

SDWP Operations Manual
 Chapter 9
 Nondiscrimination & Equal Opportunity Policy and Complaint Procedures

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I. Purpose

The purpose of this chapter is to assist Subrecipients in establishing and maintaining a Nondiscrimination & Equal Opportunity (EO) policy and procedures for handling complaints (Nondiscrimination & EO, Program Grievance, and Incident Report) from applicants and other interested parties served by the local workforce development system.

The policies mentioned herein references to *Recipient* or *Subrecipient* applies to and includes any funded partner, employer, entity or service provider utilizing San Diego Workforce Partnership's (SDWP) program funding ([29 CFR 38.4\[zz\]](#)).

A. References

Subrecipients are required to adhere to all of the rules and regulations outlined in Workforce Services Directives:

- [WSD08-04: Grievance and Complaint Procedures](#);
- [WSD12-18: Incident Reporting](#);
- [WSD17-01: Nondiscrimination and Equal Opportunity Procedures](#); and
- [WSD17-03: Limited English Proficiency](#).

B. Definitions

1. CRC

U.S. Department of Labor/Office of the Assistant Secretary for Administration and Management/Civil Rights Center.

2. Days

Means consecutive calendar days, including weekends and holidays.

3. Local Area Equal Opportunity (EO) Officer

The San Diego Workforce Partnership (SDWP) Equal Opportunity Officer/Grievance Officer

4. Recipient/Subrecipient

Any entity to which financial assistance under WIOA Title I is extended, either directly from Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee or a recipient), but excluding the ultimate beneficiaries of the WIOA Title I – funded program or activity. In addition, One-Stop partners, as defined in section 121(b) of the WIOA are treated as “recipients” and are subject to the nondiscrimination and equal opportunity requirements of Title 29 CFR Part 38, to the extent that they participate in the One-Stop delivery system ([29 CFR 38.4\[zz\]](#)).

5. Small Recipient/Subrecipient

A recipient who (1) serves a total of fewer than 15 beneficiaries during the entire grant year and (2) employs fewer than 15 employees on any given day during the grant year.

II. Subrecipient Policy & Procedure Requirements

At all levels of the complaint process, complainants have the right to be represented, at their own expense, by a person(s) of their choosing. All persons filing complaints shall be free from restraint, coercion, reprisal, or discrimination.

A. Requirements of Policy

1. Designation of Responsible Staff

Subrecipients must designate an individual who will operate as the point of contact (POC). The POC is responsible for developing and publishing of complaint procedures and the processing of complaints as required by [29 CFR 38.72 through 38.75](#).

The POC is responsible to:

- Ensure employees are familiar with the policy and procedures;
- Ensure all SDWP-funded activities are operated in compliance with this policy;
- Ensure all applicants, participants, and employees are informed of their rights and responsibilities;
- Hear, answer, and advise applicants, participants, and employees on any complaints of discrimination filed;
- Ensure no retaliation or reprisal is taken against applicants, participants, and employees that have filed a complaint or assisted in the filing or the investigation of a complaint; and
- Serve as a liaison with the SDWP Equal Opportunity (EO) Officer/Grievance Officer, the Civil Rights Center (CRC), and/or Employment Development Department (EDD) in resolving complaints.

2. Notice and Communication

A Subrecipient must provide initial and continuing notice of the policy and related procedures.

This notice must be provided to ([29 CFR 38.34](#)):

- Registrants, applicants, and eligible applicants/registrants;
- Participants;
- Applicants for employment and employees;
- Unions or professional organizations that hold collective bargaining or professional agreements with the Subrecipient;
- Recipients that receive WIOA Title 1 financial assistance from the Subrecipient; and
- Members of the public, including those with impaired vision or hearing and those with LEP.

Notice and communication must follow the guidelines below:

- Information must be disseminated in internal memoranda and other written or electronic communications.

- “Equal Opportunity is the Law” notice must be posted in prominent locations, such as the front customer entry and reception area and must include the contact information for the staff designated as the *EO point of Contact (PO)*.
- The “Equal Opportunity is the Law” notice and the “Complaint & Incident Report Policy” notice (**see attachment**) must be provided to each applicant and employee and made part of each employee’s and applicant’s file. It must be a part of both paper and electronic files, if both are maintained.
 - Electronic files: add a case note indicating documents were provided to applicant, the date of the notification, and the name of the staff person who provided it.
 - A copy of the “Equal Opportunity is the Law” notice is available in both English and Spanish, and in other languages located on the CRC’s website at [CRC EO Notice \(Multiple Languages\)](#).
- Individuals with visual impairments must be provided with the “Equal Opportunity is the Law” notice and the “Complaint & Incident Report Policy” notice (**see attachment**) in alternative formats (e.g., by being read aloud and then provided in audio format to be retained by the employee and applicant). A record that such notice has been given to the employee and applicant in an alternative format shall be included as a part of the employee’s and applicant’s file.
- Distributed publications, broadcasts, electronic media and other communications including the homepage of the Subrecipient’s website, which promote WIOA programs or activities, shall include the following taglines: *"This WIOA Title I - funded program or activity is an equal opportunity employer/program,"* and *"Auxiliary aids and services are available upon request to individuals with disabilities."*
- Where hard copy or electronic materials indicate the Subrecipient may be reached by telephone, the telephone number of any TDD/TTY or relay service used by the Subrecipient must be indicated. If the Subrecipient does not have a TDD/TTY, they can use the California Relay Service (CRS), which can be reached at 1-800-735-2922. A caller can contact the relay service by voice or TDD, and an operator will contact the party to be called using voice or TDD/TTY. A TDD/TTY or relay service should be available where services provided by telephone are a major function of the program or activity.
- During each presentation to orient new applicants, new employees, and/or the general public, to its WIOA programs or activities, whether this be in person or over the internet or using other technology, a Subrecipient must include a discussion of rights and responsibilities under the Nondiscrimination and Equal Opportunity provisions of [WIOA Section 188](#) and [29 CFR 38](#), including the right to file a complaint of discrimination with the Subrecipient. This information must be communicated in appropriate languages as required in [29 CFR 38.9](#) and in formats accessible for individuals with disabilities as required in [29 CFR 38](#) and specified in [29 CFR 38.15](#).

