

# WORKFORCE SOLUTIONS TEXOMA POLICIES & PROCEDURES

## CHAPTER 8 PROGRAM SERVICES

### SECTION 2 PROGRAM GRIEVANCE/ COMPLAINT/APPEALS

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## **TWC WD 18-07, Attachment 1, Page 2**

### **INTRODUCTION**

The purpose of this document is to provide information regarding the standard procedures used to receive and resolve complaints of discrimination.

Any person who believes the Texas Workforce Commission (TWC) or a recipient who receives federal financial assistance from or through TWC has subjected him or her or any specific class of individuals to unlawful discrimination may file a complaint of discrimination. Complaints are processed as outlined in these procedures.

#### **8.2.1 WST Discrimination Complaint / Grievance Introduction**

It is the policy of the Workforce Solutions Texoma (WST) that all complaints are treated in a fair, equitable manner and that a nondiscrimination and equal opportunity policy be followed.

It is also Board policy that no person who has filed a written complaint, testified, assisted or participated in any manner in the investigation of a complaint shall be intimidated, threatened, coerced, or discriminated against, in retaliation for such participation.

Written complaints from potential or active participants alleging a violation concerning any non-criminal grievance or programmatic-related issue, including accessibility, will be investigated and resolved. Written complaints of discrimination related to workforce-related programs administered by WST and/or WST's Service Providers relating to race, color, religion, sex, national origin, age, disability, or political affiliation or beliefs will be investigated and resolved, where possible. Customers alleging discrimination in writing of any protected class in an area not related to workforce center programs will be referred to the appropriate entity to assist them in filing their complaint. It is the goal of WST that all complaints are resolved in a timely manner.

Every attempt will be made at the local level, through WST Contractors or WST to resolve all complaints, either verbal or written, locally. Although legal advice will not be given by WST's contractor staff or Board staff, the process and procedures necessary for filing written complaints will be given. Customers will be advised they have the option of filing their complaint directly with the enforcement agency as this may lead to a quicker resolution. If verbal complaints can not be resolved locally, complainants will be offered the opportunity to call their complaint into the local enforcement agency and/or file their complaint in writing with WST or the enforcement agency.

All documentation pertaining to complaints, including Discrimination and Non-Discrimination Complaint Logs, will be retained for a period of three (3) years.

## **TWC WD 18-07, Attachment 1, Page 2**

### **Nondiscrimination under the Workforce Investment Act of 1998**

[Reference: *Workforce Investment Act (WIA), Section 188 and Code of Federal Regulations (C.F.R.), 29 C.F.R. 37*]

The forms of discrimination that are prohibited under WIA include race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I program or activity. Retaliation for opposing unlawful discrimination is also prohibited. Specific, prohibited actions related to these forms of discrimination are listed in 29 C.F.R. §3 7.30.

All recipients of WIA Title I funds and one-stop partners must effectively communicate that they do not discriminate on any of these prohibited grounds. This notice must be given to all subrecipients, applicants for and participants in programs and services, applicants for employment, employees and members of the public. The notice must contain instructions as to specific discriminatory actions that are prohibited as well as instructions on complaint procedures. Specific wording required in the notice can be found at 29 C.F.R. §3 7.30.

### **8.2.2 Orientation to Discrimination Complaint Notification**

All program applicants and participants will receive a copy of the Orientation to Discrimination Complaint Procedures Form. Said Form will contain a Contractor and Board EO Officer name, position, title, address and telephone number (voice and TTY). Participants will receive their original, signed Notice and a signed copy of same will be kept in each participant's file.

Each Texoma Workforce Center and Board office will post a copy of the Orientation to Discrimination Complaint Procedures in a public location.

## **TWC WD 18-07, Attachment 1, Page 2**

### **Responsibilities of the Equal Opportunity Officer**

Every recipient must designate an Equal Opportunity (EO) Officer except small recipients as defined in 29 C.F.R. §3 7.4. The EO Officer is responsible for coordinating the recipient's obligations and compliance activities under the nondiscrimination and equal opportunity provisions of WIA. Those responsibilities include, but are not limited to:

- Serving as the liaison with TWC or the U.S. Department of Labor (DOL), Civil Rights Center (CRC);
- Monitoring the recipient's activities and the activities of the entities that receive WIA Title I funds from the recipient to ensure they are not violating nondiscrimination and EO provisions of *WIA §188*;
- Reviewing the recipient's written policies to ensure that policies are not discriminatory;
- Developing and publishing procedures for processing discrimination complaints and ensuring those procedures are followed;
- Reporting directly to the appropriate official (TWC, Governor, or other appropriate authority) about EO matters; and
- Undergoing training to maintain competency.

### **8.2.3 WST Equal Opportunity Officer Responsibilities**

In accordance with TWC WD 18-07, WST will designate an Equal Opportunity Officer that will ensure WST is in compliance with Equal Opportunity requirements. WST's Equal Opportunity Officer will be in compliance with the responsibilities outlined on page 2 of said WD letter. WST's Equal Opportunity Officer will have designated responsibilities outlined in his/her job description and report directly to WST's Executive Director.

## **TWC WD 18-07, Attachment 1, Page 3**

### **Who May File**

A complaint of discrimination may be filed by any person or through their representative who believes that either he or she, or any specific class of individuals has been or is being subjected to discrimination prohibited by WIA by a policy, program, activity, or employee of TWC or a recipient that receives federal funding through TWC. This includes applicants and/or participants for aid, benefits, services, or training; employees, applicants for employment, and service providers.

### **Where to File**

Persons who wish to file a complaint of discrimination have several choices when filing the complaint, depending on whether the person is an employee or a customer, and also depending on the specific funding source for the program or activity. The choice of where to file a complaint of discrimination is left completely to the complainant. The local EO Officer or other staff trained in EO procedures should be prepared to explain the differences and answer any questions a potential complainant has regarding various options. Refer to Table I for authorities that have jurisdiction to process specific discrimination complaints and the types of discrimination that are prohibited by each agency. Table II lists contact information for TWC and the state and federal agencies that will accept complaints under the laws applicable to TWC and its programs.

In general, under WIA § 188 nondiscrimination and equal opportunity provisions, complaints may be filed at the federal, state, or local level. A complainant may file a complaint at the local or state level by completing and submitting a Discrimination Complaint Form (EO- 13 or EO-13S) available from a local level EO Officer (copies attached). The complainant may file a complaint at the federal level with the CRC by submitting a completed Complaint Information Form available at <http://www.dol.gov/oasam/programs/crc/EO.htm>. Complaints may also be filed with other federal agency one-stop partners according to each agency's discrimination complaint process.

It should be noted that nothing in this directive precludes a complainant from pursuing a remedy authorized under another federal, state, or local law.

### **When to File**

In most cases, a complaint of discrimination must be filed within 180 calendar days of the alleged act of discrimination. Filing means a written complaint must be *received* before the expiration of the 180-day period. Complaints received more than 180 days following the act of alleged discrimination cannot be processed and will be returned to the complainant with a notice of options for filing with either a federal or state enforcement agency.

### **Required Elements of a Complaint**

In order to be processed, a complaint must be in writing and contain the following information:

- The complainant's name and address (or other means of contacting the complainant);
- The identity of the respondent;
- A description of the complainant's allegations. The description must include enough detail to allow the EO Officer to decide:
  - Where jurisdiction lies;
  - Whether the complaint was filed in time; and
  - Whether the complaint states a case of discrimination, i.e., the allegations, if true, would violate a federal or state nondiscrimination law;
- The signature of the complainant or the complainant's representative.

A complainant may also submit a written and signed complaint narrative containing the above information.

### **8.2.4 WST Customer Discrimination Complaint Notification**

WST will ensure that all applicants and participants are advised on their right to file a discrimination complaint, where to file said complaint, and the timelines for filing, as outlined in WD 18-07, page 3, and this policy. In addition, WST will ensure that any applicant or participant that wishes to file a discrimination complaint is advised that

said complaint must be in writing and contain the required elements noted on pages 3-4 of WD 18-07.

