

**San Diego Workforce Partnership**  
**Operations Manual**

**Chapter X**

**Program and Criminal Complaint  
Policies and Procedures**

**SAN DIEGO WORKFORCE PARTNERSHIP, INC.  
OPERATIONS MANUAL  
CHAPTER X**

**PROGRAM AND CRIMINAL COMPLAINT  
POLICIES AND PROCEDURES**

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## CHAPTER X

### PROGRAM AND CRIMINAL COMPLAINT POLICIES AND PROCEDURES

#### I. INTRODUCTION

Title 20 CFR Section 667.600 requires each Local Workforce Investment Area (LWIA) receiving funds under Title I of WIA to establish and maintain a procedure for grievances and complaints from participants and other interested parties affected by the local workforce investment system, including American Job Centers of California (AJCC) and Service Providers.

The WIA regulations, Title 20 CFR Section 667.630 requires that information and complaints involving fraud, waste, abuse or other criminal activity be reported immediately by the San Diego Workforce Partnership (SDWP) through Department of Labor's (DOL) Incident Reporting System to the DOL Office of Inspector General (OIG), with a copy simultaneously provided to the Employment Development Department's (EDD) Compliance Review Office (CRO). The Incident Reporting System also processes noncriminal complaints regarding mismanagement and gross waste of funds.

Procedures for reporting incidents, including but not limited to criminal fraud, criminal abuse or other criminal activity, as well as noncriminal complaints, such as waste of funds are provided in this Chapter. These incidents must be reported to SDWP, EDD/CRO, and DOL/OIG.

Guidance is provided to AJCC Operators and Adult and Youth Service Providers on the policies and procedures used to address program grievances and criminal activity reporting alleging violations of the federal, state, or local regulations related to WIA and other programs, if applicable.

Three types of complaints have been identified by WIA and each has distinct procedures and timelines for the processing and filing of reported complaints.

In order to determine the procedure to use in response to a complaint, it is first necessary to determine which category the complaint falls under. The three types of complaints are as follows:

**Equal Opportunity (EO) and Nondiscrimination Policy Complaint (Non-criminal)** – A discrimination complaint differs from a program complaint in that it includes one of the following factors prohibited by State and/or federal law(s) on the basis of:

- Race, color, religion, gender, sexual orientation, national origin, age, physical or mental disability, political affiliation, or belief; and
- Against any beneficiary of programs financially assisted under WIA on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant, authorized to work in the US, or his/her participation in any SDWP-funded program or activity; and
- Against persons with Limited English Proficiency (LEP).

Policies and procedures for addressing an EO and Nondiscrimination complaint are provided in detail in Chapter IX of the SDWP's Operations Manual, Equal Opportunity and Nondiscrimination Policy and Complaint Procedures.

**Program Grievance and Complaint (Non-criminal)** – These procedures cover complaints alleging noncriminal violations of the requirements of WIA in the operation of local WIA programs and activities. A program complaint often results from misunderstandings and/or objections regarding programs or activities from program participants, contracted Service Providers, subcontractors, and other interested persons.

Details for addressing a program complaint are provided in Section II of this Chapter. State guidance for resolving program complaints are provided in Employment Development Department (EDD) Directive WSD08-4 Grievance and Complaint Procedures, issued on September 3, 2008. The Directive can be accessed at: [http://www.edd.ca.gov/Jobs\\_and\\_Training/pubs/wsd08-4.pdf](http://www.edd.ca.gov/Jobs_and_Training/pubs/wsd08-4.pdf).

**Criminal Activity Reporting** – Complaints in this category are regarding the following reportable conditions that include, but are not limited to: fraud, misapplication of funds, gross mismanagement of government resources, employee/participant misconduct, and standard of conduct violations. Details for addressing a criminal complaint are provided in Section III of this Chapter. State guidance for dealing with complaints in this category is provided in EDD Directive WSD12-18 Incident Reporting, issued June 12, 2013. The Directive can be accessed at: [www.edd.ca.gov/Jobs\\_and\\_Training/pubs/wsd12-18.pdf](http://www.edd.ca.gov/Jobs_and_Training/pubs/wsd12-18.pdf)

In summary, if the person alleging the complaint cannot state a reason, or does not state a reason that is a prohibited factor under the Equal Opportunity and Nondiscrimination Policy, and there is no suspected criminal activity, the complaint will be processed as a program complaint.