3. Program Access to Individuals with Limited English Proficiency (LEP)

As indicated in [WSD17-03](#), Subrecipients must take reasonable steps to ensure individuals having LEP receive the language assistance necessary to give meaningful access to programs, services, and information.

The Dymally-Alatorre Bilingual Services Act (DABSA), enacted in 1973, requires state and local agencies ensure they provide information and services in the various languages of their constituents. Specifically, when state and local agencies serve a “substantial number of non-English-speaking people,” they must:

- Employ a “sufficient number of qualified bilingual staff in public contact positions”;
- Translate documents explaining available services into the languages of their constituents.

4. Affirmative Outreach

The guidelines found in [29 CFR 38.40](#) require Subrecipients to take appropriate steps to ensure they are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by [29 CFR 38](#) including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, LEP individuals, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to, the following:

- Advertising the Subrecipient’s programs and/or activities in media such as newspapers or radio programs that specifically target various populations;
- Sending notices about openings in the Subrecipient’s programs and/or activities to schools or community service groups that serve various populations; and
- Consulting with appropriate community service groups about ways in which the Subrecipient may improve its outreach and service to various populations.

5. Program and Site Access to Individuals with Disabilities

The Americans with Disabilities Act (ADA) of 1990 prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, public accommodations, transportation, State and local government services and telecommunication relay services. All Subrecipients who receive federal or state funding are required to prepare a Self-Evaluation and Transition Plan.

- The purpose of the **Self-Evaluation** is to review all policies, programs, services, activities, and/or practices to ensure that they do not discriminate against persons with disabilities.
- The purpose of the **Transition Plan** is to document the Subrecipient’s plans to modify, as soon as feasible, any policies, program services, activities, and facilities that are determined to be inconsistent with ADA requirements.

At a minimum, Subrecipients are required to ensure that all programs and activities are accessible as prescribed by ADA standards

(https://www.ada.gov/2010ADASTandards_index.htm) to persons with disabilities.

The Employment Development Department (EDD)'s *Reasonable Accommodation Policy and Procedure Guide* can be used to process reasonable accommodation requests and can be found as **Attachment 3** of [WSD17-01](#). The guide provides general guidance and definitions for use when processing reasonable accommodation requests and step-by-step instructions on how to process these requests.

6. Service Animals

Generally, a Subrecipient shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

7. Mobile Aids and Devices

A Subrecipient must permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian use.

A Subrecipient must make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the Subrecipient can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the Subrecipient has adopted.

8. EO Policy Assurances in Sub-Contracts, Plans and Agreements

In the event Subrecipients enter into a sub-contract for provision of services funded all or in part by the SDWP, all contracts, plans and agreements entered into must contain the nondiscrimination assurance. The nondiscrimination assurance must state "the sub-contractor will comply fully with the nondiscrimination and equal opportunity provisions of the WIOA and acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance".

9. Data/Information Retention, Reporting, and Confidentiality

In compliance with [29 CFR 38.41 through 38.45](#) and [WIOA Section 188](#), any entity to which financial assistance under WIOA Title I is extended must:

- Collect data on race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminatee, applicant for employment, and employee;
 - EO data for eligible applicants, registrants/participants and exited participants will be reported using the information management system prescribed by the SDWP.

- EO data on applicants for employment and employees will not be reported to the SDWP unless it is required in response to a complaint of discrimination.
- Ensure all documentation and information concerning the medical condition or history of an individual with a disability must be collected on separate forms and maintained in separate files.
 - All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential.
 - Whether these files are electronic or hard copy, they must be locked or otherwise secured (e.g., through password protection).
 - The information shall be treated as confidential medical records, and access to the records must be limited, except to the extent of the following:
 1. The subrecipient must be informed about work restrictions or reasonable accommodations.
 2. The first-aid and safety personnel need to be informed if the disability may require emergency treatment.
 3. Government officials investigating compliance with law are required to be provided with relevant information upon request.
- Beginning on January 3, 2019, record the LEP and preferred language of each applicant, registrant, participant, and terminnee;
- Maintain a log of complaints filed with the Subrecipient that allege discrimination on the basis of race; color; religion; sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity); national origin (including LEP); age; disability; political affiliation or belief; or, for beneficiaries, applicants, and participants only on the basis of either citizenship status or participation in a WIOA Title I – financially assisted program or activity;
 - The log must include: (1) name and address of complainant; (2) grounds of the complaint (3) description of the complaint (4) date complaint was filed; (5) disposition and date of disposition of the complaint; and (6) any other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.
 - The Subrecipient shall inform the SDWP’s EO Officer/Grievance Officer within 30 days there was a filing, in the case of any discrimination-based complaint.
 - Within one (1) working day, Subrecipients must notify the SDWP’s EO Officer/Grievance Officer of any administrative enforcement actions or lawsuits filed against the Subrecipients alleging discrimination.
 - Subrecipients must also provide a description of any findings in any civil rights compliance reviews where the Subrecipient was found in noncompliance.
- Safeguard the confidentiality of the required information;
- Only use confidential information for recordkeeping and reporting purposes;
- Maintain records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three (3) years from the close of the applicable program year.

