

## SDWP Ops Manual: Chapter 9

Nondiscrimination & Equal Opportunity Policy and Complaint Procedures

**Attention: this presentation was updated as of 01/24/2018**

Good morning everyone. Please note this presentation will be will be posted in SDWP's website.

All of you are currently on mute, I will pause for questions after each topic discussed and have you send in questions. Answers to questions will be posted on SDWP's website along with presentation.

This presentation is an overview of Chapter 9: Nondiscrimination & Equal Opportunity Policy and Complaint Procedures. We are doing this training in advance of releasing the chapter so that you may be aware of changes.

Please remember, this presentation is an overview and is not a substitute for reading Chapter 9. Please read and become familiar with all information covered in Chapter 9. To access SDWP's Operation Manual visit: <https://workforce.org/>

- Under "About Us" select **Partner Resources**, then select Operations Manual.

**Recipient/Subrecipient**

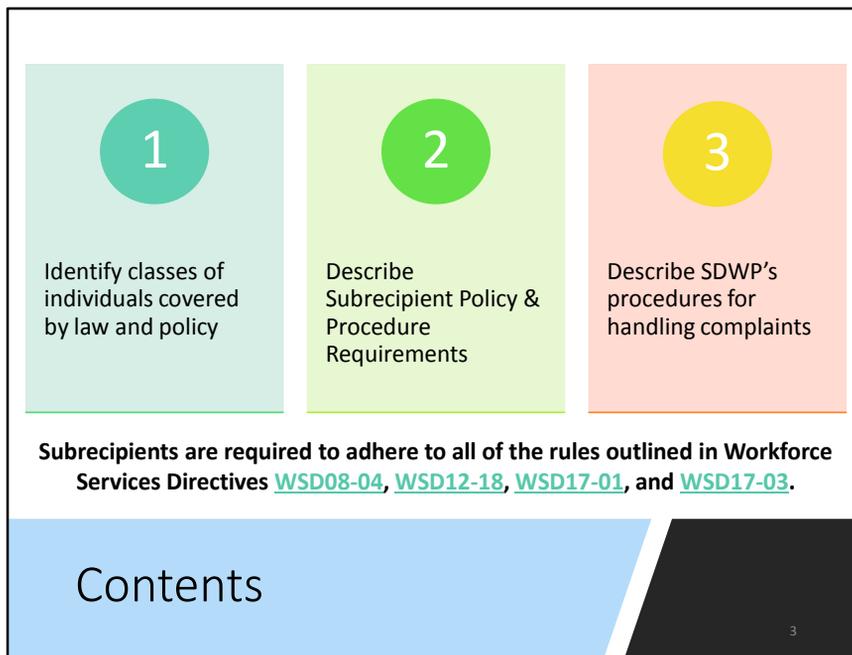
Any entity to which financial assistance under WIOA Title I is extended, either directly from Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee or a recipient), but excluding the ultimate beneficiaries of the WIOA Title I – funded 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 Section 38.4\[zz\]](#)).

Definition

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Before we continue with the presentation, here is the definition for Recipient/Subrecipient. I added this information as we make reference throughout this presentation and Chapter 9.

The definition for recipient/subrecipient is as follows: Any entity to which financial assistance under WIOA Title I is extended, either directly from the 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\[zz\]](#)).

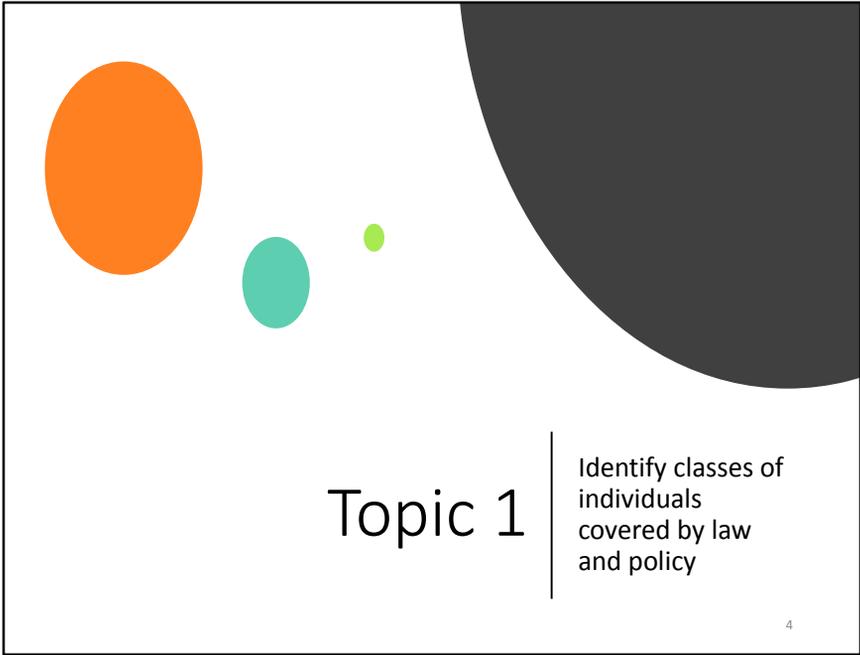


Subrecipients are required to adhere to all of the rules outlined in Workforce Services Directives:

- WSD08-04: Grievance and Complaint Procedures
- WSD12-18: Incident Reporting
- WSD17-01: Nondiscrimination & Equal Opportunity Procedures,
- WSD17-03: Limited English Proficiency, and

The presentation will cover 3 topics:

- Topic 1 – is focused on identifying classes of individuals covered by law and policy.
- Topic 2 – is focused on describing policy and procedure requirements that you, as a subrecipient, must follow.
- Topic 3 – pertains to SDWP's procedures for handling complaints.

