

CHAPTER 823: INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS MATRIX

Integrated Complaints, Hearings, and Appeals Rules – Board Complaint and Appeal Procedures	New, Amended, or Repealed Explanation and Guidance
<p>823.1 Short Title and Purpose</p> <p>(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:</p> <ul style="list-style-type: none"> (1) Child care; (2) Temporary Assistance for Needy Families(TANF) Choices; (3) Food Stamp Employment and Training (FSE&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. 	<p>823.1 Short Title and Purpose</p> <p>Complaints or determinations alleging noncriminal violations are subject to the requirements of these rules. These rules should not be confused with the processes for filing WIA nondiscrimination or equal opportunity (EO) complaints.</p> <p>Complaints or determinations within the identified workforce programs may include:</p> <ul style="list-style-type: none"> • A parent’s eligibility or child care enrollment is denied, delayed, reduced, or terminated by the Board’s child care contractor for any reason; • A parent alleges a child care contractor violated their right to choose from a specific child care provider type (i.e., did not present option for relative care); • A Choices client claims the Texas Workforce Center contractor unfairly recommended a sanction penalty to HHSC related to noncompliance with job search requirements; • An FSE&T mandatory work registrant is denied payment or reimbursement for a required work-related item or other necessary support service; • A Project RIO client is denied an initial assessment to determine employability and retention needs; • An eligible veteran or foster youth is denied priority for workforce services; • A WIA adult or dislocated worker is determined to be ineligible for

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	<p>services and denied training services; or</p> <ul style="list-style-type: none"> An ETP provides inaccurate program performance information and is removed from the list of eligible training providers. <p>The primary goals of these procedures are to address specific customer concerns, resolve the issues at hand in the most expedient manner, learn from the complaint, and implement resolutions consistently throughout the entire workforce system.</p>	
<p>823.1(c) Determinations or complaints relating to the following matters are not governed by this chapter:</p> <p>(1) Across-the-board reductions of services, benefits, or assistance to a class of recipients;</p> <p>(2) Matters governed by hearing procedures otherwise provided for in this title;</p> <p>(3) Alleged violations of nondiscrimination or equal opportunity requirements;</p>	<p>823.1(c)(1) Across-the-board reductions of services, benefits, or assistance to a class of recipient usually occur when funds for services such as child care or WIA are reallocated or reduced and services for <i>all</i> individuals are affected.</p> <p>823.1(c)(2) Commission hearing procedures that are not covered in these rules include:</p> <ul style="list-style-type: none"> Chapter 800 – General Administration – Board Sanctions Chapter 807 – Career Schools and Colleges Chapter 815 – Unemployment Insurance Chapter 817 – Child Labor Chapter 819 – Civil Rights Division – Fair Housing Act Chapter 821 – Wage Claims Chapter 849 – Trade Act Activities <p>823.1(c)(3) Alleged violations of nondiscrimination and equal opportunity requirements of WIA are handled by the Equal Opportunity Compliance Section of the Texas Workforce Commission (Commission) under Chapter 841, Subchapter F, WIA Nondiscrimination and Equal Opportunity, and in the Commission’s WD Letter 18-07. Boards must maintain separate polices for nondiscrimination and equal opportunity complaints.</p>	<p><u>NLF</u></p>