B. Nondiscrimination & EO Complaint Procedures

Subrecipients must maintain a Nondiscrimination & Equal Opportunity (EO) policy and procedures. Discrimination is strictly prohibited on the basis of race; color; religion; sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity); national origin (including Limited English Proficiency [LEP]); age; disability; political affiliation or belief; or, for beneficiaries, applicants, and participants only on the basis of either citizenship status or participation in a WIOA Title I – financially assisted program or activity.

The Subrecipient must implement procedures for addressing such complaints. The complaint processing procedures should specify:

- **Who may file** – any person who believes they or a class of individuals has been or is being subjected to discrimination;
- **Where to file** – the informal complaint may be filed with the Subrecipient(s) 's POC designated staff;
- **Time for filing** – the complaint should be filed within 180 days of alleged incident;
- **Contents of the complaint** – the complaint should clearly describe when the alleged incident occurred, who was responsible, what the nature of the incident was, and what remedy the complainant is seeking;
- **Time frame for resolution of complaint** – the Subrecipient must provide the complainant with a written Notice of Receipt within ten (10) business days and a written Notice of Final Action within 90 days of the filing date;
- **Referral to the SDWP** – if an informal resolution cannot be reached between the Subrecipients and the complainant, the complainant must be provided with instructions for filing a formal complaint with the SDWP.

Referral to SDWP

If a Subrecipient receives a complaint from an individual, applicant, participant, or employee against any of SDWP-funded programs, an attempt must first be made to resolve the problem at the source through the POC (or his/her designee) of the program where the complaint occurred.

If there is not a resolution of the complaint at the Subrecipient level within 90 working days, or if the resolution received is not satisfactory, then the individual must be instructed on how to proceed with filing a formal written complaint with SDWP, within 180 days of the alleged violation, by contacting or submitting a written report to:

Kai Jackson
Equal Opportunity Officer/Grievance Officer
San Diego Workforce Partnership, Inc.
3910 University Avenue, Suite 400
San Diego, CA 92105
Email: complaints@workforce.org
Phone: (619) 228-2900 or TDD Number (619)-228-2983 or

California Relay Service* (CRS) at (800) 735-2922

1. Elements of Procedures

At a minimum, the procedures must include the following elements:

- a. Initial, written notice to the complainant within ten (10) business days that contains the following information:
 - i. An acknowledgment that the Subrecipient has received the complaint; and
 - ii. Notice that the complainant has the right to be represented in the complaint process;
 - iii. Notice of rights contained in [29 CFR 38.35](#); and
 - iv. Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in [29 CFR 38.4\(h\) and \(i\)](#), [38.34](#), and [38.36](#).
- b. A written statement of the issue(s), provided to the complainant, that includes the following information:
 - i. A list of the issues raised in the complaint; and
 - ii. For each such issue, a statement whether the Subrecipient will accept the issue for investigation or reject the issue, and the reasons for each rejection.
- c. A period for fact-finding or investigation of the circumstances underlying the complaint.
- d. A period during which the Subrecipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR).
- e. A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:
 - i. For each issue raised in the complaint, a statement of either:
 - i. The Subrecipient'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; and
 - ii. Notice that the complainant has a right to file a complaint with the appropriate party within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the Subrecipient's final action on the complaint.

2. Alternative Dispute Resolution (ADR)

The procedures the Subrecipient adopts must include ADR procedures:

- a. The complainant may attempt ADR at any time after the complainant has filed a written complaint with the Subrecipient, but before a Notice of Final Action has been issued.
- b. The choice whether to use ADR or the customary process rests with the complainant.
- c. A party to any agreement reached under ADR may notify the POC in the event the agreement is breached. In such circumstances, the following rules will apply:
 - i. The non-breaching party may notify the POC within 30 days of the date on which the non-breaching party learns of the alleged breach; and
 - ii. The POC must evaluate the circumstances to determine whether the agreement has been breached. If the POC determines that the agreement has been

breached, the complaint will be reinstated and processed in accordance with the Subrecipient's procedures.

- d. If the parties do not reach an agreement under ADR, the complainant may file a complaint with the POC as described in [29 CFR 38.69 through 38.71](#).

3. Lack of Jurisdiction

If a Subrecipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing within five (5) business days of making such determination. This Notice of Lack of Jurisdiction must include:

- a. A statement of the reasons for that determination; and
- b. Notice that the complainant has a right to file a complaint with the appropriate party within 30 days of the date on which the complainant receives the Notice.