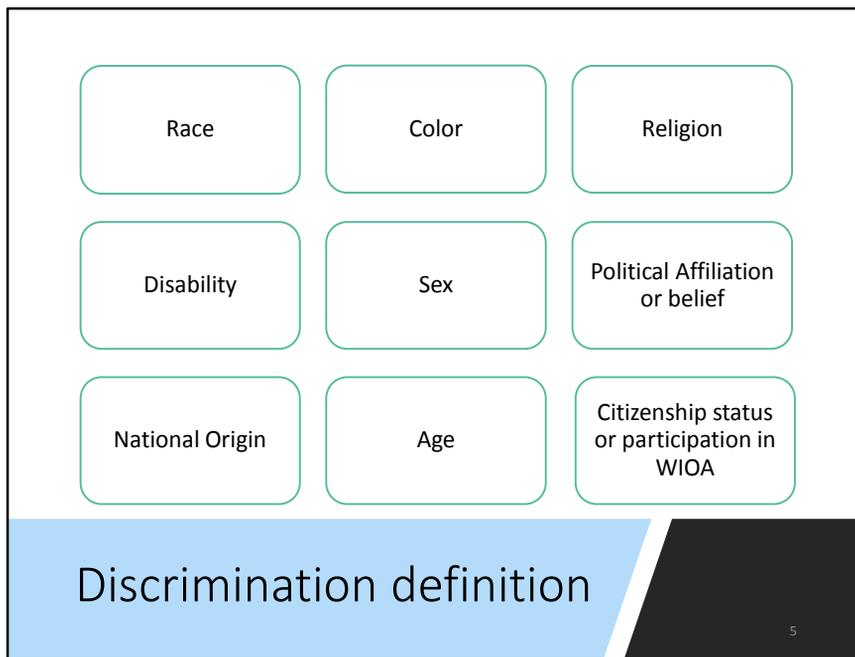


Topic 1

Identify classes of individuals covered by law and policy

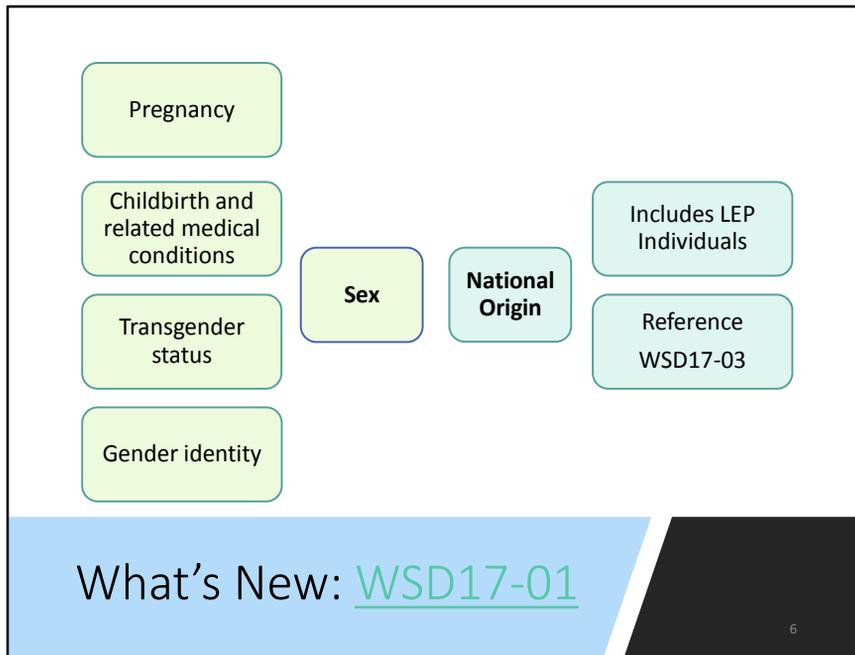
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Let's begin with topic 1 – identify classes of individuals covered by law and policy.



Based on Workforce Services Directive *WSD17-01: Nondiscrimination and Equal Opportunity Procedures*, discrimination is strictly prohibited on the basis of:

- Race
- Color
- Religion
- Disability
- Sex
- Political Affiliation or belief
- National Origin
- Age
- And Citizenship status or participation in WIOA



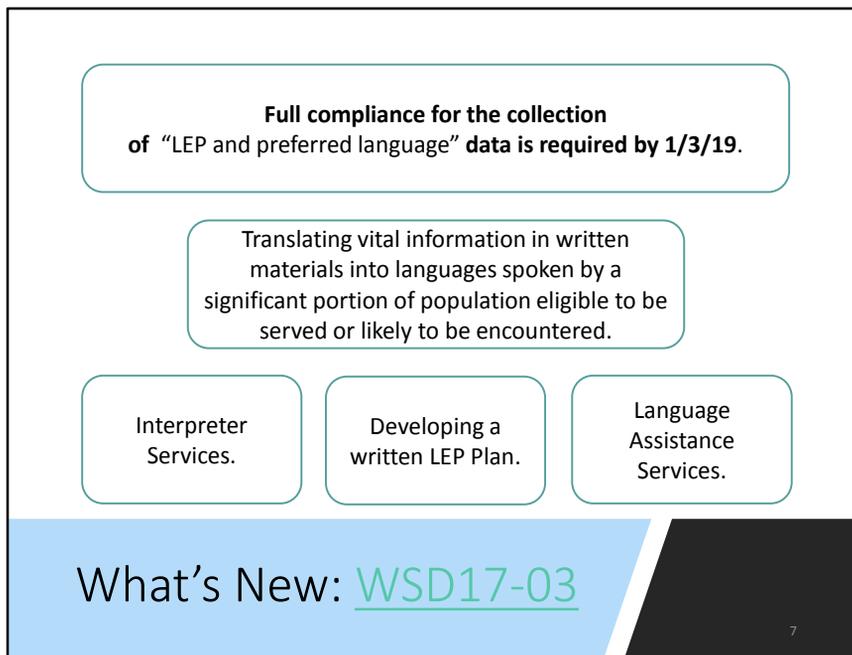
Workforce Services Directive WSD17-01 clarifies discrimination based on **Sex** includes:

- Pregnancy,
- Childbirth and related medical conditions,
- Transgender status, and
- Gender identity

It also clarifies discrimination based on **National Origin** includes:

- Failing to provide language services to Limited English Proficient (LEP) Individuals.

As part of this, EDD has also released Workforce Services Directive WSD17-03 which provides guidance on serving LEP individuals.



Workforce Services Directive WSD17-03 provides guidance and establishes the procedures regarding the prohibition against **National Origin** discrimination as it affects individuals with Limited English Proficiency (LEP).

