

# Fresno Regional Workforce Development Board

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Blake Konczal, Executive Director

## **OPERATIONAL DIRECTIVE**

**FRWDB OD # 07-18, Revision D**

**Date Released: August 26, 2021**

**To: All Fresno Regional Workforce Development Board Providers of Services**

**From: Blake Konczal, Executive Director**

**Effective Date: August 26, 2021**

**Subject: Workforce Innovation and Opportunities Act (WIOA) Title I Programs Discrimination Complaint Procedures**

**Applicable Program: All**

**Revision History: Initial Release – 2/14/18; Rev B – 3/12/18; Rev C – 5/19/21**

This Revision D removes the Nepotism procedures. These will be documented in a separate Operational Directive. Form# QUA-031 has been updated to remove the Summary Program Complaint Process.

This OD references OD 02-09, Reasonable Accommodation Request Process and State Directive WSD 17-1, Nondiscrimination and Equal Opportunity Procedures.

All questions concerning these processes are to be directed to the Fresno Regional Workforce Development Board (FRWDB) Equal Opportunity (EO) Officer.

### **Overall Direction**

This OD requires the use of the following forms:

- Summary Program and Discrimination Complaint Procedures, Form# QUA-031E
- Discrimination Complaint Form# QUA-028, if needed
- Provider Statement – EO Summary Statement Alternative Delivery, Form# GEN-004, if needed

At the time of initial registration at any Workforce Connection AJCC location (Basic Career Services) or into Young Adult Services, Service Provider staff is to review the following documents with the applicant and use the following process:

- Summary Discrimination and Equal Opportunity Policy and Procedure (QUA-031E);
  - Have the participant sign and date the acknowledgement that they have been informed of the above procedures.
- Provide copies of the completed documents to the applicants.
- The signed acknowledgments must be uploaded to CalJOBS in the Document (staff) section and labeled accordingly under the "Document Tags" field in CalJOBS.

When an applicant requires a reasonable accommodation due to a disability or limited English proficiency, they are to be provided the Summary Complaint Process in a format they understand.

To document the provision of the Summary Complaint Process (form# QUA-031E) in an alternate format, Service Provider staff is to fill out the Reasonable Accommodation Provider Statement, Form# GEN-004. The completed form must be uploaded to CalJOBS in the Document (staff) section and labeled accordingly under the "Document Tags" field in CalJOBS.

## **Discrimination and Equal Opportunity Complaint Procedures**

*{Reference: California Employment Development Department (EDD) Directive WSD17-01, released on August 1, 2017}*

### **I. THE LAW**

The nondiscrimination and equal opportunity provisions found in Section 188 of WIOA and 29 CFR Part 38 prohibit discrimination on the basis of race; color; religion; sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity); national origin (including Limited English Proficiency (LEP)); age; disability; political affiliation or belief; or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity.

### **II. DEFINITIONS**

- A. Days: Consecutive calendar days, including weekends and holidays.
- B. Complaint: A written expression by a participant or customer, sub-grantee, subcontractor, or other interested person or their duly appointed representative, alleging a violation of the nondiscrimination and equal opportunity provisions.
- C. Complainant: Any participant, personally interested, or personally affected party alleging a violation of equal opportunity or discrimination provisions.
- D. Respondent: Any specific person(s) or entity that a discrimination complaint has been filed against.
- E. Alternative Dispute Resolution (ADR): Also known as Mediation. Mediation avoids an investigation and hearings (formal and informal). Mediation is conducted by a Third Party Mediator.
- F. Independent Third Party Mediator: In the event the complainant chooses mediation, the mediator may be a management member of the Fresno Area Workforce Investment Corporation (FAWIC) who does not have responsibility over the area that the complaint is filed against.

### **III. TO FILE A COMPLAINT**

Anyone who feels they have been discriminated against may file a complaint in either of the following ways:

1. Contact the: Fresno Regional Workforce Development Board  
Attention: Equal Opportunity Officer  
2125 Kern, Suite 208  
Fresno, CA 93721  
Phone: 559-490-7100

**OR**

2. Contact the: United States Department of Labor  
The Director, Civil Rights Center  
200 Constitution Avenue NW, Room N-4123  
Washington, DC 20210

#### **IV. ACCESS TO PROCEDURES AND TECHNICAL ASSISTANCE**

Every participant accessing services at Workforce Connection or any All Youth One System office is to receive a copy of the Summary of Customer Complaint Procedure (Form #QUA-031). The participant is to acknowledge receipt by signing and dating the bottom of the form on page 2. Service Provider staff is to make a copy of the signed form and file the copy. The original is to be retained by the participant.

The full procedures are available upon request, by any person, during normal business hours. The FRWDB publishes these procedures for the general public. These procedures are also available on the Workforce Connection website at [www.workforce-connection.com](http://www.workforce-connection.com). This document contains all of the procedural elements to file a discrimination complaint related to the WIOA, within Fresno County. This document contains the contact information to file a complaint directly with the Department of Labor (DOL), Civil Rights Center (CRC).