#### **TWC WD 18-07, Attachment 1, Page 4**

##### **Incomplete Complaints**

Within five working days of receiving the complaint, the recipient should notify the complainant in writing of any further information that is needed in order to determine jurisdiction or to process the complaint. If reasonable efforts to reach the complainant are unsuccessful or if the complainant does not respond within the time specified in the request, the recipient may close the complainant's file without prejudice. The complainant may resubmit the complaint as long as it is filed within the original 180-day deadline.

If the case is closed for lack of required information, the recipient must send a written notice of closure to the complainant's last known address. In the event the complainant submits the missing information after the file has been closed, the complaint may be reopened provided it has not been more than 180 days since the date of the alleged discriminatory action. The complaint should be logged as received on the date the file is reopened and the 90 calendar day resolution period will commence with the later date.

##### **8.2.5 Incomplete Complaints**

Within five working days, WST will inform complainant of information needed to process a complaint. If complainant does not respond or attempts to reach complainant are unsuccessful, the complaint will be closed out without prejudice, with the option of resubmitting the complaint within the original 180-day deadline. In said instances, a written notice of closure will be sent to the complainant's last known address.

#### **TWC WD 18-07, Attachment 1, Page 4**

##### **Retaliation is Prohibited**

A complainant has a right to file a complaint of discrimination, have an inquiry conducted, have witnesses participate in the process and obtain a determination as to whether or not discrimination occurred. A respondent is prohibited by law from retaliating against an individual because he or she has either:

- Opposed an unlawful discriminatory employment practice;
- Opposed an unlawful discriminatory non-employment practice; or
- Made a complaint, testified, assisted or participated in an inquiry.

Any person who feels a respondent has violated this prohibition may file a complaint alleging retaliation. Retaliation is a separate complaint and a respondent can be found responsible for retaliation and thus subject to sanctions and penalties pursuant to *40 TAC §800, Subchapter E* (relating to Sanctions) and *WIA §188(b)* even if there is no finding of discrimination on the underlying complaint.

##### **8.2.6 Retaliation**

In accordance with Federal Law and 8.2.1, individuals who have filed a written complaint, testified, assisted or participated in any manner in the investigation of a complaint shall be intimidated, threatened, coerced, or discriminated against, in retaliation for such participation.

#### **TWC WD 18-07, Attachment 1, Page 4-5**

##### **Complaints under Programs other Than WIA**

A complaint of discrimination under programs other than WIA Title 1 programs administered by one-stop partners participating in the one-stop delivery system are subject to the equal opportunity and nondiscrimination provisions of *WIA §188*. One-stop partners can include entities that carry out

programs or activities related to Child Care, Employment Services (ES), Food Stamp Employment and Training (SNAP E&T), Project Reintegration of Offenders (Project RIO), Temporary Assistance for Needy Families (TANF) Choices, Trade Adjustment Assistance (TAA), Unemployment Insurance (UI), and Wagner Peyser 7(b). In general, complainants have the option of filing a program or employment-related complaint with the local EO Officer, with TWC, or with CRC under WIA nondiscrimination provisions, or filing with the non-WIA program funding agency. If the complaint is employment related, the complainant may also file with the TWC Civil Rights Division or the U.S. Equal Employment Opportunity Commission (EEOC). Refer to Table I for the types of discrimination prohibited and the corresponding authorities who have jurisdiction to process discrimination complaints and refer to Table II for applicable contact information.

More specifically, discrimination complaints in employment or program services funded in whole or in part through non-DOL programs can be filed with the local EO Officer, with TWC, or with CRC using the WIA discrimination complaint procedures set forth in this document. In addition, discrimination complaints related to other funding sources may be filed as follows:

- **Child Care and TANF Choices:** Instructions for filing with the U.S. Department of Health and Human Services can be found at <http://www.hhs.gov/ocr/index.html>.
- **SNAP E&T:** Instructions for filing with the U.S. Department of Agriculture can be found at [http://www.ascr.usda.gov/complaint\\_filing.html](http://www.ascr.usda.gov/complaint_filing.html).
- **Migrant and Seasonal Farmworkers:** Refer complaints to the Texas Monitor Advocate Officer (see Table II for address).

Discrimination in employment practices and/or wage-related complaints against employers not subject to the nondiscrimination and equal opportunity provision of WIA may be referred to the appropriate authority as follows:

- **Wage Related:** Wage related complaints should be referred to the TWC, Labor Law Section using instructions and claim forms found at <http://www.twc.state.tx.us/ui/lablaw/lablaw.html>.
- **Employment Practices:** Complaints alleging discrimination in employment practices may be referred to the TWC Civil Rights Division or to the nearest EEOC district office.

### **8.2.7 Other Program Discrimination Complaints**

A complaint of discrimination under programs other than WIA Title 1 programs administered by WST are subject to the equal opportunity and nondiscrimination provisions of *WIA §188*. Applicants or participants of any WST administered program have the option of filing a program or employment-related complaint with WST's local Equal Opportunity (EO) Officer, with TWC, with CRC under WIA nondiscrimination provisions, or with the non-WIA program funding agency. If the complaint is employment related, the complainant may also file with the TWC Civil Rights Division or the U.S. Equal Employment Opportunity Commission (EEOC). Refer to Table I for the types of discrimination prohibited and the corresponding authorities who have jurisdiction to process discrimination complaints and refer to Table II for applicable contact information.

#### **8.2.7.1 Temporary Assistance for Needy Families (TANF) / Choices**

WST is prohibited from discriminating against any TANF/Choices applicant or participant on the basis of: race, color, national origin, disability, age, sex, or religion. TANF/Choices customers who wish to file a program-related discrimination complaint will be advised they can either file said complaint within 180 days from the date of the alleged violation with:

- 1) WST's local Board or Contractor EO Officer or designee or
- 2) the Office for Civil Rights (OCR)
  - a. either by US Mail at 1301 Young Street, Suite 1169, Dallas, Texas 75202, (214) 767-4056, or
  - b. by fax to OCR at (214) 767-0432.

If the TANF/Choices customer files his/her complaint with the WST Board or Contractor EO Officer, he/she must wait either until WST issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the U.S. Department of Health and Human Services.

Complainant can use the OCR [Discrimination Complaint Form](#). If the OCR's Discrimination Complaint Form is not used, complainants will be advised that their complaint must include the following information:

- 1) Your name, address and telephone number.
- 2) If you are filing a complaint for someone else, include that person's name, address and telephone number.
- 3) The name and address of the organization or person you believe discriminated against you.
- 4) How, why and when you believe you (or the person on whose behalf you are filing the complaint) were discriminated against.
- 5) Any other information that would help OCR understand your complaint.

References:

(1) U.S. Department of Health and Human Services Office of Civil Rights located at: <http://www.hhs.gov/ocr>.

(2) TWC's Orientation to Complaint/Instructions On How To File a Complaint located at: <http://intra.twc.state.tx.us/intranet/pi/docs/3in1orientationtocomplaintprocedure.s.doc>.

#### **8.2.7.2 Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)**

WST is prohibited from discriminating against SNAP E&T applicants or customers on the following basis: race, color, religious creed, sex, political beliefs, age, disability, national origin, or limited English proficiency. Any SNAP E&T applicant or participant who wishes to file a program-related discrimination complaint may file said complaint within 180 days from the date of the alleged violation with either:

- 1) WST's Board or Contractor Equal Opportunity Officer or designee, or
- 2) U.S. Department of Agriculture, Civil Rights Office/Food and Nutrition Service, 1100 Commerce Street, Dallas, TX 75242, (214) 290-9800 or
- 4) USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW, Washington, DC 20205-9410, (202) 260-1026.

If the SNAP E&T customer files his/her complaint with the WST Board or Contractor EO Officer, he/she must wait either until WST issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the U.S. Department of Agriculture.

Customers who wish to file with the U. S. Department of Agriculture (USDOA) will be advised that the following information must be included in the complaint:

- 1) Name, address and telephone number.