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<p>(4) Denial of benefits as it relates to mandatory work requirements for individuals receiving TANF and FSE&T services and is administered through the Texas Health and Human Services Commission (HHSC);</p> <p>(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;</p> <p>(6) Services provided by the Commission pursuant to Texas Labor Code §301.023 – Complaints Against</p>	<p><i>Note:</i> The Orientation to Complaint Form is specific to EO-related complaints and does not apply to complaints, hearings, or appeals in Chapter 823.</p> <p>823.1(c)(4) Individuals denied benefits related to mandatory work requirements for Choices and FSE&T services administered through HHSC must file a complaint with this Agency. Although the Commission does not determine benefit eligibility or impose sanctions against these individuals, actions by the individual and/or Texas Workforce Center staff may affect the status of these benefits. HHSC is currently revising its process for convening fair hearings and staff may be required to call a toll-free number to participate in a hearing when an individual appeals a sanction determination from a penalty request initiated by Texas Workforce Center staff.</p> <p>823.1(c)(5) Separate procedures are maintained to resolve complaints concerning basic labor exchange, as those procedures and timelines are dictated in 20 C.F.R. Part 658, Subpart E, and federal Employment Service (ES) law. Basic labor exchange complaints include those related to:</p> <ul style="list-style-type: none"> • Employer violations of the terms and conditions of a job order; • Noncriminal complaints alleging acts or omissions by Texas Workforce Center staff; and • Complaints affecting migrant and seasonal farm workers. <p>Boards must refer to the Commission’s Employment Services Guide for ES-related complaints.</p> <p>823.1(c)(6) Texas Labor Code directs the Agency to maintain files about complaints that relate to Commission-provided services. During the 76th Legislative Session, Regular Session (1999), Senate Bill 1563 codified Texas Government Code 2114 (Customer Service Act), which required the Commission to promote and improve customer service in Texas State government. Policies and procedures related to the Commission’s</p>	<p><u>NLF</u></p> <p><u>NLF</u></p>
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<p>the Commission; or</p> <p>(7) Alleged criminal violations of any services referenced in §823.1(b).</p>	<p>Customer Relations standards are available in “General Administration Customer Relations #3-2005.”</p> <p>823.1(c)(7) Any complaints or allegations of criminal violations specific to services referenced in 823.1(b) must be investigated immediately by designated Board staff and reported to the Commission Office of Investigations, 101 E. 15th St., Room 220, Austin, Texas 78778-0001.</p>	<p><u>NLF</u></p>
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823.2 Definitions

(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.

(5) Complaint—A written statement alleging a violation of any law, regulations, or rule relating to any federal- or state-funded workforce service.

This section clarifies and expands the meaning of certain definitions in this chapter.

823.2(1) Adverse Action

An adverse action applies to Texas Workforce Center customers who believe they have been adversely affected when a service or benefit has been denied them in whole or in part. It is recommended that all adverse actions be written down and placed in the customer's file.

Example: Notifying a parent that child care has been denied because of the parent's failure to report any changes in the family's circumstances that would have rendered the family ineligible for subsidized child care.

Adverse actions also may involve customers removed from a work-based service position (i.e., subsidized employment, work experience, or workfare) if it is determined that their employment took away that of an individual not participating in workforce services.

823.2(5) Complaint

Individuals receiving any of the workforce services referenced in §823.1(b) have the right to file a complaint and be provided with information about appeals rights. Complaints must be in writing, signed, and dated. A complaint must be made within 180 days from the date of the alleged violation. If an individual is unable or unwilling to file a written complaint, a verbal complaint must be put in writing by staff taking the complaint, with the date of the complaint. All complaints are then remanded for further action.

Information for all complaints must at a minimum contain:

- complainant's full name, telephone number, and mailing address;
- a clear and concise statement of the facts of the alleged violation;
- if applicable, names, titles, and addresses of persons who may have knowledge of the facts of the complaint; and
- the dates on which the alleged violation occurred.