Here are a few of the items discussed in the directive:

- Subrecipients will be required to collect data on who is an LEP individual and their preferred language.
  - Full compliance for the collection of such data is required by January 3, 2019.
  - Please be aware more information will be coming from SDWP regarding this.
  - For the moment, subrecipients must begin by taking “reasonable steps to ensure meaningful access for LEP individuals.” Such steps are discussed in Workforce Services Directive WSD17-03.
- Services available to LEP individuals should include:
  - Providing interpreter services,
  - Providing language assistance services, and
  - Translating vital information in written materials into languages spoken by a significant portion of the population eligible to be served or likely to be encountered.
  - And finally, developing a written LEP Plan to assist with ensuring you are serving LEP individuals appropriately.



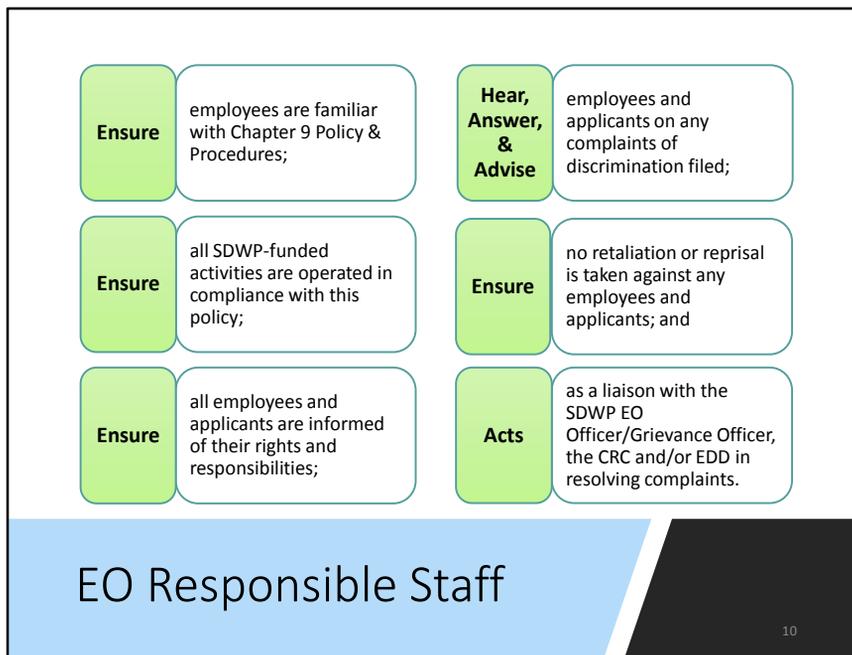
Let's pause for questions. All questions will be answered and emailed along with the recorded link.

Topic 2

Describe subrecipient policy & procedure requirements

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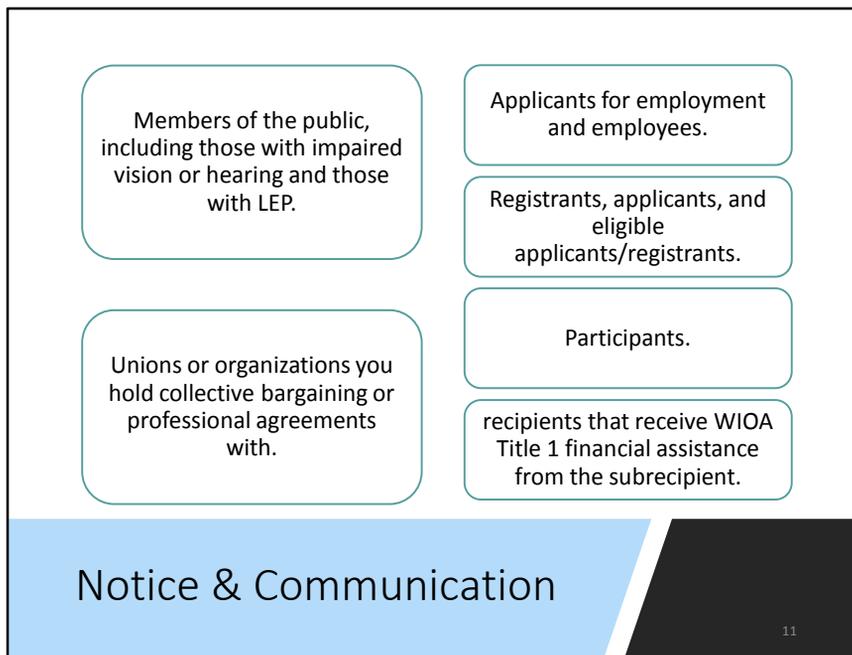
Topic 2 - is focused on describing policy and procedure requirements that you, as a subrecipient, must follow.



You 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.

The POC will:

- Ensure employees are familiar with Chapter 9 Policy and Procedures;
- Ensure all SDWP-funded activities are operated in compliance with this policy;
- Ensure all employees and participants are informed of their rights and responsibilities;
- Hear, answer, and advise employees and applicants on any complaints of discrimination filed;
- Ensure no retaliation or reprisal is taken against employees and applicants that have filed a complaint or assisted in the filing or the investigation of a complaint; and
- Acts as a liaison with the SDWP Equal Opportunity/Grievance Officer, the Civil Rights Center (CRC) and/or Employment Development Department (EDD) in resolving complaints.



You must provide initial and continuing notice of the Nondiscrimination & EO policy and related procedures. This notice must be provided to:

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

Discussion of rights and responsibilities must be provided in appropriate languages & in formats accessible for individuals with disabilities.