C. Program Grievance Complaint Procedures

Subrecipient must maintain a Program Grievance policy and procedures for resolving complaints alleging a violation of WIOA Title 1, regulations, grants, or other agreements under WIOA. Procedures must include "a process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties so provides" ([20 CFR 667.600](#)).

The Subrecipient must implement procedures for addressing such complaints. The complaint processing procedures should specify:

- **Who may file** – any person who is alleging a violation of WIOA Title 1, regulations, grants, or other agreements under WIOA;
- **Where to file** – the informal complaint may be filed with the Subrecipient(s) 's POC designated staff;
- **Time for filing** – the complaint should be filed within one (1) year of the alleged incident;
- **Contents of the complaint** – the complaint should clearly describe when the alleged incident occurred, who was responsible, what the nature of the incident was, and what remedy the complainant is seeking;
- **Time frame for resolution of complaint** – the Subrecipient must provide the complainant with a written Notice of Final Action within 60 days of the filing date;
- **Referral to the SDWP** – if an informal resolution cannot be reached between the Subrecipients and the complainant, the complainant must be provided with instructions for filing a formal complaint with the SDWP.

Referral to SDWP

If a Subrecipient receives a complaint from an individual, applicant, participant, or employee against any of SDWP-funded programs, an attempt must first be made to resolve the problem at the source through the POC (or his/her designee) of the program where the complaint occurred.

If there is not a resolution of the complaint at the Subrecipient level within 60 working days, or if the resolution received is not satisfactory, then the individual must be instructed on how to proceed with filing a formal written complaint with SDWP, within 1 year of the alleged violation, by contacting or submitting a written report to:

Kai Jackson
Equal Opportunity Officer/Grievance Officer
San Diego Workforce Partnership, Inc.
3910 University Avenue, Suite 400
San Diego, CA 92105
Email: complaints@workforce.org
Phone: (619) 228-2900 or TDD Number (619)-228-2983 or
California Relay Service* (CRS) at (800) 735-2922

1. Elements of Procedures

At a minimum, the procedures must include the following elements:

- a. Initial, written notice to the complainant within ten (10) business days that contains the following information:
 - i. An acknowledgment that the Subrecipient has received the complaint; and
 - ii. Notice that the complainant has the right to be represented in the complaint process;
 - iii. Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in [29 CFR 38.4\(h\) and \(i\)](#), [38.34](#), and [38.36](#).
- b. A written statement of the issue(s), provided to the complainant, that includes the following information:
 - i. A list of the issues raised in the complaint; and
 - ii. For each such issue, a statement whether the Subrecipient will accept the issue for investigation or reject the issue, and the reasons for each rejection.
- c. A period for fact-finding or investigation of the circumstances underlying the complaint.
- d. A period during which the Subrecipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR).
- e. A written Notice of Final Action, provided to the complainant within 60 days of the date on which the complaint was filed, that contains the following information:
 - i. For each issue raised in the complaint, a statement of either:
 - The Subrecipient's decision on the issue and an explanation of the reasons underlying the decision; or
 - A description of the way the parties resolved the issue; and
 - ii. Notice that the complainant has a right to file a complaint with the appropriate party within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the Subrecipient's final action on the complaint.

2. **Alternative Dispute Resolution (ADR)**

The procedures the Subrecipient adopts must include ADR procedures:

- e. The complainant may attempt ADR at any time after the complainant has filed a written complaint with the Subrecipient, but before a Notice of Final Action has been issued.
- f. The choice whether to use ADR or the customary process rests with the complainant.
- g. A party to any agreement reached under ADR may notify the POC in the event the agreement is breached. In such circumstances, the following rules will apply:
 - i. The non-breaching party may notify the POC within 30 days of the date on which the non-breaching party learns of the alleged breach; and
 - ii. The POC must evaluate the circumstances to determine whether the agreement has been breached. If the POC determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the Subrecipient's procedures.
- h. If the parties do not reach an agreement under ADR, the complainant may file a complaint with the POC as described in [20 CFR 667.600](#).

3. **Lack of Jurisdiction**

If a Subrecipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing within five (5) business days of making such determination. This Notice of Lack of Jurisdiction must include:

- c. A statement of the reasons for that determination; and
- d. Notice that the complainant has a right to file a complaint with the appropriate party within 30 days of the date on which the complainant receives the Notice.

D. Incident Report Complaint Procedures

Each contracted Subrecipient shall establish appropriate internal program and financial management procedures to detect fraud, abuse, and criminal activity committed by staff, sub-contractors, or program participants.

These procedures must include a reporting process to ensure that SDWP is notified immediately of any allegations of fraud, abuse, or criminal activity related to programs funded by SDWP. SDWP will in turn notify the Department of Labor (DOL)/Office of Inspector General (OIG) and the State's Compliance Review Division (CRD).

During an investigation, based on a report of fraud or abuse, State CRD or DOL/OIG investigators or auditors may contact a Subrecipient directly, regarding an incident of which the Subrecipient was not previously aware. In the event this occurs, the Subrecipient must contact the SDWP EO Officer/Grievance Officer immediately, to report they have been contacted.