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	<p>The name of the complainant may be kept confidential if requested by that individual.</p> <p>In addition, Boards must make appropriate accommodation for individuals with disabilities and individuals with limited English proficiency regarding complaints, hearings, and appeals process policies and procedures. Auxiliary aids and services to accommodate these individuals may include:</p> <ul style="list-style-type: none">• information on accessing Relay Texas at (800) 735-2989 (TDD); (800) 735-2988 (Voice) for individuals with hearing impairments;• information available in enlarged print, Braille, CDs or cassette tapes for individuals with visual impairments;• forms and posters in both English and Spanish;• designated interpreter staff or a contract for interpretive services; or• Relay Texas for Spanish services at 711 or (800) 662-4954. <p>A complaint may not be amended to add new issues but may be amended to correct technical deficiencies.</p> <p>Individuals who may file a complaint include:</p> <ul style="list-style-type: none">• Texas Workforce Center customers. These are individuals who have applied for or are eligible to receive federal- or state-funded workforce services administered by the Agency or the Board;• Other interested parties affected by the Texas workforce system, including subrecipients. These individuals may include child care or other service providers that have received a determination issued by the Board; and• 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. <p>Boards may also receive objections regarding direct provision of workforce-related services that do not allege a violation of regulations, but rather concern dissatisfaction with the behavior of Board or contractor employees, or other issues not concerning workforce services directly.</p>	<p><u>NLF</u></p>
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<p>(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).</p> <p>(7) Hearing Officer—An impartial individual designated by either the Board or the Agency to conduct hearings and issue administrative decisions.</p> <p>(8) Informal Resolution—Any procedure that results in an agreed final settlement between all parties to a complaint or an appeal.</p>	<p>These objections are handled through informal resolutions at the Board and contractor level; they are not covered in this guide and are not appealable to the Agency.</p> <p>More information is available on complaint procedures in §823.14 “Board Policies for Resolving Complaints and Appeals of Determinations.”</p> <p>823.2(6) Determination A Board, its designee, or the Agency may issue a written determination regarding actions that affect the type and level of workforce services provided. These actions may include adverse decisions affecting support services, education, training, or work activity assignments. In addition, a determination may be issued to a provider or Board contractor if an individual’s initial or subsequent eligibility is denied or terminated by the provider or Board contractor. The determination must contain detailed information to support it, and information on appeal rights and the right to file a complaint.</p> <p>823.2(7) Hearing Officer A hearing officer is an individual possessing the qualifications and training necessary to conduct hearing proceedings in accordance with Board policies. A hearing officer must be impartial. To be considered impartial, a hearing officer must not have previously participated in any decision relating to the particular complaint or appeal, including an informal resolution. Boards may contract out hearing officer functions, or, if the Board has sufficiently trained personnel insulated from a particular matter, the Board may choose a staff member as the hearing officer.</p> <p>Boards also may make arrangements with other Boards within their region to share hearing officer duties and to maintain impartiality.</p> <p>823.2(8) Informal Resolution Boards must provide an opportunity to resolve customer issues in an informal manner in lieu of a Board hearing. This allows Boards or their</p>	<p><u>NLF</u></p>
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<p>(9)Party—A person who files a complaint or who appeals a determination or the entity against which a complaint is filed or that issued the determination.</p>	<p>designees to determine the most expeditious and practical method of resolving complaints or appeals, possibly precluding the necessity of a Board hearing.</p> <p>823.2(9) Party A party may consist of an individual, an authorized representative, or an organization.</p>	
<p>823.3 Agency and Board Timeliness (a)-(g)</p> <p>823.4 Representation Each party may authorize a hearing representative to assist in presenting a complaint or an appeal on behalf of a 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.</p>	<p>823.3(a)(g) Board Timeliness process These rules provide details on the process deadlines that apply after a determination is mailed to a party.</p> <p>823.4 Representation A party may authorize a hearing representative to assist in presenting a complaint or an appeal on behalf of the party. A representative may be an attorney, friend, co-worker, or family member who represents the interest of the party and can exercise any of the party’s rights. The Board may require this authorization to be in writing and signed by the party.</p>	
<p>823.13 Board Hearings</p> <p>(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 between the parties to the complaint so provides.</p>	<p>823.13(d) Labor Standards Violations and Binding Arbitration Procedures Boards must provide a process that allows an individual alleging a labor standards violation to submit a complaint through a binding arbitration procedure.</p>	NLE

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	<p>Examples of labor standards violations include:</p> <ul style="list-style-type: none"> • Infringement on the right to collective bargaining—this is the process whereby workers organize collectively and bargain with employers regarding the workplace; • Pay disputes; • Employment discrimination; or • Disputes related to employee benefits. <p><i>Note:</i> Most collective bargaining agreements have specific provisions covering violations and specific grievance procedures addressing them. These procedures frequently include binding arbitration under the Federal Arbitration Act in which both parties submit the dispute to a neutral arbitrator. The arbitrator’s decision is final and binding upon both parties.</p> <p>Boards may be required to follow the provisions of applicable collective bargaining agreements with respect to arbitration procedures.</p> <p>Wage and labor standards are applicable to individuals in on-the-job training or who are employed in activities under Title 1 of WIA and therefore must be compensated at the same rates as other similar employees, and paid not less than is provided by applicable federal, state, or local minimum wage laws. These individuals must be provided equivalent benefits and working conditions as other similar employees.</p> <p>Technical assistance is available for Boards encountering labor standards violations.</p>	
<p>823.14 Board Policies for Resolving Complaints and Appeals of Determinations</p> <p>(a) A Board shall establish written policies to handle complaints and appeals of determinations, provide the opportunity for an informal resolution, and conduct hearings in compliance with this subchapter for individuals, eligible training providers, and</p>	<p>823.14(a) Board Policies</p> <p>To maintain uniformity and consistency across all Board-administered workforce services in protecting due process rights, Board must establish local policy to ensure that Texas Workforce Center customers are notified in writing of any adverse actions and are provided with information on</p>	<p><u>NLF</u></p>

