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E-mailed 09/28/10 (tk)

**Bureau of Workforce Transformation (BWT)**  
**Policy Issuance (PI) No: 10-13**

**Date:** September 28, 2010

**To:** Michigan Works! Agency (MWA) Directors, Local Workforce Development Boards (WDBs), and Local Grant Recipients

**From:** Liza Estlund Olson, Director, Bureau of Workforce Transformation  
**SIGNED**

**Subject:** Grievance and Complaint Policy

**Programs Affected:** Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF), Food Assistance Employment and Training (FAE&T), Reed Act, Trade Act (except requests for redeterminations), and State of Michigan General Fund/General Purpose (GF/GP) Funded Programs Administered by the Michigan Department of Energy, Labor & Economic Growth (DELEG)/BWT

**Rescissions:** BWP PI 06-03, issued July 26, 2006

**References:** WIA Sections 116(a)(5) and 181(c)  
WIA Regulations, 20 CFR 667.600 and 20 CFR 667.645(a and b)  
Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 P.L. 104-193  
TANF Regulation, 45 CFR 261.70  
Food Stamp Act of 1977

**Background:** This policy issuance sets forth the procedures that shall govern local and state-level *grievances* and complaints in accordance with the prescribed programs. Specifically, this policy establishes a process for grievances filed by participants, subgrantees, subcontractors, *service providers*, employees, One-Stop partners, providers of training services, and other interested parties.

DELEG is an equal opportunity employer/program.  
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

This policy also establishes a process for appeals filed by *local grant recipients* to the DELEG/Office of Audit & Financial Compliance (AFC) regarding monitoring findings, incident report findings, single audit resolution findings/issues, and other matters.

The hearing procedures in this policy reflect requirements of federal law and are **not** contested case procedures under the Administrative Procedures Act (1969 PA 306), as amended, being MCL 24.201 *et. seq.*

## **I. Definitions**

**Appellant:** the party that files the appeal to BWT and the U.S. Department of Labor (USDOL).

**Days:** means consecutive calendar days, including weekends and holidays.

**Grievance:** a written complaint filed in accordance with this Policy.

**Local Grant Recipient:** entities that expend awards received directly from the DELEG/BWT to carry out a program or programs.

**Interested Parties:** includes subgrantees, subcontractors, service providers, employees, One-Stop partners, providers of training services, and other relevant parties.

**Participant:** an individual who has been determined to be eligible to participate in, and who is receiving services under a program covered under this policy.

**Petitioner:** the party that files the grievance.

**Respondent:** the party who argues against the petitioner or appellant.

**Service Providers:** subrecipients or entities that expend awards received from a local grant recipient or Administrative Entity (AE) to carry out a program or programs.

## **II. General Requirements**

**Local Grievance Policy:** Local grant recipients are responsible for developing, maintaining, and making available to participants, and other interested parties, a grievance procedure, consistent with this policy, which involves WIA, TANF, FAE&T, Reed Act, Trade Act (except requests for redeterminations), and State of Michigan GF/GP programs administered by the DELEG/BWT. In addition, these parties shall sign and date documentation acknowledging receipt of and agreement to follow the procedure for grievances. The documentation shall be maintained for review.

**Accessibility:** Generally, all processes prescribed in this policy must be accessible to persons with disabilities or other barriers, as required by law.

**Posting:** Grievance procedures must be posted in areas where administration and program services are provided, and must be accessible to persons with disabilities or other barriers, as required by law.

**Monitoring/Tracking:** A monitoring/tracking system must be maintained to document the grievances received and their disposition. The local grant recipient is responsible for maintaining these records for review for a period of **three years**. The retention period begins on the date of the DELEG's acceptance of the final closeout report for the grant or contract. Records shall be retained beyond three years if any litigation or audit is begun, or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records shall be retained until the litigation, audit, or claim has been resolved.

**Language Barriers:** Pursuant to 29 CFR 37.35, where a significant number or proportion of limited English-speaking individuals exist, the local grant recipients are responsible for making a reasonable effort to assure that the information in this policy will be provided to and understood by limited English speaking individuals who seek information regarding the grievance procedure.