In addition, Subrecipients detecting the presence or appearance of fraud, abuse or other criminal activity must obtain sufficient information to provide a clear, concise report of each incident. All such reports must be made within one (1) working day, once the detection of the incident occurs, and include the following information:

- Statement of all facts;

- Any known or estimated loss of SDWP funds resulting from the incident; and
- Any immediate actions taken or planned determined to be necessary to prevent further financial loss or other damage, or recovery of funds or property.

III. SDWP Complaint Procedures

A. Nondiscrimination & EO Complaint (Non-criminal)

This type of complaint includes one of the following factors prohibited by State and/or Federal law(s) on the basis of race; color; religion; sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity); national origin (including Limited English Proficiency [LEP]); age; disability; political affiliation or belief; or, for beneficiaries, applicants, and participants only on the basis of either citizenship status or participation in a WIOA Title I – financially assisted program or activity.

For this complaint, the complainant must complete and submit the **Complaint Form** (*see attachment*). Complaint must be reported within 180 days of the alleged violation. SDWP will render decisions within 90 days of the filing date.

1. Contents of the complaint

The complaint must contain the following information:

- Complainant's full name, mailing address, and other means of contacting them (e.g. telephone, fax number, e-mail address, etc.);
- Name, address and telephone number of the organization and/or the individual the complaint is being filed against (respondent);
- A clear, concise statement of the facts describing the complaint(s), including the date(s) the alleged violation(s) occurred;
- If known, the provisions under the law, regulations, grant, or contract believed to have been violated;
- A description of the attempts made to resolve the matter with the organization and/or the individual where the alleged violation occurred;
- Complainant's requested remedy; and
- Complainant's signature, and in the case of a minor, the parent or guardian's signature.

2. Complaint Resolution Timeline

The Complaint Resolution Process timetable begins on the actual day on which the written complaint is filed, as follows:

- A. **Filing with SDWP** – the SDWP will acknowledge receipt of the complaint within 10 working days of the date of filing.
- B. **Alternative Dispute Resolution (ADR) Process** – The SDWP shall offer mediation as an ADR Process immediately upon receipt of the complaint.

- C. Investigation** – If the complainant elects not to participate in the ADR process, the SDWP EO Officer/Grievance Officer will conduct an investigation into the specifics of the complaint.

- D. Written Decision/Notice of Final Action** - The SDWP EO Officer/Grievance Officer will have 90 days from the date of filing of the formal complaint to provide the complainant with a written decision/Notice of Final Action.

3. Filing a complaint

Once a complaint is filed:

- SDWP will acknowledge receipt of the complaint and notify the complainant of the right to representation in the complaint resolution process.
- SDWP is required to send a copy of the complaint to the Subrecipient.
- The absence of any of the requested information will not be a basis for dismissing the complaint.
- A complaint may be amended to correct inaccuracies and add additional information any time up to the time of the Notice of Final Action.
- Complaints may not be amended to add new issues.
- The 180 days' time period in which complaint may be filed is not extended for complaints that are re-filed with amendments.
- Complaints may be withdrawn at any time prior to the issuance of Notice of Final Action.
- When the complainant is a minor, a parent or legal guardian must sign the complaint and must attend any meetings. In this event, decisions will be issued to the parent/guardian with a copy to the minor.
- The complainant(s) may not file a complaint with CRC until they have received a written decision from the SDWP. The SDWP EO Officer/Grievance Officer will provide the complainant with a written decision or Notice of Final Action within the 90-day period.

SDWP's EO Officer/Grievance Officer will be responsible to get all necessary facts to ensure the complainant receives fair treatment. Once the complaint information is as complete as possible, the EO Officer/Grievance Officer will make a determination whether or not to accept the complaint.

- **Acceptance of the Complaint** - Acceptance of the complaint will be based on the following:
 - Complaint must be related to a program funded all or in part by the SDWP; and
 - Complaint must be related to an allegation of a violation of *Chapter 9: Nondiscrimination & EO Policy and Complaint Procedures*; and
 - Complaint must have been received within 180 days of the alleged violation.

- **Dismissal of the Complaint** - During the complaint resolution process, a complaint may be dismissed for one or more of the following reasons:

- Complaint is not accepted by the SDWP due to lack of jurisdiction;
 - Complainant provides written notice to the EO Officer/Grievance Officer that the complaint is being withdrawn; or
 - Complainant is unavailable after reasonable means are used to locate them.
- **Notice of Lack of Jurisdiction** - The SDWP will notify the complainant in writing within five (5) business days of determining that it does not have jurisdiction over the complaint.
 - The notice will be sent to the complainant's last known address.
 - The notice will include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with CRC within 30 days of receipt of the notice at the following address:

The Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Phone: (202) 219-8927

4. [Alternative Dispute Resolution \(ADR\)](#)

The first step in the SDWP's resolution process will be an attempt to resolve the complaint on an informal basis. Informal conferences will be used wherever possible to resolve complaints. Such informal conferences will not extend the 90-day period within which a decision must be issued unless the complainant and respondent agree, in writing, to waive time frames.

The ADR will be offered, with mediation as the preferred procedure. Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent), communicate their concerns and come to an agreement about how to resolve the dispute. Mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court, or any legal or administrative proceedings.

When the complaint has been resolved through the informal resolution process, SDWP shall attempt to contact the complainant and have them provide a written withdrawal of the complaint within ten (10) days of the receipt of the notice of resolution or impasse, where a complainant decides not to proceed to an investigation.

