not been issued within 50 calendar days of the request for hearing and the time limit has not been waived.

1. A party may request a reconsideration of an adverse decision within 10 calendar days the decision was mailed or delivered.
2. The request for the Director's review or reconsideration must be in writing and include a statement of grounds for review or reconsideration.
3. Any action pursuant to the original decision shall be stayed until the Director's decision upon reconsideration is issued, upon timely filing of such a request, except if the hearing officer makes specific findings that the immediate effectiveness of the recommendation is necessary for the immediate preservation of public peace, health.
4. After receipt of a request, the Director will:
 - a. Remand the case for rehearing, specifying the nature of any additional evidence required and/or issues to be considered;
or

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- b. Decide the appeal on the record.
5. A copy of the decision of the Director will be distributed to each interested party by regular mail.
- C. Informal dispositions. An appeal of a determination, decision, order, or other action or inaction of either the Department or a LWDB or subrecipient/fiscal agent may be informally disposed of without further review on the merits, under the following circumstances:
1. By withdrawal, if the appellant withdraws the appeal, in writing or on the record at any time before the hearing officer's recommendation is issued; or
 2. By dismissal, if the appellant fails to file an appeal a determination, decision, order, or other action or inaction of either the Department, LWDB, or subrecipient/fiscal agent, within one year (calendar days) of the date of the alleged adverse occurrence; or
 3. By stipulation, if the parties agree on the record or in writing at any time before the hearing officer's recommendation is issued, subject to approval by the hearing officer; or
 4. By default, if the appellant fails to appear or waives appearances at the scheduled hearing. The hearing officer may enter a default disposition without further a right to appeal except as provided in Section 206, Title 6, Chapter 11, Article 2 of the Arizona Administrative Code.