**Informal Resolution:** The local grant recipient is responsible for making available to participants and interested parties, an opportunity to resolve complaints informally before they become grievances.

### **III. Grievance Procedures**

#### **Step 1: Local Level Grievance Procedures**

**Filing:** All grievances related to WIA, TANF, FAE&T, Reed Act, Trade Act (except requests for redeterminations), and State of Michigan GF/GP programs funded by the DELEG/BWT are required to be filed within **one year** of the date of the event that gave rise to the grievance.

**Criteria:** All grievances **shall** be in **writing** and contain, to the extent practicable, the following information:

- a. The full name, address, and telephone number of the party/parties filing the grievance.
- b. The full name, address, and telephone number of the party/parties against whom the grievance is made.
- c. A clear and concise statement of the facts, as alleged, including the pertinent dates, constituting the alleged violation.
- d. The provision of the act, regulations, grant, contract, or other agreements under the act believed to have been violated.
- e. The relief requested.

**Rejection:** The grievance may be **rejected** by the AE of the WDB if:

- a. It **lacks merit**.
- b. The petitioner fails to state a **grievable issue**.
- c. There is **no relief** that can be granted.
- d. The petitioner fails to comply with the **procedures prescribed in this policy issuance**.

The AE of the WDB will inform the petitioner and respondent in writing of the reason(s) the grievance was rejected. The notification must be issued within **60 days** from the date the grievance was filed and will include the opportunity to appeal to the DELEG/BWT.

**Hearing:** A hearing on a local level grievance **shall** be conducted within **30 days** from the date the grievance was filed, and a **decision shall** be rendered no later than **60 days** from the date the grievance was filed. For WIA-related grievances, a local level hearing **shall** be conducted. A local level hearing is not required if the grievance is **resolved** prior to the hearing date or the petitioner **withdraws** the grievance.

**Notice:** If a hearing is to be conducted, the AE of the WDB must provide written **notice** to the petitioner and respondent. The notice shall include the date, time, and place of the hearing and a description of the hearing process (e.g. opportunity to present evidence, ask questions, etc.). The notice of the hearing shall indicate the issues to be decided. Notice shall be given not less than **10 days** prior to the scheduled hearing date.

**Hearing Process:** At a minimum, the hearing process shall include:

- a. A hearing officer.
- b. An opportunity for each party to present witnesses and evidence.
- c. An opportunity for each party to ask questions of all witnesses providing testimony at the hearing.
- d. A record of the hearing.
- e. A list of all evidentiary exhibits presented at the hearing.

At the discretion of the hearing officer, there may be an opportunity to exchange evidentiary information prior to the hearing.

**Decision:** A written decision shall be issued by the hearing officer and shall include the following information:

- a. Date, time, and place of hearing.
- b. Name and address of the petitioner.
- c. Name and address of the respondent.
- d. Names and addresses of all witnesses called by the parties.
- e. Information sufficient to identify all evidence presented.
- f. A reiteration of the issues raised.

- g. A determination of the facts.
- h. An analysis of the issues as they relate to the facts.
- i. A decision addressing each issue.

**Appeal:** If a response to the grievance is not received within the time prescribed (i.e. 60 days from the filing of the grievance), or should either party be dissatisfied with a decision, there is opportunity for an appeal to the DELEG/BWT.

## **Step 2: State Level Review of a Local Level Decision**

**Appeal:** A local level grievance decision may be appealed. The appeal **shall** be in writing to the DELEG/BWT. The appeal **shall** be filed no later than **10 days** from receipt of an adverse decision at Step 1, or **10 days** from the date a decision was due (i.e. 60 days from filing of the grievance) but not issued at Step 1.