5. [Investigation](#)

If the complainant elects not to participate in the ADR process, the SDWP's EO Officer/Grievance Officer will conduct an investigation into the specifics of the complaint.

At any point in the investigation of the complaint, the complainant, the respondent, or the SDWP EO Officer/Grievance Officer may request that the parties attempt conciliation. The SDWP EO Officer/Grievance Officer shall facilitate such conciliation attempts.

The investigation may include, but not be limited to the following:

- Thorough review of the written complaint;
- Review of any paperwork completed by the complainant relative to the program in question (e.g. case notes, correspondence, etc.);
- Review of the Subrecipients' written policies;
- Interviews with the complainant;
- Interviews with the respondent named by the complainant in the written complaint;
- Interviews with other employees or participants in the Subrecipients, program operators, or employer in question;
- Interviews with SDWP staff affiliated with the program in question; and
- Review of other similar actions (e.g. terminations, suspensions, demotions) taken by the Subrecipients within the recent past.

In situations where there is a finding based on the *Chapter 9: Nondiscrimination & EO Policy and Complaint Procedures*, the SDWP EO Officer/Grievance Officer will document the facts of the alleged violation. These facts will be used to advise the complainant of any recourse available and to determine what corrective action will be taken against the Subrecipient. The Workforce Development Board (WDB), with concurrence from the Policy Board, will take such corrective action, up to and including contract termination.

6. Written Decision

The SDWP's EO Officer/Grievance Officer will make a decision strictly on the evidence on record. The SDWP's EO Officer/Grievance Officer will provide Notice of Final Action, in writing, of their decision to both the person making the complaint and the respondent within 90 days of receipt of the complaint. The Notice will include a summary of the following:

- Names of the parties involved;
- Statement of the alleged violation and issues related to the alleged violation;
- Statement of the facts;
- SDWP's EO Officer/Grievance Officer's decision and reasons for the decision;
- Statement of the corrective action, if any, to be taken; and
- The process for filing a complaint with the CRC.

7. Appeal Rights to the Civil Rights Center (CRC)

If the SDWP has not provided the complainant with a written decision within 90 days of filing the complaint:

- The complainant may file their complaint with the CRC within 30 days of the expiration of the 90-day period (e.g., within 120 days from the date on which the complaint was filed with the SDWP) at the address below:

The Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, D.C. 20210
Phone: (202) 219-8927

If the complainant is dissatisfied with the SDWP's resolution of a complaint:

- The complainant may file a complaint with the CRC within 30 days of the date on which the Notice of Final Action was received.
- The CRC may extend the filing time, if deemed necessary based on the circumstances.
- The CRC may extend the 30-day time limit for filing a complaint if the SDWP has not provided the complainant with a written decision/Notice of Final Action and if the complainant has not been properly notified, or for other good cause shown.

B. Program Grievance Complaint (Non-criminal)

This type of complaint covers complaints alleging noncriminal violations of the requirements of WIOA in the operation of local WIOA programs and activities. A program complaint often results from misunderstandings and/or objections regarding programs or activities from program participants, subrecipients, subcontractors, and other interested persons.

For this complaint, the complainant must complete and submit the **Complaint Form** (*see attachment*). Complaint must be reported within one (1) year of the alleged violation. SDWP will render decisions within 60 days of the filing date.

1. Contents of the complaint

The complaint must contain the following information:

- Complainant's full name, mailing address, and other means of contacting them (e.g. telephone, fax number, e-mail address, etc.);
- Name, address and telephone number of the organization and/or the individual the complaint is being filed against (respondent);
- A clear, concise statement of the facts describing the complaint(s), including the date(s) the alleged violation(s) occurred;
- If known, the provisions under the law, regulations, grant, or contract believed to have been violated;
- A description of the attempts made to resolve the matter with the organization and/or the individual where the alleged violation occurred;
- Complainant's requested remedy; and
- Complainant's signature, and in the case of a minor, the parent or guardian's signature.

2. Complaint Resolution Timeline

The Complaint Resolution Process timetable begins on the actual day on which the written complaint is filed, as follows:

- A. **Filing with SDWP** – the SDWP will acknowledge receipt of the complaint within 10 working days of the date of filing.

- B. **Alternative Dispute Resolution (ADR) Process** – The SDWP shall offer mediation as an ADR Process immediately upon receipt of the complaint.

- C. **Formal Hearing** – If the complainant elects not to participate in the ADR process, the SDWP EO Officer/Grievance Officer will conduct an investigation into the specifics of the complaint and schedule a Formal Hearing. Hearings on any Program Grievance complaints shall be conducted within 30 days of the filing of the formal complaint.

- D. **Written Decision/Notice of Final Action** - The SDWP EO Officer/Grievance Officer will have 60 days from the date of filing of the formal complaint to provide the complainant with a written decision/Notice of Final Action.

3. Filing a complaint

Once a complaint is filed:

- SDWP will acknowledge receipt of the complaint and notify the complainant of the right to representation in the complaint resolution process.
- SDWP is required to send a copy of the complaint to the Subrecipient.
- The absence of any of the requested information will not be a basis for dismissing the complaint.
- A complaint may be amended to correct inaccuracies and add additional information any time up to the time of the Notice of Final Action.
- Complaints may not be amended to add new issues.
- The 1 year time period in which complaint may be filed is not extended for complaints that are re-filed with amendments.
- Complaints may be withdrawn at any time prior to the issuance of Notice of Final Action.
- When the complainant is a minor, a parent or legal guardian must sign the complaint and must attend any meetings. In this event, decisions will be issued to the parent/guardian with a copy to the minor.
- The complainant(s) may not file a complaint with EDD until they have received a written decision from the SDWP. The SDWP EO Officer/Grievance Officer will provide the complainant with a written decision or Notice of Final Action within the 60 day period.