- 2) The name, address, and telephone number of attorney or authorized representative.
- 3) The basis of the complaint. The basis is what complainant believes was the motivating factor for the discrimination.
- 4) The date(s) that the incident(s) occurred. In some circumstances, USDOA may waive the 180 day filing requirement.
- 5) The name of the individual(s) or entity complainant believes committed the discrimination and the agency or recipient that employs that/those individual(s).
- 6) The issue(s) of the complaint. The issue is a description of what happened, or the action that was taken by the individual(s) or agency that discriminated against the complainant, resulting in some harm. Explain as clearly as possible what happened, why you believe it happened, and how you were discriminated against. Please include how other persons were treated differently from you, if applicable. If there was a denial of a benefit or service, please provide a copy of the denial letter. Include copies of all documents to support the events that are reported.

References:

(1) U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights located at: [http://www.ascr.usda.gov/complaint\\_filing\\_program.html](http://www.ascr.usda.gov/complaint_filing_program.html).

(2) TWC's Orientation to Complaint/Instructions On How To File a Complaint located at:

<http://intra.twc.state.tx.us/intranet/pi/docs/3in1orientationtocomplaintprocedure.s.doc>

### **8.2.7.3 Child Care Services (CCS)**

In accordance with 45 CFR 80 and 84, it is against the law for WST to discriminate against any Child Care Services applicant or participant on the following bases: race, color, religion, sex, national origin, age, disability, political affiliation or belief. WST must not discriminate in any of the following areas: deciding who will be admitted, or have access, to any CCS-financially assisted program or activity; providing opportunities in, or treating any persons with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity. If any child care applicant or participant feels they have been subjected to discrimination under CC-financially assisted program or activity, a complaint may be filed within 180 days from the date of the alleged violation with either:

- 1) WST Board or Contractor Equal Opportunity Officer or designee, or
- 2) the U.S Department of Health and Human Services Office of Civil Rights, 1301 Young Street, Suite 1169, Dallas, TX 75202, (214) 767-4056; fax: (214) 767-1471) or
- 3) the U.S. Department of Agriculture (USDA), Office of Civil Rights-Southwest Region, Food and Nutrition Services, 1100 Commerce Street, Dallas, Texas 75242, (214) 290-9820.

If the Child Care customer files his/her complaint with the WST Board or Contractor EO Officer, he/she must wait either until WST issues a written Notice

of Final Action, or until 90 days have passed (whichever is sooner), before filing with the U.S. Department of Health and Human Services or the Department of Agriculture.

References:

(1) U.S. Department of Health and Human Services Office of Civil Rights located at: <http://www.hhs.gov/ocr>.

(2) TWC's Orientation to Complaint/Instructions On How To File a Complaint located at: <http://intra.twc.state.tx.us/intranet/pi/docs/3in1orientationtocomplaintprocedure.s.doc>.

#### **8.2.7.4 Project Re-Integration of Offenders (Project RIO) and Trade Adjustment Act (TAA), and Trade Readjustment Allowances (TRA)**

Project RIO, TAA, and TRA customers who feel they have been subjects of discrimination will be directed to follow the WIA Discrimination Complaint filing procedures located at 9.2.9 of these policies. Project RIO customers may file a discrimination complaint within any applicable program they have been co-enrolled in.

#### **8.2.7.5 TWC Employee-Related Discrimination Complaints**

If discrimination complaints involving TWC employees cannot be resolved locally, complainants may choose to file a written complaint. Complainants will be provided with the EEO-13/13S to file their written complaint. Complainant can forward the complaint directly to either:

- 1) The LWDA Integrated Service Area Manager, 5904 Texoma Parkway, Sherman, TX 75090.
- 2) The Civil Rights Center, U. S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, DC 20210.

#### **8.2.7.6 Workforce Center-Related Employment Services Discrimination Complaints**

Center-related Employment Services Discrimination Complaints refer to complaints of customers referred to jobs that are posted with the workforce center (Work-In-Texas). If these complaints cannot be resolved locally, complainant will be provided with the EO-13/13S to file their written complaint. Complainant can forward the complaint directly to the Texas Workforce Commission, Civil Rights Division, P.O. Box 13006, Austin, TX 78711-3006 or the nearest Equal Employment Opportunity Commission.

All center-related Employment Services discrimination complaints should be reported to the broker assigned to that employer who will then review other job orders by that employer to ensure that no discriminatory language or procedures are reflected in said job orders.

#### **8.2.7.7 Migrant and Seasonal Farm Workers Discrimination**

## **Complaints**

Workforce Center Operator will attempt to resolve cases where the MSFW customer reports an employer refused to take an application or hire due to the customer migrating from the area. If the case cannot be resolved locally, customer will be offered the opportunity to complete the EEO13/S. Said form will be logged on the Discrimination Complaint Log, Form EEO-4, and sent to the Texas Monitor Advocate Officer, ATTN: Francisco Cerda, 101 East 15<sup>th</sup> Street, Room 116-T, Austin, Texas 78778-0001, 512.475.1179.

### **8.2.7.8 Unemployment Insurance (UI) Discrimination Complaints**

Customers having complaints concerning the Unemployment Insurance (UI) system can be referred directly to the UI Customer Service at 512.643.2547 or 512.936.6379 to discuss or file their written complaint. If complainant insists on filing a written complaint, they will be provided with the EO-13/13S and given the following address to mail their written complaint: Unemployment Insurance Ombudsman, Rosa Perez, Room 354, Texas Workforce Commission, 101 E. 15<sup>th</sup> Street, Austin, Texas 78778.

## **TWC WD 18-07, Attachment 1, Page 5**

### **Complaints Not Based on Discrimination**

Each Board and Board subcontractors should have a written policy on complaint resolution for complaints not based on discrimination as set forth in *20 C.F.R. §667.600*. If a complaint is not based on discrimination, but on program or customer service issues, process the complaint in accordance with local policies and procedures. Examples might include complaints of discourteous treatment by Texas Workforce Center staff or violations of the terms and conditions of a job posting in [WorkInTexas.com](http://WorkInTexas.com). Once received, attempt to resolve the complaint at the Texas Workforce Center level. If this is not possible, refer the complaint to the Board level for resolution. In the event the complaint cannot be resolved at the Board level, the complaint should be referred to the TWC ombudsman. Refer to Table II for the ombudsman's mailing address.

### **8.2.8 Non-Discrimination/ Non-Program Complaints**

Non-discrimination complaints that are non-program related concerning poor customer service, equipment complaints, etc. will be referred to the Workforce Center Management staff for resolution. If the complaint cannot be resolved by the management staff, it will be referred to the Workforce Systems Director. If the Workforce Systems Director cannot achieve resolution, the complainant then can be referred to the WST EO Officer/Complaint Monitor. The final decision on all general non-discrimination, non-program related complaints will be made by the WST Executive Director. Complainants who are not satisfied with the WST Executive Director's decision will be referred to the TWC Ombudsman at 101 E. 15th Street, Room 651, Austin, Texas 78778-000 1, (512) 463-2236 (Voice) (800) 735-2989 (TDD) (800) 735-2988 (Voice).

#### **8.2.8.1 Fraud, Abuse, or Other Criminal Activity Reporting**

Procedures for handling complaints involving allegations of fraud or abuse are located at WST Fraud and Recoupment Policy and Procedures, Chapter 8, Section 13. All criminal activity shall be reported directly to the Texas Workforce Commission, Office of Investigations, 101 E. 15<sup>th</sup> Street, Room 220, Austin, Texas 78778-0001

#### **8.2.8.2 Complaint File**

Both the Workforce Center Operator and the WST EO Officer will maintain a "Complaint File" where all written complaints/grievances received by either party will be placed." A detailed transaction of the investigation and any actions taken on the complaint, including supporting documents and case notes, will also be included in the file.

## **TWC WD 18-07, Attachment 1, Page 6**

### **WORKFORCE INVESTMENT ACT DISCRIMINATION COMPLAINT PROCESSING PROCEDURES**

#### **Process Overview**

The required elements of a discrimination complaint process are outlined in 29 C.F.R. §37.76 through §37.80 and in *Texas Administrative Code (TAC)*, 40 TAC §841.208 through §841.215. For purposes of illustrating the process, the following example of a discrimination complaint received at a Texas Workforce Center is provided.