All appeals of a local level grievance decision **shall** be submitted by **certified mail**, return receipt requested to:

Mr. Gary Clark, Director  
Accelerating Employment Division  
Bureau of Workforce Transformation  
Michigan Department of Energy, Labor & Economic Growth  
Victor Office Building  
201 N. Washington Square, 5<sup>th</sup> Floor  
Lansing, MI 48913

**Appeal Criteria:** All appeals shall contain, to the extent practicable, the following information:

- a. The full name, address, and telephone number of the appellant(s).
- b. The full name, address, and telephone number of the respondent(s).
- c. A clear and concise statement of the facts, as alleged, including the pertinent dates, constituting the alleged violation.
- d. The provision of the act, regulations, grant, contract, or other agreements under the act believed to have been violated.
- e. The relief requested.

**Evidentiary Documentation:** Both parties should send all relevant information and documentation generated at the local hearing and related to this appeal to the address provided above (i.e. where the appeal was sent). It is the responsibility of the parties to ensure BWT has all relevant documentation necessary to make a determination on the grievance.

**Documentation Deadline:** All relevant documentation should be sent to BWT within **15 days** of the filing of the appeal. BWT has the **discretion** to provide parties with the opportunity to provide additional information after the 15 day deadline if BWT believes it is necessary to make a final determination.

**USDOL Monitoring:** Any appeal of USDOL monitoring findings shall only be reviewed for compliance with USDOL requirements. A record shall be created to forward to USDOL, if required.

**Notification:** BWT shall **notify** the appellant and respondent within **10 days** of receipt of the appeal that the appeal was received. This notice will explain the grievance resolution process going forward.

**DELEG/BWT Action:** BWT will consider the appeal and may:

- a. **Reject** the hearing and make a final determination.
- b. Allow **waiver** of the hearing and make a final determination.
- c. Schedule a **hearing** and make a final determination.

**Hearing:** For an appeal of a WIA related local level decision, an **opportunity** for a hearing must be provided. However, a hearing will **not** be held under certain circumstances, as prescribed in this policy issuance.

**Final Determination:** In all cases, a final determination must be made within **60 days** of the receipt of the appeal.

## 1. DELEG/BWT Action

### a) Rejection of the Hearing

A grievance may be **rejected** on appeal, without a hearing, if it is determined that:

- It **lacks merit**.
- It fails to state a **grievable issue**.
- There is **no relief** that can be granted.
- If the appellant fails to comply with the applicable **procedures** prescribed in this policy (e.g. the **10 day filing requirement**, among other provisions).

### b) Waiver of the Hearing

In lieu of a hearing for an appeal of a WIA related local level decision, the parties to the appeal may mutually consent to having BWT decide the matter based on the record created at the local level. If both parties and BWT are in agreement, the hearing is **waived**. Both parties must provide BWT with **written confirmation** that demonstrates their consent to waive the hearing.

### c) Hearing

**Hearing Notice:** A hearing **may** be conducted on the appeal. If a hearing is to be conducted, the appellant and the party against whom the grievance is made will be provided written **notice** of the date, time, and place of the scheduled hearing and of the opportunity to present evidence, including witnesses. The notice of the hearing shall indicate the issues to be decided. **Notice** shall be given not less than **ten days**

**prior** to the scheduled hearing date.

**Hearing:** If a hearing on an appeal is to be held, it shall be conducted within **30 days** of the filing of the appeal. A hearing is not required at this step if the appellant withdraws the appeal.

**Hearing Process:** At a minimum, the hearing process shall include:

- a. A hearing officer.
- b. An opportunity for each party to present witnesses (subpoenas are not authorized under this PI) and evidence.
- c. An opportunity for each party to ask questions of all witnesses providing testimony at the hearing.
- d. A record of the hearing and a list of all evidentiary exhibits presented at the hearing.

At the discretion of the hearing officer, there may be an opportunity to exchange evidentiary information prior to the hearing.