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<p>other persons affected by the One-Stop Service Delivery Network, including subrecipients.</p> <p>(b) A Board shall maintain written copies of these policies, and make them available to the Agency, Texas Workforce Center customers, and other interested persons upon request. A Board shall ensure that subrecipients provide these policies to Texas Workforce Center customers and other interested persons upon request.</p> <p>(c) At a minimum, a Board shall develop and approve policies to:</p> <p>(1) ensure that determinations are provided as specified in §823.11;</p>	<p>their appeal rights and their right to file a complaint regarding workforce services. Failure to ensure that Texas Workforce Center customers are informed of their right to file a complaint or appeal the written notice of an adverse action risks violating due process principles.</p> <p>All Board directives that impact the rights, benefits, and privileges of employers, individuals, other customers, or organizations are official governmental policies, must be voted on, and adopted as Board policy in an open meeting*. Board policy-making involves developing and adopting directives as local guidelines that implement, interpret, or prescribe laws, regulations, and state policies.</p> <p>*As required by Commission rule §801.51(f) and as detailed in WD Letter 10-07, Board members must take such actions in an open meeting.</p> <p>823.14(b) Complaint and appeals policies developed by the Board must be made available to the Agency, Texas Workforce Center customers, and other interested parties upon request.</p> <p>823.14(c)(1) Determination Policy The Board or its designee must promptly issue a written determination regarding any action that adversely affects the type and level of services to any individual or provider directly affected. Examples of written determinations may include notification to:</p> <ul style="list-style-type: none"> • a Choices participant that child care services have been terminated due to noncooperation in the Choices program; • a WIA eligible training provider whose certification has been suspended, denied, or terminated because performance information is not verifiable or has not been submitted despite repeated requests; or • an individual enrolled in training services is suspended, terminated, or 	<p><u>NLF</u></p>
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<p>(2) ensure that information about complaint procedures is available as described in §823.10(d);</p>	<p>denied services for non-compliance with a training providers course curriculum or attendance policies.</p> <p>For parents requesting child care, a written determination is not issued when a parent:</p> <ul style="list-style-type: none"> • does not meet pre-screening criteria; or • is placed on a waiting list for child care. <p>A written determination must include the following information:</p> <ul style="list-style-type: none"> • A brief statement of the adverse action; • The mailing date of the determination; • An explanation of the individual’s right to appeal the determination; • The procedures for filing an appeal to the Board, including applicable time frames as required under §823.3; • The right to a hearing representative, including legal counsel; and • The address or fax number to which the appeal must be sent. <p><i>Note:</i> Boards may continue to use Forms CC-2052 and CC-1071, but must be aware that parents will not request hearings at the child care contractor office as noted in Form CC-1071. This form is scheduled for review.</p> <p>A party may file an appeal with the Board requesting a review of the determination. The appeal must be submitted in writing and filed with the Board within 14 calendar days of the mailing date of the determination. The appeal must include the party’s proper mailing address. <i>Refer to the Commission rule §823.3 “Agency and Board Timeliness” for more detailed information on deadlines and time frames.</i></p> <p>See Attachment 2 to this WD Letter for a sample written determination.</p> <p>823.14(c)(2) Complaint Procedures Boards must ensure that information related to complaint procedures is provided to individuals, eligible training providers, and subrecipients. Information must be presented in a manner that is easily understood by the</p>	<p><u>NLF</u></p>