Taglines that must be used in all communication:

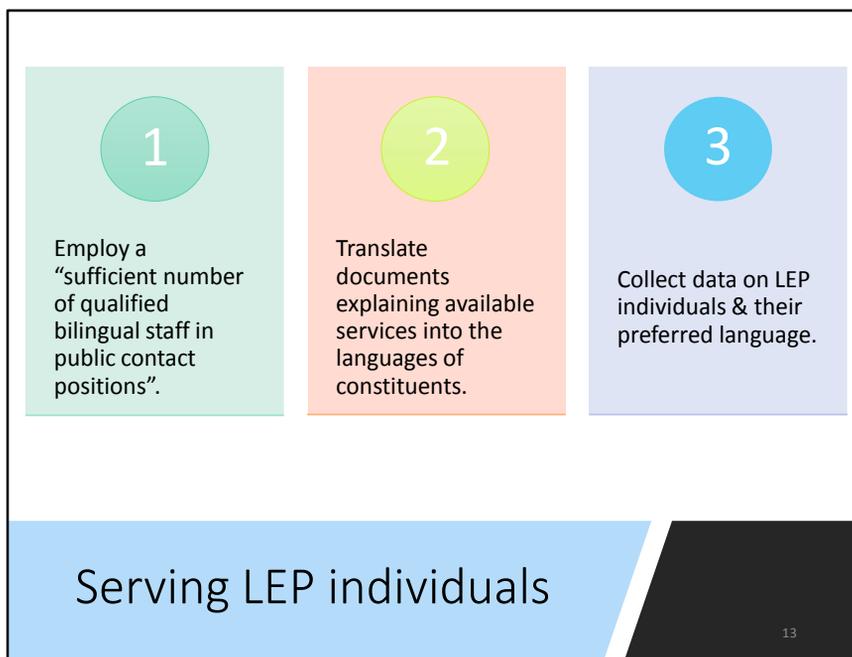
*“This WIOA Title I - funded program or activity is an equal opportunity employer/program”*

*“Auxiliary aids and services are available upon request to individuals with disabilities”*

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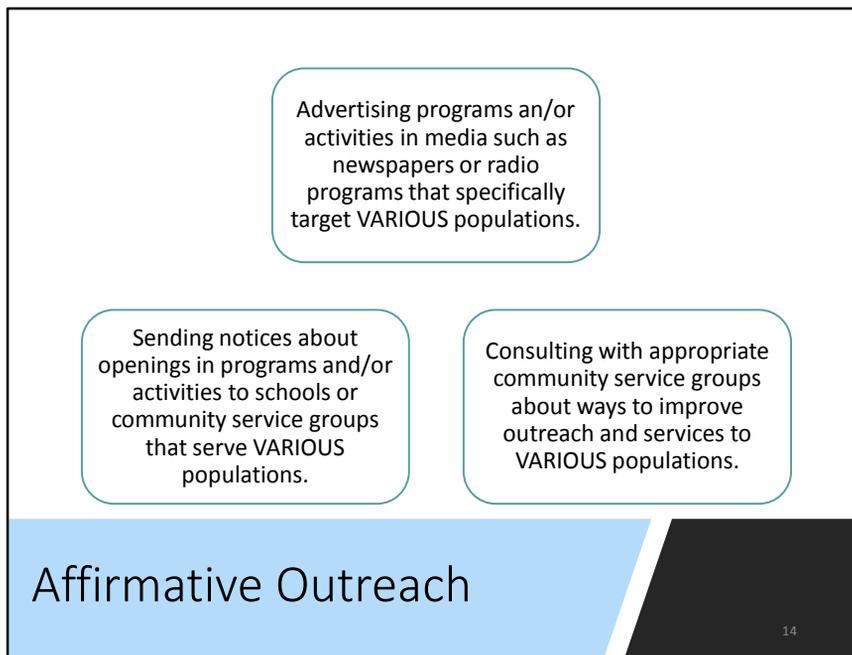
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- Discussion of rights and responsibilities must be provided in appropriate languages & in formats accessible for individuals with disabilities.
- The “Equal Opportunity is the Law” notice must be posted in prominent locations, such as the front customer entry and reception area and must include the contact information for the staff designated as the *point of Contact (POC)*.
  - When an individual has a complaint they can submit information directly to this staff.
- Distributed publications, broadcasts, electronic media and other communications including the homepage of your website, which promotes WIOA programs or activities, shall include the following taglines: *“This WIOA Title I - funded program or activity is an equal opportunity employer/program,”* and that *“Auxiliary aids and services are available upon request to individuals with disabilities.”*



As indicated in Workforce Services Directive 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.

- If you serve a “substantial number of non-English-speaking people,” you must employ a “sufficient number of qualified bilingual staff in public contact positions”,
- Translate documents explaining available services into the languages of your constituents, and
- Collect data on who is a Limited English Proficient individual and what is their preferred language.



Regarding affirmative outreach, you must take reasonable steps to ensure you are providing equal access to the WIOA Title I – financially assisted programs and activities.

These steps should involve reasonable efforts to include members of the various groups protected 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 programs and/or activities in media such as newspapers or radio programs that specifically target various populations.
- Sending notices about openings in programs and/or activities to schools or community service groups that serve various populations.
- Consulting with appropriate community service groups about ways to improve outreach and services to various populations.

Required to prepare a **Self-Evaluation and Transition Plan**.

Permit the use of service animals.

Ensure programs and activities are accessible as prescribed by ADA standards.

Permit the use of mobile aids and devices (i.e., wheelchairs, walkers).

Individuals with disabilities

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To address nondiscrimination against individuals with disabilities:

- You are required to prepare a Self-Evaluation and Transition Plan.
- Ensure programs and activities are accessible as prescribed by ADA standards.
- Permit the use of service animals.
- Permit the use of mobile aids and devices.

**Reasonable Accommodation  
Policy and Procedure Guide**

WSD17-01 **Attachment 3** of *Reasonable Accommodation Policy and Procedure Guide* provides:

- general guidance and definitions and
- outlines 4 steps to help you determine how to process such requests.

- **Step 1** – Individual with a disability requests reasonable accommodation
- **Step 2** – Consult with the individual requesting a reasonable accommodation
- **Step 3** – Designated staff analyzes the request for reasonable accommodation
- **Step 4** – Select and implement an appropriate reasonable accommodation

WSD17-01: Attachment 3

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Workforce Services Directive 17-01, Attachment 3: Reasonable Accommodation Policy and Procedure Guide provides:

- general guidance and definitions and
- outlines 4 steps to help you determine how to process such requests

**Step 1** – Individual with a Disability Requests Reasonable Accommodation

**Step 2** – Consult with the Individual Requesting a Reasonable Accommodation

**Step 3** – Local Entity Management and/or Designated Staff Analyzes the Request for Reasonable Accommodation

**Step 4** – Select and Implement an Appropriate Reasonable Accommodation

“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.”

Language for Sub-contracts

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In the event you 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 of:

“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.”

Collect data on race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminatee, applicant for employment, and employee.

Documentation & information concerning the medical condition or history of an individual with a disability must be collected on separate forms and maintained in separate files.