SDWP's EO Officer/Grievance Officer will be responsible to get all necessary facts to ensure the complainant receives fair treatment. Once the complaint information is as complete as possible, the EO Officer/Grievance Officer will make a determination whether or not to accept the complaint.

- **Acceptance of the Complaint** - Acceptance of the complaint will be based on the following:
 - Complaint must be related to a program funded all or in part by the SDWP; and
 - Complaint must be related to an allegation of a violation of *Chapter 9: Nondiscrimination & EO Policy and Complaint Procedures*; and

- Complaint must have been received within 1 year of the alleged violation.
- **Dismissal of the Complaint** - During the complaint resolution process, a complaint may be dismissed for one or more of the following reasons:
 - Complaint is not accepted by the SDWP due to lack of jurisdiction;
 - Complainant provides written notice to the EO Officer/Grievance Officer that the complaint is being withdrawn; or
 - Complainant is unavailable after reasonable means are used to locate them.
- **Notice of Lack of Jurisdiction** - The SDWP will notify the complainant in writing within five (5) business days of determining that it does not have jurisdiction over the complaint.
 - The notice will be sent to the complainant's last known address.
 - The notice will include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with EDD within 30 days of receipt of the notice at the following address:

Chief, Compliance Review Division, MIC 22-M
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001

4. [Alternative Dispute Resolution \(ADR\)](#)

The first step in the SDWP's resolution process will be an attempt to resolve the complaint on an informal basis. Informal conferences will be used wherever possible to resolve complaints. Such informal conferences will not extend the 60 day period within which a decision must be issued unless the complainant and respondent agree, in writing, to waive time frames.

The ADR will be offered, with mediation as the preferred procedure. Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent), communicate their concerns and come to an agreement about how to resolve the dispute. Mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court, or any legal or administrative proceedings.

When the complaint has been resolved through the informal resolution process, SDWP shall attempt to contact the complainant and have them provide a written withdrawal of the complaint within ten (10) days of the receipt of the notice of resolution or impasse, where a complainant decides not to proceed to an investigation.

5. [Informal Hearing](#)

If the complainant elects not to participate in the ADR process, the SDWP's EO Officer/Grievance Officer will conduct an investigation into the specifics of the complaint.

At any point in the investigation of the complaint, the complainant, the respondent, or the SDWP EO Officer/Grievance Officer may request that the parties attempt conciliation. The SDWP EO Officer/Grievance Officer shall facilitate such conciliation attempts.

The investigation may include, but not be limited to the following:

- Thorough review of the written complaint;
- Review of any paperwork completed by the complainant relative to the program in question (e.g. case notes, correspondence, etc.);
- Review of the Subrecipients' written policies;
- Interviews with the complainant;
- Interviews with the respondent named by the complainant in the written complaint;
- Interviews with other employees or participants in the Subrecipients, program operators, or employer in question;
- Interviews with SDWP staff affiliated with the program in question; and
- Review of other similar actions (e.g. terminations, suspensions, demotions) taken by the Subrecipients within the recent past.

SDWP EO Officer/Grievance Officer or their designee will conduct an investigation into the specifics of the complaint and schedule a Formal Hearing. Hearings on any Program Grievance complaint shall be conducted within 30 days of the filing of the formal written complaint. SDWP must issue a written decision within 60 days of the filing of the written grievance or complaint, unless the timeframe is waived in writing by the complainant.

In the event of a Formal Hearing, the complainant and the respondent must be notified in writing of the date, time and place of the hearing at least ten (10) days prior to the date of the hearing. If the complainant is a minor, their parent or guardian must also attend the Informal Hearing. The 10-day notice period may be shortened with written consent of both parties. The Informal Hearing notice shall be in writing and contain the following information:

- The date of the notice, name of complainant, and the name of the Respondent;
- The date, time and place of the Informal Hearing before an impartial Hearing Officer;
- A statement of the alleged violations. These statements must accurately reflect the content of the complaint, as submitted by the complainant. However, clarifying notes may be added to assure that the complaint is addressed accurately;
- The name and address and telephone number of the contact person issuing the notice.

An impartial/independent Hearing Officer shall conduct the Informal Hearing. SDWP will select a Hearing Officer that will not be directly affected by, or will not implement the final resolution of, a specific grievance or complaint. The independent Hearing Officer may be from SDWP, if the complaint is not against SDWP.

The Informal Hearing will be conducted in an informal manner with strict rules of evidence not being applicable, and according to the procedures established by SDWP. The Informal Hearing will be recorded electronically or by a court reporter.

Both parties will be given ample opportunity to respond to, or rebut the other side. Both the complainant and the respondent will have the right during the Informal Hearing to:

- Present either written or oral testimony and/or arguments;
- Question others who present evidence;
- Call and question witnesses in support of their position;
- To examine records and documents relevant to the issue(s); and
- To be represented at their own expense.