There are several terms defined in the EDD Directives related to the program grievance/complaint and the incident reporting procedures that are provided in a Glossary of Terms, provided as **Attachment A**.

**Notice to Affected Parties** – AJCC Operators, partners participating in the AJCC system, contracted Service Providers and employers must provide initial and continuing notice of the local grievance and complaint procedures and how to file a complaint by:

- Posting the notice in a public location and making it available to any interested party and members of the public; and
- Making the notices available to each participant at the start of services, activities, programs or employment; and in the event of an alleged violation/complaint; and
- Including an acknowledgement in each applicant's file of receipt of the Program Grievance and Criminal Complaint Policy Notice (**Attachment B**) provided in this Chapter. Acknowledgement that this form was provided to the applicant is provided on the signed Universal Participant Authorization Form, an attachment to the SDWP Operations Manual, Chapter VII, WIA Eligibility Certification.

## **II. PROGRAM GRIEVANCE/COMPLAINT RESOLUTION PROCESS (Non-Criminal)**

### **A. PROGRAM GRIEVANCE PROCEDURES**

A program grievance is a type of complaint resulting from misunderstandings and/or objections regarding programs or activities from program participants, AJCCs, contracted Service Providers, subcontractors and other interested parties. At all levels of the grievance or complaint process complainants have the right to be represented, at their own expense, by a person of their choosing. Grievances or complaints must be filed within one (1) year of the alleged violation. All grievances or complaints, amendments and withdrawals, must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal or discrimination.

AJCC Operators and contracted Service Providers must make reasonable efforts to assure that information about the content of the grievance and complaint procedures will be understood by affected participants and individuals, including youth and those who are limited English-speaking individuals. Such efforts must comply with the language requirements of Title 29 CFR Section 37.35. This section requires that AJCCs and Service Providers comply with the following:

- The Dymally-Alatorre Bilingual Services Act (act), enacted in 1973, which provides for effective communication between the State's residents and state, county, and municipal governments. The act is intended to ensure that individuals who do not speak or write English are not prevented from using public services because of language barriers.
- The act requires state and local agencies to ensure that 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 who can translate documents explaining available services into the languages of their constituents.
- When a significant number or proportion of the population eligible to be served, or likely to be directly affected by a WIA Title I-financially assisted program or activity, needs services or information in a language other than English in order to be effectively informed about, or able to participate in the program or activity, an AJCC Operator or Service Provider must, based on those considerations, take reasonable steps to provide services and information in appropriate languages.

#### **1. Who May File**

According to the State Directive WSD 08-4, regarding WIA grievances and complaints, the procedures outlined in this Chapter shall be available for use by all individuals and entities; including WIA Title I grant recipients, SDWP staff, SDWP AJCC Operators and contracted Service Providers, and other interested persons.

The procedures described in this section shall also provide for the resolution of complaints/appeals arising from actions taken by the SDWP with respect to investigations or monitoring reports of AJCC Operators or contracted Service Providers.

## **2. Informal Conference**

The state requires that the SDWP notify the complainant and the respondent of the opportunity for an informal resolution. Respondents must make good faith efforts to resolve all grievances or complaints prior to the scheduling of a Hearing.

Failure on the part of either party involved in the grievance or complaint to exert good faith efforts towards this end shall not constitute a basis for dismissing a grievance or complaint, nor shall this be considered to be a part of the facts to be judged in the resolution process.

Where a complaint alleges a violation of WIA Title I grant or any agreements under WIA, the SDWP shall assure that every grievance or complaint, not resolved informally or not withdrawn, is given a Hearing regardless of the grievance or complaint's apparent merit or lack of merit.

The first step in the SDWP's resolution process will be an attempt to resolve the grievance or complaint on an informal basis. If the SDWP believes the grievance or complaint can be resolved informally, a meeting may be arranged between the Complainant and Respondent (the person or Service Provider the complaint is against), to attempt to reach a mutually satisfactory resolution. If such a resolution is reached, the resolution will be documented by the Vice-President and Chief Financial Officer/EO Officer and signed by both parties.

If the informal conference takes place through a conference call, and a resolution is reached, or there is an impasse, or for any other reason the Complainant decides not to proceed to an administrative Hearing, the Complainant must provide a written withdrawal of the complaint to the SDWP within ten (10) calendar days of the resolution or impasse. In this situation, if a written withdrawal is not received from the Complainant within ten (10) calendar days, a certified letter will be sent to the Complainant and Respondent by the SDWP verifying there was a resolution of the complaint by phone and the Complainant's verbal agreement to withdraw the complaint. The SDWP shall maintain copies of the correspondence in the Complainant's file.