## Collection of Data

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You must collect data on race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminatee, applicant for employment, and employee.

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. (*Reasonable Accommodation Policy and Procedure Guide Attachment 3* of [WSD17-01](#))

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.

Maintain a Complaint Log & notify SDWP of complaints (30 days) & lawsuits (1 day).

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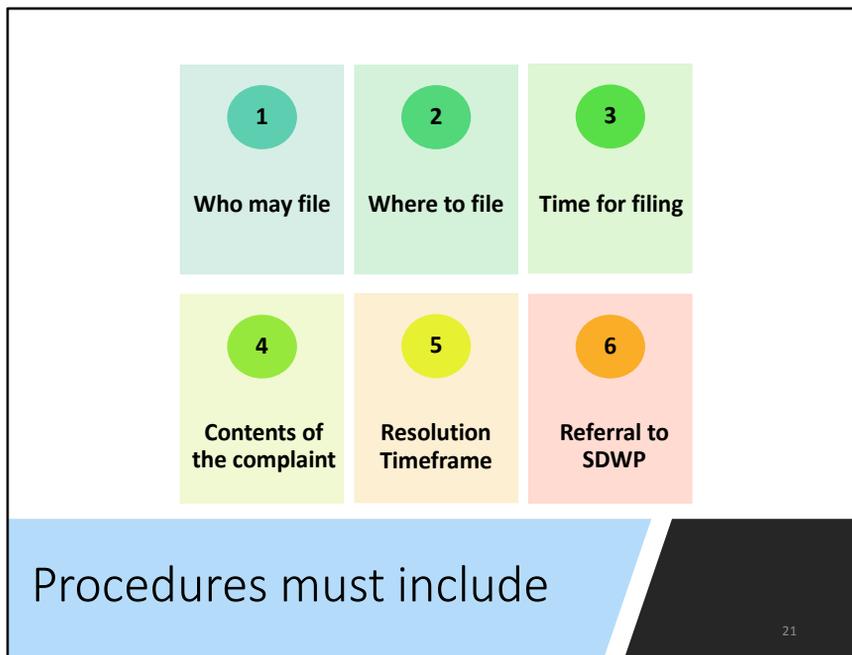
Maintain records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three (3) years from the close of the applicable program year.

And for any complaints received, maintain a complaint log & notify SDWP of complaints & lawsuits filed against you.



Chapter 9 references 3 types of complaints:

- Nondiscrimination & Equal Opportunity,
- Program Grievances, and
- Incident Reporting



Complaints procedures should specify:

- Who may file,
- Where to file,
- Time for filing,
- Contents of the complaint,
- Resolution timeframe, and
- Referral to SDWP.

#### **Filing with the Subrecipient**

- *The “Equal Opportunity is the Law” notice must include the contact information for the staff designated as the point of Contact (POC). When an individual has a complaint they must submit information directly to this designated staff.*

#### **Filing with the SDWP**

- Referral to SDWP should only happen in instances where *there is not a resolution of the complaint at your level within 60 days for program grievances or 90 days for equal opportunity/nondiscrimination complaints or if the resolution received is not satisfactory. In these case, the individual must be instructed on how to proceed with filing a formal written complaint with SDWP.*



Let's pause for questions. All questions will be answered and emailed along with the recorded link.



Topic 3

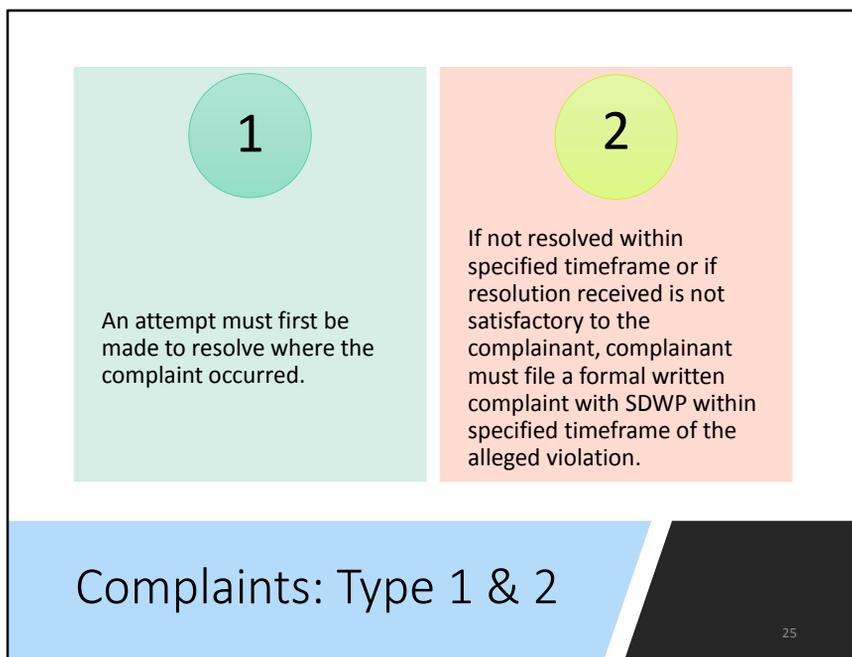
Describe SDWP's procedures for handling complaints

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Topic 3 – describes SDWP's procedures for handling complaints.



- SDWP handles complaints regarding:
- Nondiscrimination & Equal Opportunity,
  - Program Grievances, and
  - Incident Reporting