## **2. Final Determination & Appeal to USDOL**

**Final Determination:** A written decision shall be issued not later than **60 days** after the filing of the appeal. The decision shall include the following:

- a. Date, time and place of hearing (if held).
- b. Name and address of the petitioner.
- c. Name and address of the respondent.
- d. Names and addresses of all witnesses called by the parties.
- e. Information sufficient to identify all evidence presented.
- f. A reiteration of the issues raised.
- g. A determination of the facts.
- h. An analysis of the issues as they relate to the facts.
- i. A decision addressing each issue.

**Appeal to USDOL:** In general, the decision is final. However, if a decision is not issued by the due date, a WIA related appeal may be reviewed by the Secretary of the USDOL. A WIA related decision may be appealed by the adversely affected party to the USDOL within **60 days** of receipt of the DELEG/BWT decision. Pursuant to 20 CFR 667.610(c), an appeal must be submitted to the Secretary of the USDOL by certified mail, return receipt requested, to:

Secretary  
U.S. Department of Labor  
Attention: ASET  
Washington, DC 20210

A copy of the appeal must be simultaneously provided to:

Regional Administrator  
Employment and Training Administration  
U.S. Department of Labor  
230 South Dearborn Street, Room 628  
Chicago, IL 60604

And

Mr. Gary Clark, Director  
Accelerating Employment Division  
Bureau of Workforce Transformation  
Michigan Department of Energy, Labor & Economic Growth  
Victor Office Building  
201 N. Washington Square, 5<sup>th</sup> Floor  
Lansing, MI 48913

#### **IV. State Level Review of a Local Grant Recipient Appeal**

- A. Local grant recipients may appeal monitoring findings, incident report findings, single audit resolution findings/issues, and other matters related to State Workforce Investment programs by filing an appeal with the DELEG/AFC.

Other interested parties cannot appeal monitoring findings, incident report findings, single audit resolution findings/issues, etc. (which are issued by DELEG/AFC) directly to DELEG/AFC. To the extent that interested parties are affected by a DELEG/AFC decision regarding monitoring findings, incident report findings, single audit resolution findings/issues, etc., the interested parties must first file a grievance at the local level (see Step 1: Local Level Grievance Procedures).

- B. All appeals shall be submitted to:

Mr. Allen Williams, Director  
Office of Audit & Financial Compliance  
Michigan Department of Energy, Labor & Economic Growth  
General Office Building – 1<sup>st</sup> Floor, A-Wing  
7150 Harris Drive  
Lansing, Michigan 48913

- C. All appeals shall contain, to the extent practicable, the following information:

1. The full name, address, and telephone number of the party/parties filing the appeal.



2. The full name, address, and telephone number (if any) of the party/parties against whom the appeal is made.
  3. A clear and concise statement of the facts, as alleged, including the pertinent dates, constituting the alleged violation.
  4. The provision of the act, regulations, grant, contract, or other agreements under the act believed to have been violated.
  5. The relief requested.
- D. Any appeal of USDOL monitoring findings shall only be reviewed for compliance with USDOL requirements. A record shall be created to forward to USDOL, if applicable.
- E. The DELEG/AFC may conduct a hearing on an appeal within **30 calendar days** of the filing of the appeal. The appellant and the party against whom the appeal is made will be provided written notice of the date, time, and place of the scheduled hearing date and of the opportunity to present evidence, including witnesses. The notice of the hearing shall indicate the issues to be decided. Notice shall be given not less than **10 calendar days** prior to the scheduled hearing date.

For an appeal of a WIA related local level decision, an opportunity for a hearing must be provided. However, a hearing will not be held if the WIA related appeal involves a non-grievable issue.

- F. If a hearing on an appeal is to be held, it shall be conducted within **30 calendar days** of the filing of the appeal. A hearing is not required at this step if the appellant withdraws the appeal.
- G. At a minimum, the hearing process shall include:
1. A hearing officer.
  2. An opportunity for each party to present witnesses (subpoenas are not authorized under this policy) and evidence.
  3. An opportunity for each party to ask questions of all witnesses providing testimony at the hearing.
  4. A record of the hearing and a list of all evidentiary exhibits presented at the hearing.