The SDWP will use informal conferences wherever possible to resolve grievances or complaints. Such informal conferences will not extend the sixty (60) calendar-day period within which a decision must be issued, unless the Complainant and the Respondent agree in writing to waive the time frames.

## **3. Timelines for Filing**

- a) If an AJCC Operator or Service Provider receives a complaint from an individual, member, applicant, participant, or employee against any of the SDWP-funded programs, as mentioned above, an attempt must first be made to resolve the problem at the source, through the director of the program where the complaint has occurred.

If there is not a resolution of the complaint at the AJCC or Service Provider level within five (5) 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 grievance with the SDWP within one (1) year of the alleged violation.

- b) If a AJCC Operator or Service Provider has a grievance or complaint against the SDWP, regarding resolution of complaints/appeals arising from actions taken by the SDWP with respect to investigations or monitoring reports, an attempt must first be made to resolve the problem at the source through the SDWP's Vice-President and Chief Financial Officer/EO Officer (see contact information below).

If there is not a resolution of the complaint at the SDWP level within five (5) working days, or if the resolution received is not satisfactory, then the AJCC or Service Provider must be instructed on how to proceed with filing a formal written grievance against the SDWP within one (1) year of the alleged violation.

All program complaints must be reported to the SDWP and are addressed to:

Vice-President and Chief Financial Officer/Equal Opportunity Officer  
San Diego Workforce Partnership, Inc.  
3910 University Avenue, Ste 400  
San Diego, CA 92105

The AJCC or Service Provider program director (or designee) where the complaint occurred, or the SDWP's Vice-President and Chief Financial Officer/EO Officer (or designee), will provide the necessary forms to file a complaint, the details of the process, and any needed assistance to file the complaint to the individual or organization filing the complaint.

#### **4. Contents of the Complaint**

The official filing date of the complaint is the date the written complaint is received by the SDWP. When the Complainant is a minor (17 years and under), a parent or legal guardian must sign the complaint and must attend any formal hearings. In this event, decisions will be issued to the parent/guardian with a copy to the minor.

The Complainant may use the forms in this Chapter, Complaint Resolution Form, **Attachment C**, or may prepare a letter with the following information regarding the complaint:

- 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;
- Where known, the provisions under the Act, 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.

The absence of any of the requested information will not be a basis for dismissing the complaint. A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of the Hearing. Grievances or complaints may not be amended to add new issues. The one (1) year time period in which a grievance or complaint may be filed is not extended for grievances or complaints that are re-filed with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the Hearing Officer's decision. The SDWP is required to send a copy of the grievance or complaint to the Respondent.

## **5. Formal Hearing**

If the grievance or complaint cannot be resolved informally, the Vice-President and Chief Financial Officer/EO Officer or his/her designee will conduct an investigation into the specifics of the complaint and schedule a Formal Hearing (Hearing). Hearings on any grievance or complaint shall be conducted within thirty (30) calendar days of the filing of the formal written grievance or complaint. The SDWP must issue a written decision within sixty (60) calendar days of the filing of the written grievance or complaint, unless the timeframe is waived in writing by the Complainant.

Once the initial investigation is complete, the Vice-President and Chief Financial Officer/EO Officer will schedule a Hearing at a date, time, and location that is agreeable to the Complainant, the Respondent, and the representative of either party. An Independent Hearing Officer will conduct the Hearing. Attendance at the Hearing will be required. If the Complainant is a minor, their parent or guardian must also attend the Hearing.

## **6. Notice of Hearing**

In the event of a Hearing, the Complainant and the Respondent must be notified in writing of the date, time and place of the Hearing at least ten (10) calendar days prior to the date of the Hearing. The 10-day notice period may be shortened with written consent of both parties. The 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 Hearing before an impartial Hearing Officer;
- A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint, as submitted by the Complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately;
- The name and address and telephone number of the contact person issuing the notice.

## **7. Hearings by an Independent Hearing Officer**

An impartial/independent Hearing Officer shall conduct the Hearing. The 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 the SDWP, if the complaint is not against the SDWP.