- Complainant expresses a desire to file a discrimination complaint.
- The Texas Workforce Center representative provides the complaint form.
- A written and signed complaint is received.
- A copy of the completed and signed complaint form is provided to the complainant.
- The Texas Workforce Center representative logs the complaint on the Discrimination Complaint Log.
- The complaint form is immediately forwarded to the Board EO Officer.
- The Board EO Officer:
  - Determines jurisdiction by considering the basis of the complaint, the timeliness of the complaint, and whether the respondent is a recipient of WIA funds or participates in the one-stop delivery system.
  - If it is determined that the Board lacks jurisdiction, the complainant is provided with an initial written notice within five days of receipt of the complaint stating the reasons for the determination and providing notice that the complainant has the right to file a complaint with CRC within 30 days from the date the complainant receives the notice.
  - If the Board has jurisdiction, the recipient provides the complainant with an initial written notice within five days of receiving the complaint. The initial written notice acknowledges receipt of the complaint, gives notice of the right to representation, provides a list of issues identified by the complainant and indicates whether the Board will accept or reject each issue with reasons for rejection. The notice also offers the complainant Alternative Dispute Resolution (ADR) services in lieu of the complaint processing procedures.
  - If the complainant agrees to ADR, the ADR process is completed according to Board procedures. This process should be completed within 40 days from the date of the initial written notice.
  - If ADR is not elected, or is unsuccessful, the fact-finding process is initiated. The fact-finding process is completed within 45 days from the date of the initial written notice or 30 days from the date of the failed ADR.
  - A Notice of Final Action is provided to the complainant within 90 days from the date on which the complaint was filed.
- Records regarding complaints and corresponding actions must be maintained for not less than three years from the date of resolution.

#### **Steps in the Process**

##### **Step 1 – Complete Written Complaint**

Complainants may file a written complaint of discrimination themselves or through a representative. In the event a complaint is received by phone, notify the complainant that the complaint must be submitted in writing and signed. If a written complaint does not contain all

the information required in 29 C.F.R. §37.73, offer to mail (or e-mail) the form or ask the complainant to pick up the form.

In the event complainants present themselves in person, Texas Workforce Center staff escorts the complainant to the representative designated to receive complaints.

The Texas Workforce Center representative provides the complainant with the Discrimination Complaint Form (EO-13 or EO-13S). A supply of forms should be maintained locally. When meeting with the complainant, the Texas Workforce Center representative should:

- Explain the form to the complainant and provide instructions for returning the form by mail
- or in person.
- Not provide legal advice or advocate a position.
- Not complete the form for the complainant, unless providing reasonable accommodation to individuals with disabilities.
- Explain the discrimination complaint process to the complainant.
- Explain to the complainant that a written acknowledgment will be sent within five working days.

The Texas Workforce Center representative may attempt to resolve the situation. However, if the complainant desires to submit a written complaint, it must be completed and processed.

### **Step 2 – Log Complaint and Forward to Equal Opportunity Officer**

When the written complaint is received, the Texas Workforce Center representative logs the complaint on the discrimination complaint log. The discrimination complaint is immediately forwarded to the Board EO Officer. The Board EO Officer may attempt to resolve the situation at any time during the process.

### **Step 3 – Determine Jurisdiction**

The Board EO Officer initiates the fact-finding process to determine whether the Board has jurisdiction to process the complaint. There are three criteria that determine jurisdiction:

- BASIS – The Board may accept and process only those complaints that allege discrimination on the basis of race, color, religion, national origin, sex, political affiliation or belief, age or disability, or (for beneficiaries only) citizenship or participation in WIA;
- TIMELINESS – The Board may accept and process a complaint only if it is filed within 180 days of the alleged violation; and
- PROGRAM TYPE – The Board may accept and process only those complaints in which the program or activity against which the complaint is filed is financially assisted by WIA funds. This includes all WIA Title 1 programs as well as all one-stop partner programs. One-stop partners are also subject to the nondiscrimination and equal opportunity provisions of the WIA to the extent that they participate in the One-stop delivery system.

### **Step 4 – Provide Initial Written Notice to Complainant**

Provide an initial written notice to the complainant within five working days of the receipt of the complaint.

a. If it is determined that the Board has jurisdiction, then:

- The notice should acknowledge receipt of the written complaint and advise complainants of their right to representation (without cost to the Board).
- The notice should also list each issue identified by the complainant and whether the Board will accept the issue for investigation or reject the issue, with the reason listed for each rejection.
- The notice should advise complainants that they may choose to use the Board's ADR procedure rather than the complaint processing procedure. *Note: 40 TAC §841.212 requires that each Board establish a written ADR procedure. The notice must advise complainants that they must file notice of the election to use ADR procedures within seven calendar days of receipt of notification.*

b. If it is determined that the Board lacks jurisdiction, then:

- The notice should acknowledge receipt of the complaint and advise the complainant that the Board lacks jurisdiction. The notice should also state the reason for the determination and provide notice that the complainant may file a complaint with the CRC Director within 30 days of the receipt of the notification.
- Where possible, the Board EO Officer should then refer the complaint to the state or federal agency that has jurisdiction in the matter and provide the complainant with the agency name and address or

a copy of the referral letter.

### **Step 5 – Complete Alternative Dispute Resolution Process, if Elected**

If the complainant elects to resolve the complaint through ADR, proceed with the Board's written ADR procedures. If ADR is not elected proceed to Step 6. The following are guidelines for the ADR process:

- If the complainant elects to use the Board's written ADR procedure, the complainant must submit a notice of this election within seven calendar days of the complainant's receipt of the Board's initial written notice.
- The ADR process should be completed within 40 days from the date of the initial written notice.
- The EO Officer coordinates the scheduling of the mediation with a qualified mediator at a location convenient to the complainant and the respondent.
- If the parties are able to resolve the dispute at mediation, a written settlement agreement must be prepared and signed by all parties. A copy of the agreement is given to all parties.
- If the parties reach an agreement, the EO Officer provides the complainant with a Notice of Final Action.
- In the event a mediation agreement is subsequently breached, the non-breaching party should notify the EO Officer. The non-breaching party may file a complaint directly with the CRC Director within 30 calendar days from the date the party learns of the alleged breach. If the CRC Director determines the agreement has been breached the complainant may file a complaint with CRC based on the original allegations. The CRC Director will waive the 180 day deadline and process the complaint as an initial complaint.

### **Step 6 – Complete Fact-Finding Process if Alternative Dispute Resolution is not Elected or is Unsuccessful**

If ADR is not elected or is not successful and the complainant elects to proceed with the complaint at the recipient level, initiate the fact-finding process.

- Complete the fact finding process within 45 days from the date of the original written notice or 30 days from the date of the failed ADR.
- The EO Officer should attempt to resolve the complaint. At any point in the process, the EO Officer may request that the parties attempt conciliation. The EO Officer should act to facilitate such conciliation efforts.

### **Step 7 – Determine if Act of Discrimination Has Occurred and Notify Parties**

At the completion of the fact-finding process, the EO Officer must determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and EO provisions of the WIA and notify the complainant and respondent, in writing, of that determination.

- If the EO Officer determines that no act of discrimination has occurred, the complainant must be provided with a written Notice of Final Action within 90 days from the date the complaint was received. The notice must include:
  1. The decision for each issue raised and reasons for the decision; and
  2. Notice that the complainant has the right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if the complainant is dissatisfied with the final action on the complaint.
- If there is reasonable cause to believe a violation has occurred, the EO Officer:
  1. Notifies the TWC Subrecipient and EO Monitoring Department of this finding. The department will assist in reviewing the file and the conclusions. (If reasonable cause is determined the department immediately notifies the state EO Officer.)
  2. Must provide the complainant with a Notice of Final Action within 90 days that includes:
    - a. The decision for each issue raised and reasons for the decision or a description of how the issues were resolved;
    - b. Any remaining remedial or corrective actions required of the respondent; and
    - c. Notice that the complainant has the right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if the complainant is dissatisfied with the final action on the complaint.
  3. If violations are unresolved, the EO Officer must issue an Initial Determination Notice to the respondent. The Initial Determination Notice must include:
    - a. The specific findings;
    - b. Corrective or remedial action required by the respondent;

- c. The time by which the respondent must complete the corrective action;
  - d. A statement as to whether the respondent must enter into a written agreement; and
  - e. The opportunity for the respondent to engage in voluntary compliance negotiations.
- Note that if a Notice of Final Action is not issued within 90 days of the receipt of the complaint, the complainant may file a complaint with CRC within 30 days of the expiration of the 90-day period.