At the discretion of the hearing officer, there may be an opportunity to exchange evidentiary information prior to the hearing.

- H. A written decision shall be issued not later than **60 calendar days** after the filing of the appeal. The decision shall include the following:
1. Date, time, and place of hearing.
  2. Name and address of the appellant.

3. Name and address of the party against whom the appeal is made.
4. Names and addresses of all witnesses called by the parties.
5. Information sufficient to identify all evidence presented.
6. A reiteration of the issues raised.
7. A determination of the facts.
8. An analysis of the issues as they relate to the facts.
9. A decision addressing each issue.

## **V. Appeals Related to Designation as a Local Workforce Investment Area**

In accordance with Section 116(a)(5) of the WIA and 20 CFR 667.645(a) and (b):

- A. Appeals of denial of automatic or temporary and subsequent designation as a local workforce investment area may be filed with the Council for Labor and Economic Growth (CLEG). Appeals must be filed by certified mail, return receipt requested, to the Michigan Department of Energy, Labor & Economic Growth, Council for Labor & Economic Growth, Victor Office Center, 201 N. Washington Square, Suite 150, Lansing, MI 48913.
- B. If the appeal to the CLEG does not result in designation as a local workforce investment area, the appellant may request a review by the Secretary of USDOL. Appeals must be filed no later than **30 days** after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the CLEG.

## **VI. Special Provisions**

Parties involved in a grievance procedure should take note of the following:

- A. **Equal Opportunity:** Complaints alleging violation of the nondiscrimination and equal opportunity (EO) provision of state/federal grant programs must be resolved in accordance with the nondiscrimination and EO policy guidelines issued by the DELEG/BWT.
- B. **Criminal Conduct:** Known or suspected fraud, abuse, or criminal conduct under the WIA shall be reported in accordance with the incident report guidelines issued by the DELEG.
- C. **TANF Displacement:** Pursuant to the PRWORA Regulation 45 CFR 261.70, a grievance may be filed by an affected individual if a recipient

of TANF is placed in a position (1) when any other individual is on layoff from the same or any substantially equivalent job or (2) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult receiving TANF assistance. In this situation, either party to the grievance, the TANF recipient, or the displaced employee, may appeal the decision rendered by the AE of the WDB to the DELEG/BWT.

- D. **WIA Displacement:** Pursuant to WIA Regulation 20 CFR 667.270(d), a grievance may be filed by a regular employee displaced by a WIA participant who is placed in an employment activity operated with WIA funds. Also, a grievance may be filed by a WIA participant in an employment activity if the participant is displaced.
- E. **Binding Arbitration/Collective Bargaining:** In accordance with 20 CFR 667.600(c)(3) of the WIA regulations, local grant recipient grievance procedures must provide WIA participants 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 to the grievance so provides.
- F. **Jurisdiction:** Depending on the nature of the grievance, TANF and FAE&T program applicant and recipient grievances shall be handled in accordance with the local grant recipient or the Michigan Department of Human Services (DHS) or other applicable procedures. For example, grievances regarding sanctioning or food stamp benefits will be handled by DHS, while grievances regarding programs administered by the local grant recipient will be handled by the AE of the WDB.
- G. **Wagner-Peyser:** Grievances involving Wagner-Peyser Act activities must be resolved in accordance with the grievance procedures outlined in the Employment Service Manual, which is available on the One-Stop Management Information System. In addition, please refer to the Employment Service Manual for specific guidance regarding work-related complaints that are not program specific, such as: employer hour and wage violations, migrant and seasonal farm worker complaints, and other possible violations of general labor laws.

**Action:** Effective immediately, local grant recipients and/or AEs of the WDBs shall establish and maintain written grievance procedures in accordance with this PI.

**Inquiries:** Questions regarding this PI may be directed to the DELEG/BWT at 517/335-5858.

In accordance with the Americans with Disabilities Act, the information contained in this policy will be made available in alternative format (large type, audio tape, etc.) upon request to this office.

**Expiration:**  
LEO:JD:tk

Continuing