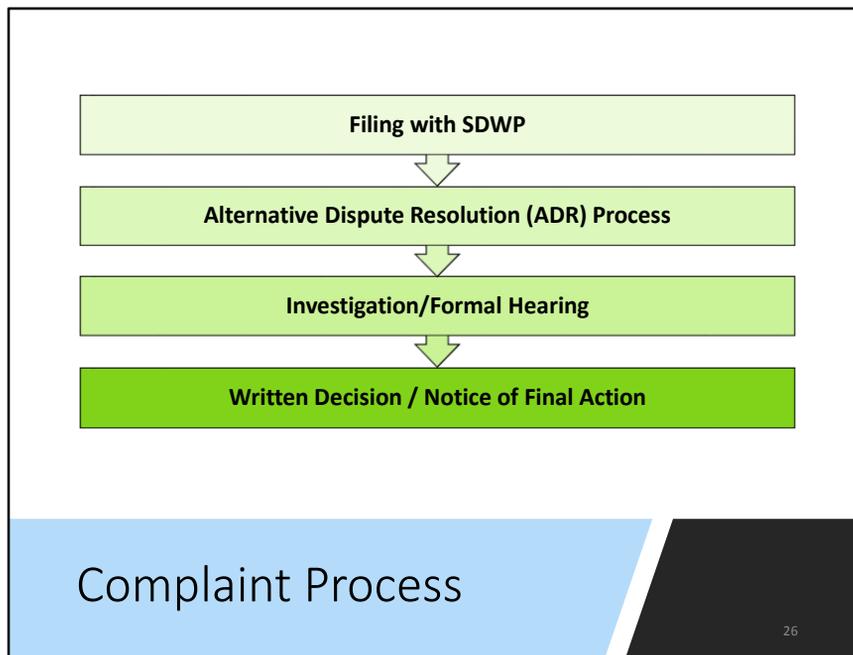


When it comes to complaints regarding:

1. Nondiscrimination and Equal Opportunity and
2. Program Grievance

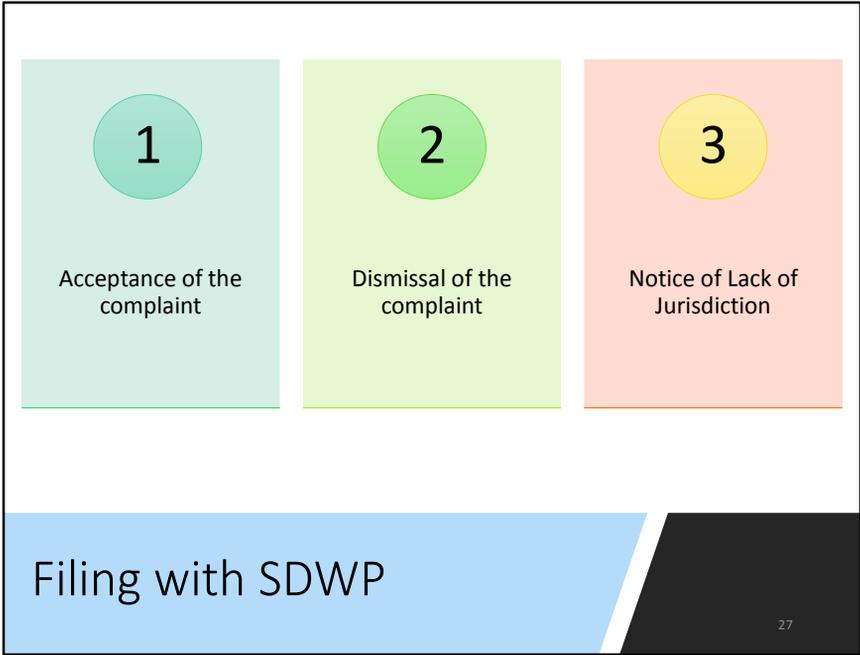
Before SDWP is involved in the process:

- An attempt must first be made to resolve where the complaint occurred, in this case with you the subrecipient.
- If the complaint is not resolved within the specified timeframe or if resolution received is not satisfactory to the complainant, the complainant must file a formal written complaint with SDWP within 180 days of the alleged violation for Nondiscrimination & Equal Opportunity complaints or within 1 year of the alleged violation for Program Grievance complaints.



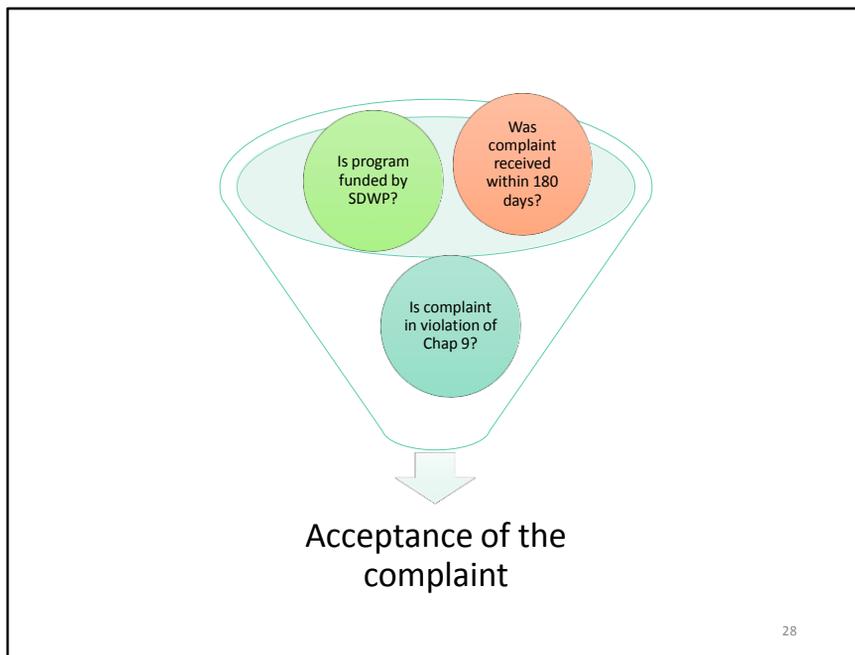
SDWP Complaint Procedures include the following:

- 1. Filing with SDWP** – the SDWP will acknowledge receipt of the complaint within 10 working days of the date of filing.
- 2. Alternative Dispute Resolution (ADR) Process** – The SDWP shall offer Mediation as an ADR Process immediately upon receipt of the complaint.
- 3. Investigation/Formal Hearing** – If the complainant elects not to participate in the ADR process, the SDWP EO Officer/Grievance Officer will conduct an investigation/formal hearing into the specifics of the complaint.
- 4. Written Decision/Notice of Final Action** - The SDWP EO Officer/Grievance Officer will have 60 days for Program Grievances or 90 days for Equal Opportunity/Nondiscrimination Complaints from the date of filing of the formal complaint to provide the complainant with a written decision/Notice of Final Action.