### **Step 8 – Complete Resolution Process**

The respondent must file a notice within ten calendar days of receipt of the Initial Determination Notice that states whether the recommended complaint resolution is accepted and whether the respondent will complete the required corrective actions. When the resolution process is complete, or the respondent has not agreed to or performed the corrective or remedial actions to resolve the violation, the EO Officer must issue a Final Determination Notice. The Final Determination Notice must include the following:

- Description of efforts to resolve the violation(s);
- Recap of the remaining unresolved violation(s);
- Description of corrective or remedial actions required to come into compliance; and
- Notice that if the respondent fails to come into compliance within ten days of receiving the Final Determination Notice, sanctions may be imposed pursuant to 40 TAC § 800, Subchapter E (relating to sanctions), WIA § 188(b), or other remedies prescribed by law.

## **8.2.9 WST WIA DISCRIMINATION PROCEDURES**

In the event a written WIA-related Discrimination complaint is received, WST will ensure steps noted in the WD 18-07, page 6, Process Overview are completed. For discrimination complaints that are timely and WST is determined to have jurisdiction, WST will issue an initial written notice and offer Alternative Dispute Resolution (ADR) services as noted in 8.2.9.1 below, in lieu of the complaint processing procedures. If the ADR is not elected or is unsuccessful, WST will initiate a fact-finding process that will be completed within 45 days from the date of the initial written notice or 30 days from the date of the failed ADR. All process steps noted in WD 18-07 will be followed. In addition, a Notice of Final Action will be provided to the complainant within 90 days from the date on which the complaint was filed.

### **8.2.9.1 ALTERNATIVE DISPUTE RESOLUTION**

Complainants involved in WST administered programs can choose to have their written discrimination complaint processed through participation in a local-level Alternative Dispute Resolution (ADR) procedure in lieu of the formal discrimination complaint process. If this option is chosen, the Board EO officer will coordinate the scheduling of mediation with a certified mediator at a location convenient to the complainant and respondent. Within 30 days of the date of the complainant's election to participate in ADR, a copy of the final agreement or a notice of failure to reach agreement will be provided to the Board EO officer and TWC.

Table I

**Prohibited Discrimination Under Regulations of Selected Programs Applicable to TWC, Local Workforce Investment Boards, One-stop Operators and Service Providers**

Prohibited Discrimination	In Employment				In Programs and Activities		
	Under WIA Title 1 (including One-Stop Partners) (x) <sup>1</sup>	Under U.S. Dept. of Health & Human Services regulations (x) <sup>2</sup>	Under U.S. Dept of Agriculture regulations (x) <sup>3</sup>	Statutes Enforced by EEOC & TWCCRD (x) <sup>4</sup>	Under WIA Title 1 (including One-Stop Partners) (x) <sup>1</sup>	Under U.S. Dept. of Health & Human Services regulations (x) <sup>2</sup>	Under U.S. Dept of Agriculture regulations (x) <sup>3</sup>
age	x			x	x	x	x
citizenship / immigrant status (lawfully admitted authorized to work in the U.S.)					x		
color	x	x	x	x	x	x	x
disability	x	x	x	x	x	x	x
equal pay				x			
familial status income from public assistance program							x
5 national origin	x	x	x	x	x	x	x
marital status							x
participation in WIA Title 1 financially assisted program or activity					x		
political affiliation or belief	x				x		
race	x	x	x	x	x	x	x
religion	x			x	x	6	x
reprisal/retaliation				x	x	x	
sex	x	x	x	x	x	x	x
sexual orientation	x	x	x	x	x	x	x
							x

**NOTES:**

1. Includes programs and employment practices of One-Stop Partners as defined in WIA 121(b) including, but not limited to, WIA Title I, ES, Wagner Peyser 7(b), TAA, UI, Child Care, Project RIO, TANF Choices, & SNAP E&T programs

2. Includes TANF Choices & child care-funded employment-related and program activities. Also includes transportation contracts associated with TANF Choices program participants (45 C.F.R. Part 80, Part 84, Part 86, and Part 90)

3. Includes Food Stamp Employment and Training-funded employment-related and program activities. Also includes transportation contracts associated with SNAP E&T program participants (7 C.F.R. 15)

4. EEOC enforces Title VII of Civil Rights Act of 1964 (as amended), Equal Pay Act, Age Discrimination in Employment Act, and Title I & V of the Americans with Disabilities Act. TWC's CRD enforces Texas Labor Code Chapter 21.

5. Also includes discrimination based on limited English proficiency

6. Applies to the selection of a service provider based on religious character or affiliation [45 C.F.R. 87.2(b)]

7. Pertains to employment practices of certain training providers (7 C.F.R. 15a & 45 C.F.R. 86)

8. Sex discrimination also includes pregnancy, childbirth and related medical conditions [Title VII of Civil Rights Act, as amended Sec. 2000e(k)].

**Table II**  
**Contact Information for Discrimination Complaints**

**STATE AGENCIES**

**Texas Workforce Commission  
Civil Rights Division**  
1117 Trinity, Room 144-T  
P.O. Box 13006 (78711-3006)  
Austin, Texas 78701-1919  
512. 463-2642 or (888) 452-4778  
(800) 735-2988 (Voice) (800) 735-2989 (TDD)

**Texas Workforce Commission  
Labor Law Section**  
101 E. 15th Street, Room 124-T  
Austin, Texas 78778-0001  
(800) 832-9243 (Voice) (800) 735-2989 (TDD)

**Texas Monitor Advocate Officer**  
101 E. 15th Street, Room 116-T  
Austin, Texas 78778-001  
(512) 475-1179 (Voice) (800) 735-2989 (TDD)  
(800) 735-2988 (Voice)

**Texas Workforce Commission  
Attn: Ombudsman**  
101 E. 15th Street, Room 651  
Austin, Texas 78778-000 1  
(512) 463-2236 (Voice) (800) 735-2989 (TDD)  
(800) 735-2988 (Voice)

**Texas Health and Human Services Commission  
Office of the Ombudsman, MC H-700**  
P. O. Box 85200  
Austin, Texas 78708  
877.787.8999 (Voice)  
TTY: 888.425-6889 / 512.438.3087  
[www.hhsc.state.tx.us](http://www.hhsc.state.tx.us)

**FEDERAL AGENCIES**

**U. S. Department of Labor  
Civil Rights Center**  
200 Constitution Avenue, NW  
Room N-4123  
Washington, DC 20210  
(866) 487-2365 (Voice) (866) 889-5627 (TTY)  
(202) 514-2226 (Voice) (202) 693-6515 (TTY)  
Technical Assistance Program, ADA Info Line  
(800) 514-0301 (V) / (800) 512-0383 (TTY)

**U. S. Department of Health and Human Services  
Office for Civil Rights, Region VI**  
1301 Young Street, Room 1169  
Dallas, Texas 75202  
(800) 368-1019 (Voice) (800) 537-7697 (TDD)  
(214) 767-4056 (Voice) (214) 767-8940 (TDD)

**U. S. Department of Agriculture  
Office of Civil Rights**  
1400 Independence Avenue, SW, Mail Stop 94  
Washington, DC 20250-9410  
Customer Service Unit  
(800) 795-3272 (Voice) (800) 720-6382 (TDD)  
(202) 401-0005 (Voice) (202) 401-0216 (TTY)

**Equal Employment Opportunity Commission  
San Antonio District Office**  
Mockingbird Plaza II  
5410 Fredericksburg Road, Suite 200  
San Antonio, Texas 78229  
(800) 669-4000 (Voice) (800) 669-6820 (TDD) (210)  
281-7600 (Voice) (210) 281-7610 (TTY)

