

TEXAS WORKFORCE COMMISSION
Workforce Development Letter

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Effective:	Immediately

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers



From: Mary York, Director, Workforce Development Division

Subject: **Training Provider Complaint Procedures**

PURPOSE:

The purpose of this WD Letter is to provide Local Workforce Development Boards (Boards) with guidance on required complaint procedures for training providers, including Workforce Innovation and Opportunity Act (WIOA) Eligible Training Providers (ETPs).

RECISSIONS:

None

BACKGROUND:

The U.S. Department of Labor (DOL) provides guidance to states in Title 20 Code of Federal Regulations (CFR) §683.630(b) on implementing procedures to allow providers of training services an opportunity to appeal a denial or termination of eligibility under WIOA.

Title 40, Texas Administrative Code (TAC), Part 20, Chapter 823 Integrated Complaints, Hearings, and Appeals lay out uniform procedures and time frames for complaints and appeals processes applicable to workforce services administered by Boards.

On January 5, 2021, TWC's three-member Commission (Commission) approved amendments to TAC Chapter 823 that:

- specify the programs and parties covered by the rules, including ETPs receiving WIOA or other funds for training services;
- distinguish between state hearing officers and individuals responsible for complaints at the Board level;
- clarify affected parties' right to appeal; and
- define the process for complaints and appeals.

PROCEDURES:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must.”

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”

Board Policy

NLF: Boards must establish and maintain written policies for handling complaints and appeals, ensuring informal resolution opportunities, and conducting formal reviews regarding ETPs, consistent with TAC §823.12 and §823.13 respectively.

NLF: Boards must ensure that local complaint policies address the minimum requirements¹ described in TAC Chapter 823.

Training Provider Notification

NLF: Boards must ensure that training providers receive written information about Board complaint procedures that include information about:

- the right of a training provider, or their authorized representative,² to file a complaint relating to a denial or termination of eligibility for the statewide Eligible Training Provider List (ETPL) or as a provider of on-the-job training (OJT) or customized training;
- the right of a training provider, or their authorized representative, to appeal a complaint determination made by the Board;
- the Board’s informal resolution procedures;
- the right of a training provider to appeal a Board determination to TWC; and
- time frames for informal agreement, issuance of Board determination, provider appeals, and other actions relating to complaints.

LF: Boards may inform training providers that TAC Chapter 823 includes detailed requirements for Board and TWC-level complaints and appeals procedures.

NLF: Boards must provide notice by mail to a training provider of any local determination relating to denial or termination of eligibility, that includes:

- a description of action, including date, taken by the Board;
- the mailing date of notice;
- an explanation of the right of the training provider to an appeal;
- the procedure to request informal resolution or file an appeal (including time frames);

¹ TAC §823.14(c).

² TAC §823.4.

- the right to representation; and
- the mailing address and fax to send informal resolution request or appeal.

Training Provider Complaints

NLF: Boards must accept any complaint from a training provider that:

- is filed in writing within 180 calendar days of the denial or termination of eligibility;
- includes the complainant's name and current mailing address; and
- contains a brief statement of the denial or termination of eligibility, including any facts pertinent to the complaint.

Informal Resolution Process

NLF: Boards must offer training providers with an opportunity for informal resolution of a complaint or appeal relating to a Board determination that results in a denial or termination of eligibility.

LF: Informal resolutions may include, but are not limited to:

- explanations of applicable federal or state laws or regulations applicable to the training provider;
- informal meetings (in-person or virtual); and
- secondary reviews of training provider information.

NLF: Boards must provide training providers with an opportunity for a formal review if the informal resolution does not result in an agreement with the training provider.

Complaint and Appeals Process

NLF: Boards must designate at least one individual to be responsible for investigating, documenting, monitoring, and following up on complaints.

NLF: Boards must ensure that individuals designated to address complaints:

- maintain a complaint log³; and
- comply with all requirements included in:
 - local complaints and appeals policies;
 - TAC, Chapter 823; and
 - 20 CFR §683.630(b).

NLF: Boards must ensure that complaints filed by training providers are resolved, or a determination is made, within 60 calendar days.

Board Decisions

NLF: Boards must provide a training provider with the hearing decision, by mail, within 60 days of the filing date of the complaint or appeal relating to denial or termination of eligibility.

³ TAC §823.14(c)(4).

- LF**: Training providers, or their authorized representatives, may file an appeal with TWC if:
- they do not agree with the Board decision; or
 - the Board does not provide a decision within 60 calendar days of the date a complaint or appeal is filed.

TWC Complaint and Appeals Process⁴

- NLF**: Boards must inform appropriate staff that training providers may file a written complaint directly with TWC according to the process outlined below.

Training provider complaints must:

- be filed in writing within 180 calendar days of the denial or termination of eligibility;
- include the complainant's name and current mailing address; and
- contain a brief statement of the denial or termination of eligibility, including any facts pertinent to the complaint.

Complaints filed with TWC must be submitted using one of the following methods:

- Mail—
TWC Special Program Appeals
101 East 15th Street, Room 414
Austin, Texas 78778-0001
- Email—specialprogram.appeals@twc.texas.gov
- Fax—(512) 463-9318
Note: The appellant should keep the appeal fax's confirmation page.

TWC may redirect training provider complaints relating to Board actions to the appropriate Board for processing.

TWC will offer an informal resolution before setting a hearing date.

TWC will set a hearing date when:

- an appeal of a Board decision or TWC eligibility determination is received from a training provider or their authorized representative; and
- TWC's informal resolution process does not result in a satisfactory resolution for the training provider.

TWC must issue notice of a hearing to affected parties at least 10 calendar days before the hearing date.

Following the conclusion of the hearing, the hearing officer must promptly issue a written decision on behalf of TWC. Decisions issued on state-level complaints and grievances, or appeals of local-level complaints and grievances, will be issued within 60 calendar days of the filing of the complaint, grievance, or appeal, whichever comes later.

⁴ TAC §823.20.

A hearing officer decision regarding denials or termination of training provider eligibility for the statewide ETPL is final after 14 calendar days following the mailing date of the final notice.⁵ TWC decisions may not be appealed to DOL.⁶

INQUIRIES:

Send inquiries regarding this WD Letter to wfpolicy.clarifications@twc.texas.gov.

ATTACHMENTS:

None

REFERENCES:

WIOA §122 Identification of Eligible Providers of Training Services

WIOA §181 Requirements and Restrictions

20 Code of Federal Regulations, Subpart F, Grievance Procedures, Complaints, and State Appeals Processes

Title 40, Texas Administrative Code, Part 20, Chapter 823 Integrated Complaints, Hearings, and Appeals

⁵ TAC, §823.20(g) and §823 subchapter D.

⁶ 20 CFR §683.630(b)(3).