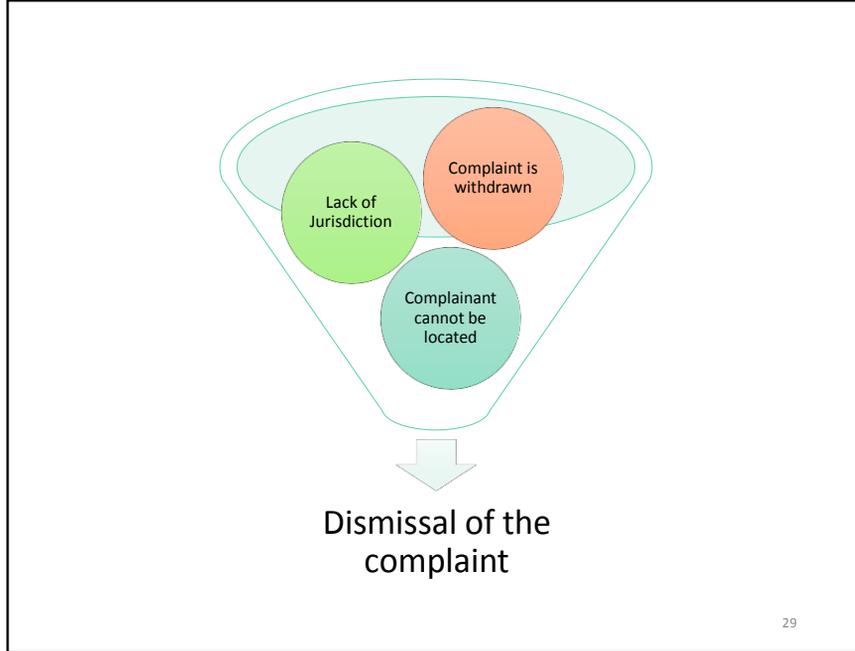
The first step in the complaint process is filing the complaint with SDWP.

SDWP can accept, dismiss, or issue a Notice of Lack of Jurisdiction regarding the complaint.



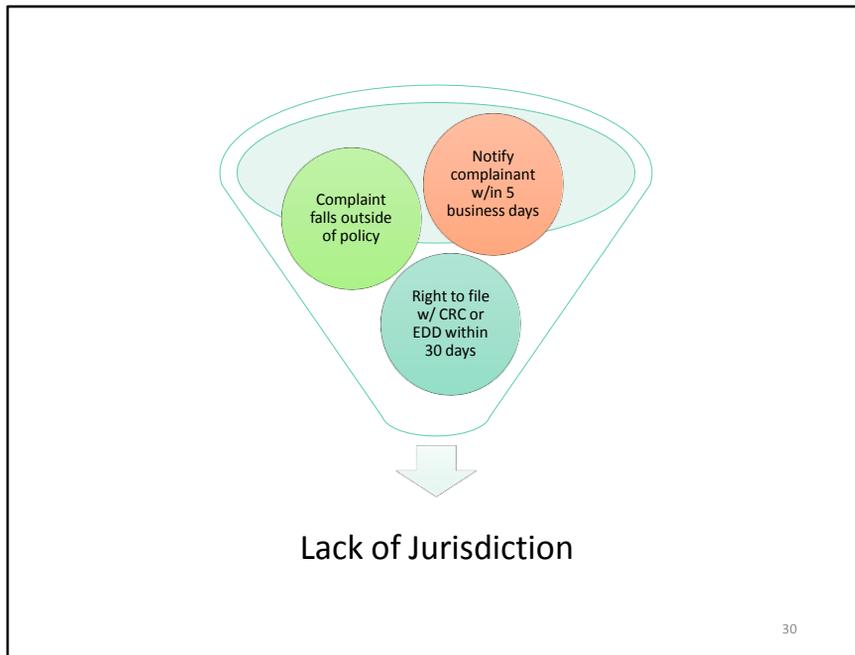
**Acceptance of the complaint** will be based on the following:

- Complaint must be related to a program funded all or in part by the SDWP;
- Complaint must be related to an allegation of a violation of the *Nondiscrimination & EO Policy and Complaint Procedures*; and
- Complaint must have been received within the specified timeframe of the alleged violation.



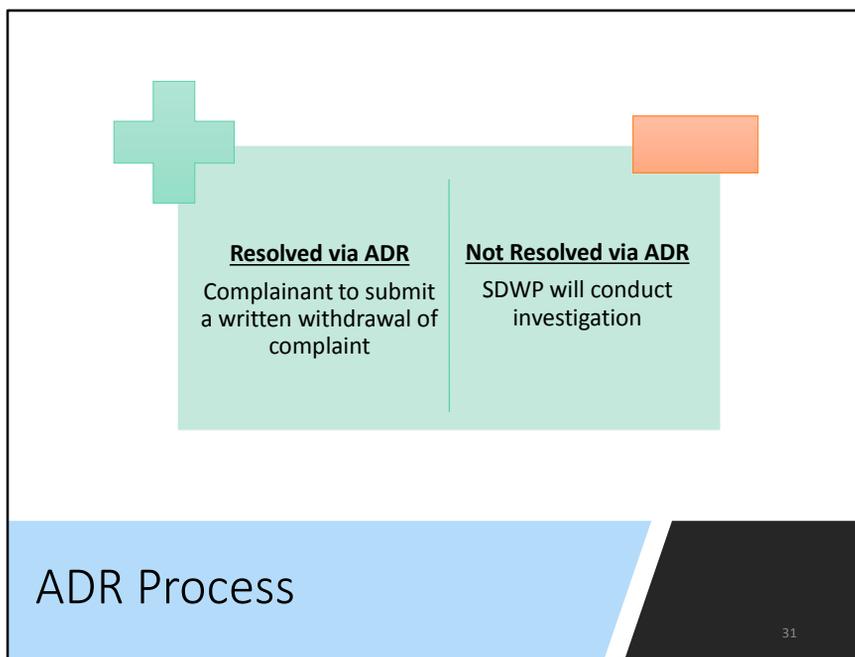
**Dismissal of the Complaint** - During the complaint resolution process, a complaint may be dismissed for one or more of the following reasons:

- 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 him/her.



**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 or EDD within 30 days of receipt of the notice.



**ADR Process** - The first step in the SDWP’s resolution process will be an attempt to resolve the complaint on an informal basis.

The ADR will be offered, with mediation as the preferred procedure.