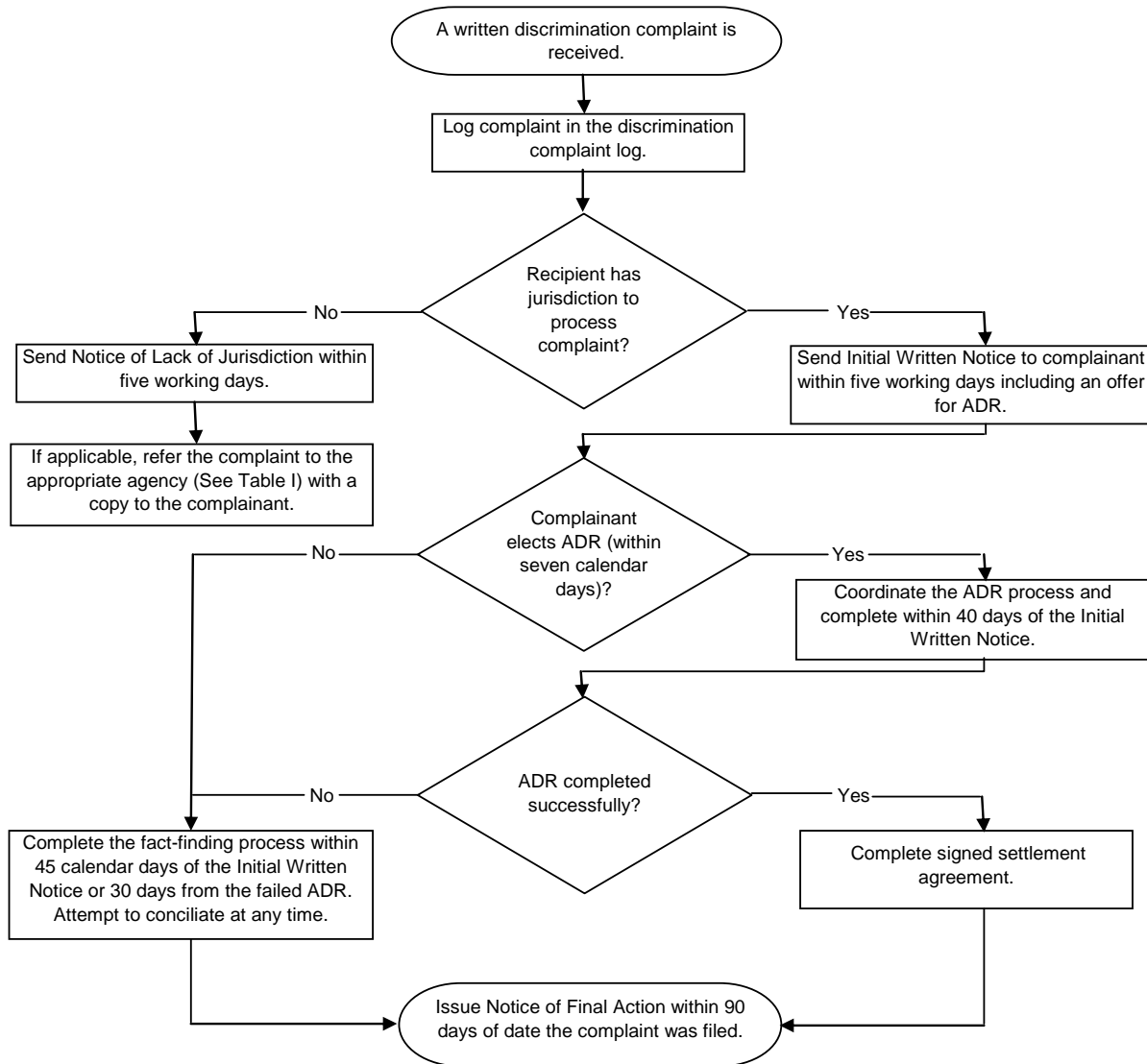
**Equal Employment Opportunity Commission  
Dallas District Office**  
207 South Houston, Third Floor  
Dallas, Texas 75202  
(800) 669-4000 (Voice) (800) 669-6820 (TDD)  
(214) 253-2700 (Voice) (214) 253-2710 (TTY)

**Equal Employment Opportunity Commission  
El Paso Area Office**  
300 East Main Street, Suite 500  
El Paso, Texas 79901  
(800) 669-4000 (Voice) (800) 669-6820 (TDD)  
(915) 534-6700 (Voice) (915) 534-6710 (TTY)

**Equal Employment Opportunity Commission  
Houston District Office**  
Mickey Leland Federal Building  
1919 Smith, 6th Floor  
Houston, Texas 77002  
(800) 669-4000 (Voice) (800) 669-6820 (TDD)  
(713) 209-3320 or 3329 (Voice)  
(713) 209-3439 (TTY)

**TABLE III**

**DISCRIMINATION COMPLAINT PROCESS**



**NOTES:**

1. This flow chart provides a broad overview of the discrimination complaint process.
2. In the event an ADR agreement is breached, the non-breaching party may initiate a complaint directly with CRC within 30 days of the day the non-breaching party learns of the alleged breach.
3. If violations are unresolved when the Notice of Final Action is issued to the Complainant, the EO Officer must also issue an Initial Determination Notice to the Respondent with the corrective actions required followed by a Final Determination Notice at the end of the resolution period (See steps 7 and 8).
4. If the Complainant is dissatisfied with the final action, he/she has the right to file a complaint with CRC within 30 days of the Notice of Final Action.
5. Complaints not related to discrimination, such as program or customer service issues, must be processed according to local policies and procedures. In the event a complaint not based on discrimination cannot be resolved at the local level, contact the appropriate TWC office for assistance.

## Chapter 823 Integrated Complaints, Hearings and Appeals

### SUBCHAPTER A. GENERAL PROVISIONS

#### §823.1. Short Title and Purpose.

- (a) This chapter provides an appeals process to the extent authorized by federal and state law and by rules administered by the Texas Workforce Commission (Agency).
- (b) This section applies only to complaints or determinations regarding federal- or state-funded workforce services administered by the Agency or Local Workforce Development Boards (Boards), as follows:
  - (1) Child care;
  - (2) Temporary Assistance for Needy Families (TANF) Choices;
  - (3) Food Stamp Employment and Training (SNAP E&T);
  - (4) Project Reintegration of Offenders (Project RIO);
  - (5) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth; and
  - (6) Eligible Training Providers (ETP) receiving WIA funds or other funds for training services.
- (c) Determinations or complaints relating to the following matters are not governed by this chapter:
  - (1) Across-the-board reductions of services, benefits, or assistance to a class of recipients;
  - (2) Matters governed by hearing procedures otherwise provided for in this title;
  - (3) Alleged violations of nondiscrimination and equal opportunity requirements;
  - (4) Denial of benefits as it relates to mandatory work requirements for individuals receiving TANF and SNAP E&T services and is administered through the Texas Health and Human Services Commission (HHSC);
  - (5) Matters governing job service–related complaints as referenced in 20 C.F.R. Part 658, Subpart E, §§400-418 and the federal Employment Service law;
  - (6) Services provided by the Commission pursuant to Texas Labor Code §301.023 - Complaints Against the Commission; or
  - (7) Alleged criminal violations of any services referenced in §823.1(b).

*The provisions of this §823.1 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### 8.2.10 Integrated Program Complaints, Hearings and Appeals

WST will adhere to the general provisions outlined in TWC Rule 823.1 Short Title and Purpose. The policies defined in this Chapter will apply to all customers as designated in 823.1.b relating to program complaints. Allegations of discrimination or equal opportunity issues will be handled according to 8.2.1-10 of this policy.

#### 8.2.10.1 Customer Rights and Complaint Resolution Procedures Notification

All program applicants and participants will receive a copy of the WST Customer Rights and Complaint Resolution Procedures and Customer Complaint Form upon enrollment into programs noted at 823.1.b. Said Procedures will contain a Contractor and Board EO Officer name, position, title, address and telephone number (voice and TTY). Participants will receive their original, signed Procedures and a signed copy of same will be kept in each participant's file.

Each Texoma Workforce Center and Board office will post a copy of the Customer Rights and Complaint Resolution Procedures in a public location and make available, upon request, a copy of the Customer Complaint Form.