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<p>(5) designate an individual to be responsible for investigation, documentation, monitoring, and following up on complaints;</p>	<ul style="list-style-type: none"> • recording date the complaint is received; • recording name of the individual making the complaint; • briefly describing the complaint (i.e., child care provider denied the individual child care services, qualified individual did not receive priority for a service, etc.); • noting who the complaint was referred to (individual’s name and department) and date of the referral; and • recording disposition of the complaint and date of the disposition. <p>See Attachment 4 to this WD Letter for a sample complaint log.</p> <p>Boards and their providers must secure and maintain all records related to complaints, including the complaint log, for a period of three years.</p> <p>A separate file must be maintained for each complaint. Each file should include:</p> <ul style="list-style-type: none"> • the original complaint filed; • a chronological summary of all contacts made to investigate and resolve complaint issues; • all fact-finding reports and interviews; • copies of all correspondence and any agreements with parties involved; • copies of all documents related to the complaint issues collected and reviewed; and • the final disposition of the complaint. <p>823.14(c)(5) Boards must designate a staff member to investigate, document, monitor, and follow up on complaints. related to Board-administered workforce services. This individual will be responsible for initial fact-finding on complaints.</p> <p>Initial, general fact-finding may include the following:</p> <ul style="list-style-type: none"> • Establishing the official record and file; 	<p><u>NLF</u></p> <p><u>NLF</u></p>
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<p>(6) Inform persons of the:</p> <p>(A) right to file a complaint;</p> <p>(B) right to appeal a determination;</p>	<ul style="list-style-type: none"> • Taking a complaint in person or by phone; • Establishing what the involved parties heard or saw and what the issue is; • Providing any assistance required by involved parties who have limitations or barriers; • Determining the exact laws, regulations, or Board policies violated; • Creating an accurate and complete record about the complaint; • Determining what is causing an individual to initiate contact, what the problem is, who is causing the problem, and how the problem should be dealt with; • Determining the facts from the point of view of the complainant while ensuring that all necessary information is gathered; • Obtaining copies of documents from the complainant for the file; and • Organizing and processing the complaint file in accordance with established policies and time frames. <p>Accurate and complete fact-finding enables designated staff to determine whether a complaint is a violation of law, regulation, fraud or abuse, an EO issue, or a program violation.</p> <p>Staff designated to investigate, document, monitor, and follow up on complaints may also be responsible for conducting informal resolutions. This same individual must not be the Board-designated hearing officer.</p> <p>823.14(6)(A) Right to file a complaint Boards and their designees must notify parties adversely affected by a decision or action of the Texas workforce system, including subrecipients, of their right to file a complaint. This information may be included in written determinations sent to affected parties and on the Customer Rights and Complaint Resolution Procedure form. Complaints must be made within 180 days from the date of the alleged violation.</p> <p>823.14(6)(B) Right to appeal a determination Parties that receive a written determination relating to an adverse action may appeal the determination by contacting the designated staff listed on</p>	<p><u>NLF</u></p>
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<p>(D) time frame in which to either reach informal resolution or to issue a Board decision; and</p>	<p>process, a good faith effort should be made to enter into a final written agreement between the parties. Failure to enter into a written agreement by either party may not necessarily warrant the dismissal of the complaint. The party may continue to seek a formal resolution through a Board hearing regardless of the outcome or their attendance at the informal resolution meeting.</p> <p><i>Setting a hearing</i> If no final informal resolution is reached, the Board must provide the opportunity for a hearing to resolve the appeal or complaint.</p> <p>Boards must mail a notice of hearing to the parties and/or their designated representatives. The notice of hearing must include the following:</p> <ul style="list-style-type: none"> • A statement of the date, time, place, and nature of the hearing; • A statement of the legal authority under which the hearing is held; and • A short and plain statement of the issues to be considered during the hearing. <p>Hearing guidelines may be included with the notice.</p> <p>See Attachment 5 to this WD Letter for a sample notice of hearing and hearing guidelines.</p> <p>823.14(6)(D) A final agreement resulting from an informal resolution or a hearing and Board decision must be reached and communicated to all involved parties within 60 calendar days of the original filing of the appeal or the complaint.</p> <p>If the decision is reached through a Board hearing, the Board hearing officer must issue a decision setting forth the results of the hearing within 60 calendar days of the filing of that appeal or complaint. The decision issued by the Board hearing officer must include findings of fact and conclusions of law along with information about rights of appeal to the Agency.</p>	<p><u>LF</u></p> <p><u>NLF</u></p>
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