- If the complaint is resolved through the informal resolution process, SDWP shall attempt to contact the complainant and have him or her provide a written withdrawal of the complaint within ten (10) days of the receipt of the notice of resolution.

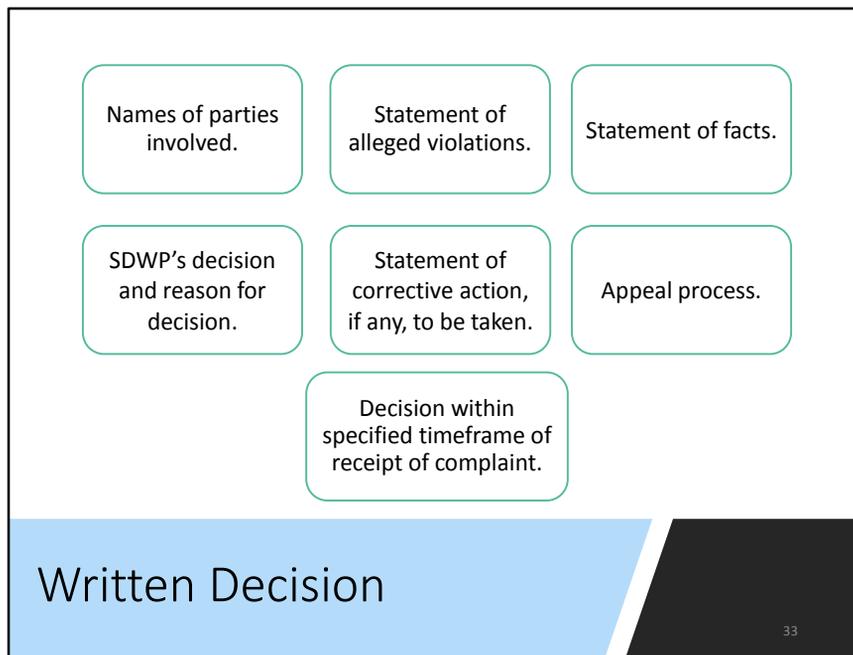
If complaint is not resolved via ADR Process, SDWP will conduct an investigation.



**Investigation/Formal 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.

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

- Formal Hearing for Program Grievance complaints
- Review of the complaint
- Review of subrecipient's policies
- Interview(s) with complainant
- Interview(s) with respondent
- Gather all facts to make a determination



Once investigation is conducted, 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 his/her decision to both the person making the complaint and the respondent (within 90 days for Nondiscrimination & Equal Opportunity complaints or within 60 days for Program Grievance complaints) of receipt of the complaint. The Notice will include a summary of the following:

- Names of parties involved
- Statement of alleged violations
- Statement of facts
- SDWP's decision and reason for decision
- Statement of corrective action, if any, to be taken
- And appeal process.

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

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

## Appeals

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Reasons why appeals can occur include:

- **If the SDWP has not provided the complainant with a written decision within the specified timeframe for the complaint.**
- **If the complainant is dissatisfied with the SDWP's resolution of a complaint.**

The diagram is enclosed in a black rectangular border. It features three rounded rectangular boxes stacked vertically. The first two boxes are light gray and contain the text '1. Nondiscrimination & Equal Opportunity' and '2. Program Grievance' respectively. The third box is light green and contains the text '3. Incident Reporting'. Below these boxes is a blue and black decorative footer area. The text 'Type of complaints' is written in white on the blue background. The number '35' is printed in small white font on the black background.

1. Nondiscrimination & Equal Opportunity
2. Program Grievance
3. Incident Reporting

Type of complaints

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The last type of complaint we'll cover is Incident Reporting.

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

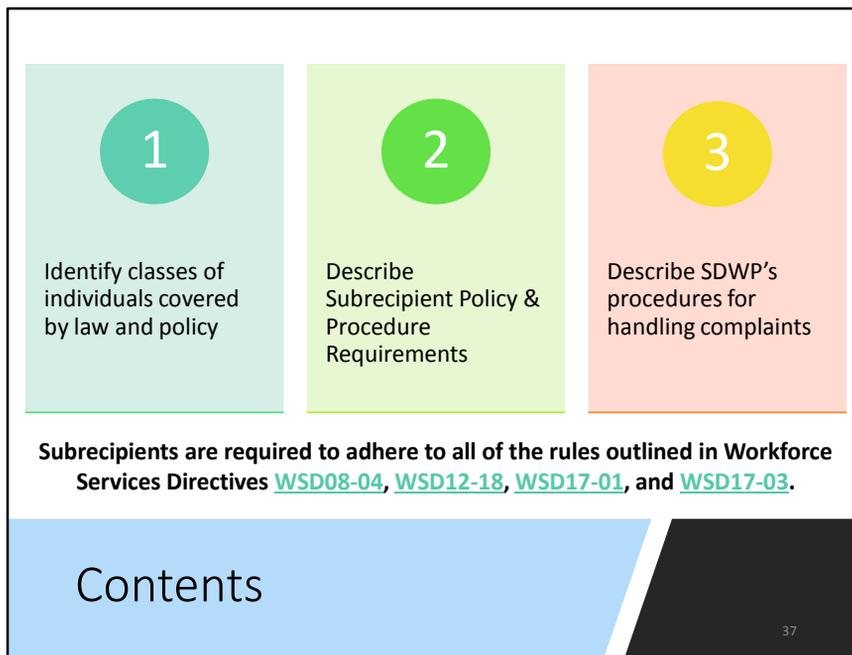
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The detecting entity is required to prepare an **Incident Report Form** and submit to SDWP within one (1) working day of discovery.

2

Upon receipt, SDWP will forward the incident report to EDD, OIG, and appropriate law enforcement agency(ies).

# Incident Reporting



Information in Chapter 9 is based on rules and regulations outlined in Workforce Services Directives:

- WSD08-04: Grievance and Complaint Procedures
- WSD12-18: Incident Reporting
- WSD17-01: Nondiscrimination & Equal Opportunity Procedures,
- WSD17-03: Limited English Proficiency, and

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Let's pause for questions. All questions will be answered and emailed along with the recorded link.

Thank You  
for  
attending!

SDWP provides equal opportunity for its programs, services, and employment. Auxiliary aids and services for individuals with disabilities are available upon request.