### **§823.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) Adverse action -- Any denial or reduction in benefits or services to a party, including displacement from current employment by a Texas Workforce Center customer.
- (2) Agency decision -- The written finding issued by an Agency hearing officer following a hearing before that hearing officer.
- (3) Appeal -- A written request for a review filed with the Board or Agency by a person in response to a determination or decision.
- (4) Board decision -- The written finding issued by a Board hearing officer following a hearing before that hearing officer in response to an appeal or complaint.
- (5) Complaint -- A written statement alleging a violation of any law, regulation, or rule relating to any federal- or state-funded workforce service.
- (6) Determination -- A written statement issued to a Texas Workforce Center customer by a Board, its designee, or the Agency relating to an adverse action, or to a provider or contractor relating to denial or termination of eligibility under programs administered by the Agency or a Board listed in §823.1(b).
- (7) Hearing officer -- An impartial individual designated by either the Board or the Agency to conduct hearings and issue administrative decisions.
- (8) Informal resolution -- Any procedure that results in an agreed final settlement between all parties to a complaint or an appeal.
- (9) Party -- A person who files a complaint or who appeals a determination or the entity against which the complaint is filed or that issued the determination.

*The provisions of this §823.2 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.3. Agency and Board Timeliness.**

- (a) A properly addressed determination or decision is final for all purposes unless the party to whom it is mailed files an appeal no later than the fourteenth calendar day after the mailing date.
- (b) Each party to a complaint or an appeal shall promptly notify, in writing, the Board, Board's designee, or the Agency with which the complaint or appeal was filed of any change of mailing address. Determinations and decisions shall be mailed to this address.
  - (1) A copy of the determination or decision must be mailed to a properly designated party representative in order for it to become final.
  - (2) The Board or Agency is responsible for making an address change only if the Board or Agency is specifically directed by the party to mail subsequent correspondence to the new address.
  - (3) If the Board, Board's designee, or Agency addresses a document incorrectly, but the party receives the document, the time frame for filing an appeal shall begin as of the actual date of receipt by the party, whether or not the party receives the document within the appeal time frame set forth in subsection (a) of this section. However, this does not apply if the party fails to provide a current address or provides an incorrect address.
- (c) A determination or decision mailed to a party shall be presumed to have been delivered if the document was mailed as specified in subsection (b) of this section.
  - (1) A determination or decision shall not be presumed to have been delivered:
    - (A) if there is tangible evidence of nondelivery, such as being returned to sender by the U.S. Postal Service; or
    - (B) if credible and persuasive evidence is submitted to establish nondelivery or delayed delivery to the proper address.
  - (2) If a party provides the Board or Agency with an incorrect mailing address, a mailing to that address shall be considered a proper mailing, even if there is proof that the party never received the document.
- (d) A complaint or an appeal shall be in writing. Complaints or appeals may be filed electronically only if filed in a form approved by the Agency in writing. The filing date for a complaint or an appeal shall be:
  - (1) the postmarked date or the postal meter date (where there is only one or the other);
  - (2) the postmarked date, if there is both a postmark date and a postal meter date;
  - (3) the date the document was delivered to a common carrier, which is equivalent to the postmarked date;
  - (4) three business days before receipt by the Board or Agency, if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;
  - (5) the date of the document itself, if the document date is fewer than three days earlier than the date of receipt and if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;
  - (6) the date of the document itself, if the mailing envelope containing the complaint or appeal is lost after delivery to the Board or Agency. If the document is undated, the filing date shall be deemed to be three business days before receipt by the Board or Agency; or
  - (7) the date of receipt by the Board or Agency, if the document was filed by fax.

- (e) Credible and persuasive testimony under oath, subject to cross-examination, may establish a filing date that is earlier than the dates established under subsection (d) of this section. A party shall be allowed to establish a filing date earlier than a postal meter date or the date of the document itself only upon a showing of extremely credible and persuasive evidence. Likewise, when a party alleges that a complaint or appeal has been filed that the Board or Agency has never received, the party must present extremely credible and persuasive evidence to support the allegation.
- (f) A decision or determination shall not be deemed final if a party shows that a representative of the Board, Board's designee, or Agency has given misleading information on appeal rights to the party. The party shall specifically establish:
  - (1) how the party was misled; or
  - (2) what misleading information the party was given, and, if possible, by whom the party was misled.
- (g) There is no good cause exception to the timeliness rules.

*The provisions of this §823.3 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### 8.2.11 Board Timeliness

WST will comply with requirements outlined in TWC Rule 823.3.

#### **§823.4. Representation.**

Each party may authorize a hearing representative to assist in presenting a complaint or an appeal on behalf of the party under this chapter. The Agency or Board may require authorization to be in writing. On behalf of the party, the hearing representative may exercise any of the party's rights under this chapter.

*The provisions of this §823.4 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### 8.2.12 Representation

Each party of a complaint or hearing may designate a representative to act on their behalf. WST will require this authorization to be designated in writing and signed by both the party that is the subject of a hearing or complaint and the person designated to represent them. The statement must allow the hearing/complaint representative to exercise any of the party's rights for a hearing or complaint.

## **SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES**

### **§823.10. Board-Level Complaints.**

- (a) Persons who may file a complaint include:
  - (1) Texas Workforce Center customers;
  - (2) other interested persons affected by the One-Stop Service Delivery Network, including subrecipients and eligible training providers; and
  - (3) previously employed individuals who believe they were displaced by a Texas Workforce Center customer participating in work-based services such as subsidized employment, work experience, or workfare.
- (b) Complaints shall be in writing and filed within 180 days of the alleged violation.
- (c) The complaint shall include:
  - (1) the party's name and current mailing address; and
  - (2) a brief statement of the alleged violation identifying the facts on which the complaint is based.
- (d) Each Board shall ensure that information about complaint procedures is provided to individuals, eligible training providers, and subrecipients. The information provided shall be presented in such a manner as to be understood by the affected individuals, including youth, individuals with disabilities, and individuals with limited English proficiency. This information shall be:
  - (1) posted in a conspicuous public location at each Texas Workforce Center;
  - (2) provided in writing to any customer;
  - (3) made available in writing to any individual upon request; and
  - (4) placed in each Texas Workforce Center customer's file.

*The provisions of this §823.10 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **8.2.13 Board Level Complaints**

Information about WST complaint procedures will be made available to Workforce customers using the following:

- a) Information about filing a complaint, including deadlines for filing, will be posted in a prominent area in the Resource Room in each workforce center.
- b) Provided to each customer in writing upon enrollment and again at termination of services.
- c) Made available to any customer in writing upon request. Complaint information must be presented to the customer within 2 business days of the request.
- d) A copy of the complaint information and verification the customer received such information will be maintained in the customer's file.

### **§823.11. Determinations.**

- (a) A determination affecting the type and level of services to be provided by a Board or its designee shall be promptly provided to any person directly affected.
- (b) The determination shall include the following:
  - (1) A brief statement of the adverse action;
  - (2) The mailing date of the determination;
  - (3) An explanation of the individual's right to an appeal;
  - (4) The procedures for filing an appeal to the Board, including applicable time frames as required in §823.3;
  - (5) The right to have a hearing representative, including legal counsel; and
  - (6) The address or fax number to send the appeal.
- (c) Boards shall allow providers of training services the opportunity to appeal a determination related to the:
  - (1) denial of eligibility as a training provider under WIA §122(b), §122(c), or §122(e);
  - (2) termination of eligibility as a training provider or other action under WIA §122(f); or
  - (3) denial of eligibility as a training provider of on-the-job or customized training by the operator of a Texas Workforce Center under WIA §122(h).
- (d) A person that receives a determination from a Board or a Board's designee may file an appeal with the Board requesting a review of the determination. The appeal must be submitted in writing, filed within 14 calendar days of the mailing date of the determination, and include the party's proper mailing address.

*The provisions of this §823.11 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **8.2.14 Determinations**

Information about WST appeal procedures will be made available to Workforce customers using the following:

- a) Provided to each customer in writing upon enrollment and again at termination of services.
- b) Made available to any customer in writing upon request. Appeal information must be presented to the customer within 2 business days of the request.
- c) Verification the customer received information on their right to appeal adverse action/termination of services will be maintained in the customer's file.

Providers of training services will be notified of their right to appeal denial or termination as an eligible training provider at the time they are notified of their denial or termination.