The Hearing will be conducted in an informal manner with strict rules of evidence not being applicable, and according to the procedures established by the SDWP. The 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 Hearing to:

- Present either written or oral testimony and/or arguments;
- Question others who present evidence;
- Call and question witnesses in support of his/her position;
- To examine records and documents relevant to the issue(s); and
- To be represented at his/her 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 Hearing. If a mutually acceptable resolution can be reached, the Hearing Officer will communicate the resolution to the Vice-President and Chief Financial Officer/EO Officer who will issue a written decision of findings, based on the merits of the complaint and the facts presented at the Hearing.

## **8. Written Decision**

The Hearing Officer will make a decision strictly on the evidence on record. The Vice-President and Chief Financial Officer/EO Officer will provide notice, in writing, of the Hearing Officer's decision to both the Complainant and the Respondent within sixty (60) calendar days of receipt of the complaint. The Hearing Officer's decision will contain the following:

- Full names, telephone numbers and mailing addresses of the parties involved;
- A clear and concise statement of the grievance or complaint;
- A statement of the facts and dates describing the alleged violation;
- The provisions of WIA Law, the WIA regulations, grant requirements, or other agreements under the WIA believed to have been violated. (Grievance or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with the WIA law, regulation or contract);
- The remedy sought by the Complainant;
- The Hearing Officer's decision and reason(s) for the decision;
- Statement of the corrective action, if any, to be taken; and
- Notice of the right of either party to request a review of the decision (within ten [10] calendar days of receipt of the decision) by the State Review Panel.

## 9. Appeal Rights

If the Complainant does not receive a decision from the SDWP within sixty (60) calendar days of filing the grievance, or receives a decision that is unsatisfactory, the Complainant shall have the right to file an appeal with the State.

A request for review must be filed within ten (10) calendar days of receipt of the adverse decision or, if no timely decision is rendered, within fifteen (15) calendar days from the date on which the Complainant should have received a timely decision from the SDWP.

The Complainant may request a State hearing by submitting a written notice of appeal to:

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

The procedures for filing appeals with the state are provided in detail in the EDD Directive WSD08-4, Grievance and Complaint Procedures (see link on page 1).

The State will issue a decision within sixty (60) calendar days of receipt of the Request for Hearing or State review. The State's decision in these matters will be final. In the event the State does not issue a timely decision, the Secretary of Labor may exercise authority for a federal-level review and render a decision.

## III. CRIMINAL ACTIVITY REPORTING PROCESS

This type of complaint involves information and allegations involving criminal fraud, waste, abuse, or other criminal activity, and is reported through the Incident Reporting System. The Incident Reporting System is also used to process non-criminal complaints regarding mismanagement and gross waste of funds.

Criminal Activity complaints must be reported immediately to the SDWP's Vice-President and Chief Financial Officer/EO Officer at (619) 228-2900

Reports must be made in writing using the SDWP Incident Report Form, provided as **Attachment D**, and faxed to the SDWP's EO Officer (or designee) at (619) 228-2900, or sent to the SDWP addressed to:

Vice-President and Chief Financial Officer/ /Equal Opportunity Officer  
San Diego Workforce Partnership, Inc.  
3910 University Avenue, Ste 400  
San Diego, CA 92105

The WIA Directive Incident Reporting (see link on page 1) requires that information and complaints of criminal activity must be reported within 24 hours by the SDWP to the DOL OIG, with a copy simultaneously provided to the EDD CRO. In addition, within one (1) work day of detection or discovery of information alleging fraud, abuse or other criminal activity involving WIA funds, a written incident report shall be prepared by the detecting entity.

The report must be submitted on the Incident Report Form. Submit the report to:

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

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 report.

#### **A. Service Provider Policy and Procedures**

Each contracted Service Provider 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 the SDWP is notified immediately of any allegations of fraud, abuse, or criminal activity related to programs funded by the SDWP. The SDWP will in turn notify the DOL/OIG and the EDD CRO, as required and stated above.

#### **B. Reporting**

Service Providers 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 immediately, 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 that are determined to be necessary to prevent further financial loss or other damage, or recovery of funds or property.

During an investigation, based on a report of fraud or abuse, EDD CRO or DOL OIG investigators or auditors may contact a AJCC or contracted Service Provider directly, regarding an incident of which the AJCC or Service Provider was not previously aware. In the event this occurs, the Service Provider must contact the SDWP Vice-President and Chief Financial Officer//EO Officer immediately to report that they have been contacted.

#### **ATTACHMENTS**

- A.** Glossary of Terms
- B.** Program Grievance and Criminal Complaint Policy Notice
- C.** Program Complaint/Grievance Report Form
- D.** Incident Report Form