The complainant will be asked to provide the facts that led to the filing of the complaint without interruption by the respondent. Following this, the respondent will be provided the same opportunity to present the facts, without interruption by the complainant. Once both parties have equally communicated all information, the Hearing Officer may ask additional questions to clarify the facts and/or obtain additional information.

At the conclusion, the Hearing Officer will either call for a recess to pursue a mutually acceptable resolution or may adjourn the Informal Hearing. If a mutually acceptable resolution can be reached, the Hearing Officer will communicate the resolution to SDWP EO Officer/Grievance Officer who will issue a written decision of findings, based on the merits of the complaint and the facts presented at the Informal Hearing.

In situations where there is a finding based on the *Chapter 9: Nondiscrimination & EO Policy and Complaint Procedures*, the SDWP EO Officer/Grievance Officer will document the facts of the alleged violation. These facts will be used to advise the complainant of any recourse available and to determine what corrective action will be taken against the Subrecipient. The Workforce Development Board (WDB), with concurrence from the Policy Board, will take such corrective action, up to and including contract termination.

6. Written Decision

The SDWP's EO Officer/Grievance Officer will make a decision strictly on the evidence on record. The SDWP's EO Officer/Grievance Officer will provide Notice of Final Action, in writing, of their decision to both the person making the complaint and the respondent within 60 days of receipt of the complaint. The Notice will include a summary of the following:

- Names of the parties involved;
- Statement of the alleged violation and issues related to the alleged violation;
- Statement of the facts;
- SDWP's EO Officer/Grievance Officer's decision and reasons for the decision;
- Statement of the corrective action, if any, to be taken; and
- The process for filing a complaint with the EDD.

7. [Appeal Rights to the Employment Development Department \(EDD\)](#)

If the SDWP has not provided the complainant with a written decision within 60 days of filing the complaint or complainant is dissatisfied with the SDWP's resolution, the complainant may file their complaint with the EDD at the address below:

Chief, Compliance Review Division, MIC 22-M
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001

C. [Incident Report Complaint \(Criminal\)](#)

This type of complaint includes fraud, misapplication of funds, gross mismanagement of government resources, employee/participant misconduct, and standard of conduct violations.

For this type of complaint, the detecting entity is required to prepare an **Incident Report Form** (*see attachment*) and submit to SDWP within one (1) working day of discovery of potential criminal activity. Upon receipt, SDWP will forward the incident report to EDD, OIG, and appropriate law enforcement agency(ies).

1. [Contents of the complaint](#)

The complaint must contain the following information:

- Complainant's full name, mailing address, and other means of contacting him/her (e.g. telephone, fax number, e-mail address, etc.);
- Name, address and telephone number of the organization and/or the individual the complaint is being filed against (respondent);
- A clear, concise statement of the facts describing the complaint(s), including the date(s) the alleged violation(s) occurred; and
- If known, the provisions under the law, regulations, grant, or contract believed to have been violated.

2. [Filing a complaint](#)

Per Title [20 CFR Section 667.630](#), information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately to SDWP through DOL's Incident Reporting System to the OIG with a copy simultaneously provided to the ETA. Complaints of a noncriminal nature, such as mismanagement and gross waste of funds, may also be reported through DOL's Incident Reporting System.

The [WSD12-18](#) requires that information and complaints of criminal activity must be reported within 24 hours to the DOL/OIG, with a copy simultaneously provided to the Employment and Training Administration (ETA) and the State CRD.

SDWP: Kai Jackson
Equal Opportunity Officer/Grievance Officer

San Diego Workforce Partnership, Inc.
3910 University Avenue, Suite 400
San Diego, CA 92105
(619) 228-2900
complaints@workforce.org

EDD: Attention: Compliance Resolution Unit
Compliance Review Division, MIC 22M
Employment Development Department
PO Box 826880
Sacramento, CA 94280-0001

OIG: *(choose one of the following methods)*

Website: www.oig.dol.gov/hotlinecontact.htm

Telephone: 1-800-347-3756

FAX: (202) 693-7020

Mail: Office of Inspector General Complaints Analysis Office

200 Constitution Avenue, N.W., Room S-5506 Washington, D.C. 20210

Allegations considered to be of an emergency nature may be reported by telephone to the Compliance Resolution Unit Supervisor at (916) 653-0298, and by calling the OIG hotline at 1-800-347-3756, and ***followed immediately thereafter by a written Incident Report.***

IV. Conclusion

The goal of the SDWP is to ensure that each of its programs offers equal opportunity by enforcing federal and state laws prohibiting discrimination, fraud, waste, abuse, and program grievances and ensuring high-quality service to the customers and businesses we serve. The complaint process is designed to ensure that all individuals receive equal treatment.

If an individual has any questions regarding the *Nondiscrimination & EO Policy and Complaint Procedures* or has any recommendations to make the programs more accessible, he/she should contact the SDWP's EO Officer. If any assistance is needed in complying with the requirements specified in this chapter, the Subrecipient should contact the SDWP's EO Officer/Grievance Officer, or his/her designee at (619) 228-2900.

V. Attachments

[Equal Opportunity Notice English](#)

[Equal Opportunity Notice Spanish](#)

[Complaint & Incident Report Policy Notice](#)

[Complaint Form](#)

[Incident Report Form](#)