### **§823.12. Board Informal Resolution Procedure.**

- (a) Boards shall provide an opportunity for informal resolution of a complaint or appeal.
- (b) Informal resolution may include but is not limited to:
  - (1) informal meetings with case managers or their supervisors;
  - (2) second reviews of the case file;
  - (3) telephone calls or conference calls to the affected parties;
  - (4) in-person interviews with all affected parties; or
  - (5) written explanations or summaries of the laws or regulations involved in the complaint.

*The provisions of this §823.12 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **8.2.15 Informal Resolution Policy**

The Contractor will complete a second review of all cases requesting an appeal in an effort to resolve the issue prior to forwarding the appeal request to the Board. The contractor will have 5 business days to complete the second review and forward any unresolved appeals to the Board.

Appeal requests forwarded to the Board will be reviewed as follows:

1. Board staff will send notice to the customer that a review will be conducted by the Board. The customer will be sent copies of all documentation provided by the child care contractor and given 10 days to provide documentation or written statement concerning their appeal.
2. Once documentation is received from the customer or 10 days whichever comes first, Board staff will review the information provided by the Contractor and customer (if any) and complete a written explanation for upholding the Contractor's decision or reversing in favor of the customer. The Board will have 5 business days from the receipt of information from the customer or 10 days, whichever comes first, to complete the review and mail the results to both the customer and the Contractor.
3. The written explanation will include:
  - a. List of documentation used to base the decision of the review for both the contractor and the customer
  - b. List of TWC rules, Board policies or procedures applicable to the customer's termination
  - c. Written explanation of the Board's decision
  - d. Notification of the opportunity to have a Board Hearing with a Board Hearing Officer

### **§823.13. Board Hearings.**

- (a) If the informal resolution procedure results in a final agreement between the parties, no hearing shall be held.
- (b) If no final informal resolution is reached, Boards shall provide an opportunity for a hearing to resolve an appeal or complaint.
- (c) Either a final agreement resulting from informal resolution or a hearing and Board decision shall be completed within 60 calendar days of the original filing of the appeal or complaint.
- (d) Boards shall provide a process that allows an individual alleging a labor standards violation to submit a complaint to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the complaint so provides.
- (e) Within 60 calendar days of the filing of the appeal or complaint, the Board shall send the parties a decision setting forth the results of the hearing. The decision shall be issued by a Board hearing officer, shall include findings of fact and conclusions of law, and shall provide information about appeal rights to the parties.
- (f) If no Board decision is mailed within the 60 calendar-day time frame described in subsection (e) of this section or if any party disagrees with a timely Board decision, a party may file an appeal with the Agency.
- (g) An appeal to the Agency shall be filed in writing with TWC Appeals, Texas Workforce Commission, 101 East 15th St., Room 410, Austin, Texas 78778-0001, within 14 calendar days after the mailing date of the Board's decision. If the Board does not issue a decision within 60 calendar days of the date of the filing of the original appeal or complaint, an appeal to the Agency must be filed no later than 90 calendar days after the filing date of the original appeal or complaint.

*The provisions of this §823.13 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

## **8.2.16 Board Hearings**

### **8.2.16.1 Requesting a Hearing**

Either party that does not agree with the decision made during the informal resolution process may request a Board Hearing. A Board Hearing must be requested in writing within 10 days of the notification of the decision for the informal resolution. The written request for a Board Hearing must include the following:

- a) Name of the appellant
- b) Current Mailing address
- c) Reason for requesting a Board Hearing

### **8.2.16.2 Setting up a Hearing**

#### **8.2.16.2a Contacting a Hearing Officer**

Once a Board Hearing has been requested, Board staff have 5 business days to contact a Hearing Officer and provide documentation for the hearing. Documentation for the hearing must include:

- a) Original appeal request with date of request
- b) Continued appeal request from the customer or Contractor after the local review
- c) All documentation provided by the Contractor and customer for the local review and

d) Local review results

#### **8.2.16.2b Setting a Hearing Date**

The Hearing Officer will have an additional 5 business days to set up an appeal hearing. The hearing date must be at least 10 days from the date of contact unless a shorter timeframe is agreed upon, in writing, from both parties.

#### **8.2.16.2c Notification of Hearing**

The Hearing Officer will mail notification to both parties immediately (within 1 business day) after setting the agreed upon hearing date.

#### **8.2.16.3 Conducting a Hearing**

The Board Hearing Officer will conduct the Board Hearing in accordance with TWC Rule 823.13 Board Hearings. In addition, the Hearing Office will ensure that all hearings are recorded and all recordings are available for review for a minimum of 90 days after the hearing.

#### **8.2.16.4 Rendering a Decision**

The Board Hearing Officer will render a decision within 5 business days of the hearing. Under no circumstances will the final decision be rendered later than 59 days from the original appeal request date.

The decision will be submitted in writing to the customer, Contractor and designated Board staff. The written determination will also include information on procedures and timeframes for requesting an appeal with a TWC appeals officer.

#### **8.2.16.5 Designated Board Hearing Officer**

WST has collaborated with 4 other boards to develop a Regional Policy for procurement and utilization of designated Board Hearing Officers.

##### **8.2.16.5a Procurement of Board Hearing Officer**

The lead board will complete the procurement of eligible hearing officers and ensure they meet TWC requirements to conduct Board Hearings. They will also be responsible for maintaining a current list of qualified Board Hearing Officers.

##### **8.2.16.5b Contacting a Hearing Officer**

WST will contact the lead board whenever a Board Hearing Officer is needed for the current list of qualified Hearing Officers. WST will contact an eligible Hearing Officer from the list and request that they conduct a hearing for the board. If that Hearing Officer is not available, WST will continue to contact other qualified Hearing Officers from the procurement list until an available Hearing Officer is secured for the Board Hearing.

##### **8.2.16.5c Payment for Conducting a Hearing**

WST will pay the Board Hearing Officer their contracted rate once the hearing has been conducted and the Hearing Officer has rendered a decision in accordance with board fiscal policies and procedures.

## References:

Workforce Investment Act (WIA), Section 188

Code of Federal Regulations (C.F.R.) 29; C.F.R. 37

TWC Rules - Chapter 823 Integrated Complaints, Hearings and Appeals, January 7, 2008

WD 24-01 – Prohibition Against Discrimination Based on Disability or Limited English Proficiency in the Administration of Workforce Services, 6/22/01

TWC WD 18-07 & Attachment 1 - Discrimination Complaint Procedures, 3/1/07

TWC WD 08-08 – Implementation of New Integrated Complaints, Hearings and Appeals Rules, 4/29/08

United States Department of Agriculture – Office of the Assistant Secretary for Civil Rights: [http://www.ascr.usda.gov/complaint\\_filing.html](http://www.ascr.usda.gov/complaint_filing.html)

United States Department of Health & Human Services – Office of Civil Rights: <http://www.hhs.gov/ocr/index.html>

Nondiscrimination on the basis of race, color, or national origin [as amended at 70 FR 24322, May 9, 2005], [45 CFR Part 80](#)

Nondiscrimination on the basis of Disability [as amended at 70 FR 24319, May 9, 2005], [45 CFR Part 84](#)

Federally Conducted Activities. [45 CFR Part 85](#),

Nondiscrimination on the basis of sex [as amended at 70 FR 24320, May 9, 2005], [45 CFR Part 86](#)

Nondiscrimination on the basis of age [amended at 70 FR 24321, May 9, 2005], [45 CFR Part 90](#)

Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from HHS [as amended at 70 FR 24318, May 9, 2005], [45 CFR Part 91](#)

Hill-Burton Regulations - Subpart G - Community Service, [42 CFR](#)

Title VI, Civil Rights Act of 1964, as amended (Public Law 888-352)

Title IX, Education Amendments of 1972, as amended

Section 504, Rehabilitation Act of 1973, as amended (Public Law 93-112  
Age Discrimination Act of 1975, as amended  
Texas Accessibility Standards of the Architectural Barriers Act  
Title 40, Chapters 805, 809, and 813 of the Texas Administrative Cod  
45 CFR 80; Americans with Disabilities Act of 1990 (Public law 101-336)  
Title 29 Code of Federal Regulations, Part 37 (29 CFR 37)  
Workforce Investment Act of 1998 and amendments  
Workforce investment Act Interim Final Rule  
Texas Labor Code 301.061  
State of Texas Methods of Administration (MOA) with the Department of Labor