The FRWDB and/or sub-recipient staff will provide technical assistance to the complainants, including those complaints against the FRWDB. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as the WIOA regulations, local rules, contracts, etc., and providing clarifications and interpretations of relevant provisions. This requirement shall not be interpreted as requiring the FRWDB to violate rules of confidentiality. If in doubt, escalate to the FRWDB EO Officer.

#### **V. GENERAL REQUIREMENTS**

##### **Filing a Discrimination Complaint with the Fresno Regional Workforce Development Board**

- A. All complaints must be in writing and filed/received by the FRWDB within 180 days of the alleged discrimination occurrence. This time period is not extended for complaints that are re-filed with amendments. The official filing date of the complaint will be the date it is actually received by the FRWDB. A complaint that is not filed within the required time limit will not be considered. The FRWDB will not grant any extensions of time to file a complaint.
- B. The FRWDB's EO Officer, or designee, will maintain a log containing complaints alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, or limited English proficiency. The log will include:
  1. Date of complaint
  2. Name and address of complainant
  3. Status of complainant
  4. Funding stream
  5. Date of alleged incident(s)
  6. Basis of complaint
  7. Description of alleged incident(s)
  8. Name and address of respondent
  9. Status of the respondent
  10. Disposition
  11. Date of disposition
  12. Alternative Dispute Resolution (ADR) status

- C. The FRWDB's EO Officer, or designee, will create and maintain a complaint file for each complaint that will contain documentation pertinent to the complaint and the final determination.
- D. Completion of the complaint form (QUA-028) is mandatory
- E. The complaint must be filed in writing with the FRWDB, either by e-mail, U.S. Mail, courier or in person, within 180 days of the alleged violation.
- F. Upon receipt of the complaint, the FRWDB shall give written notice to all parties of the scheduled conference date and location to resolve the matter.
- G. The complainant must be offered an alternative dispute resolution, such as mediation with an independent third party, up on receipt of the complaint. It is the complainant's decision if the ADR is to be used.
  - 1. In the event the complainant does not choose mediation, then the EO Officer will investigate the alleged incident(s).
- H. FRWDB staff may request verbal information and/or written records from the respondent without the necessity of first obtaining a signed release from the complainant. However, if it is determined that the information and/or records in the possession of the respondent was obtained from a One-Stop partner, or an agency/entity not funded by the FRWDB, the complainant is required to deliver a completed, signed and dated "Release of Information" form to the FRWDB. The information or records requested must be pertinent to complainant's complaint. The complainant's delay in providing a signed release may delay the proceedings until such time as the necessary information and/or records are obtained by the FRWDB.
- I. In the event a complaint form is filed electronically (e.g., email), an acknowledgment of receipt must be prepared and sent to the complainant acknowledging receipt of the complaint, with the request that the complainant sign the acknowledgement receipt and return the original signed acknowledgement to the FRWDB. The original signed acknowledgement must be retained in the complaint file.
- J. All complaints, amendments, and withdrawals must be in writing.
- K. In the event the complaint is against the FRWDB, and the complainant wants the case to be handled at the local level and does not choose ADR, the EO Officer will arrange for an independent party to conduct the investigation hearing and issue the Final Determination. The independent party will have no relationship with the FRWDB, its staff or its sub-recipients.

## **VI. General Considerations**

- A. At every stage of the proceedings, all parties have the right to be represented by an attorney, or a lay representative of their choosing, at his/her own expense. Complainants are entitled to review and obtain copies of his/her records.
- B. Prior to the proceedings, the complainant may request and receive an accommodation for a disability and/or service to assist with limited English proficiency.
- C. The complainant shall be free from restraint, interference, coercion, discrimination, retaliation, or reprisal in connection with the complaint.
- D. At any time during the process, the complainant may choose to change the resolution process.
- E. At any point in the investigation of the complaint, the complainant, respondent, or the Local Area EO Officer may request that the parties attempt conciliation. The Local Area EO Officer shall facilitate such conciliation efforts.

1. Conciliation is a process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions.
2. If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing (usually with the assistance of legal counsel) and signed by the parties, at which time it becomes a legal binding contract and falls under contract law.

## **VII. FRWDB RESOLUTION PROCESS**

### **A. Formal Conference Process:**

The formal conference with the EO Officer and all parties must be held within 30 days from the original filing of the complaint, or 30 days from the date a request for formal hearing was received by the FRWDB. The FRWDB will notify the complainant in writing, of the hearing date, at least 10 days prior to the date of the hearing, unless there has been written consent of the parties to shorten the number of days for notice of the hearing. The notice of hearing shall contain the following:

1. The date of the notice, name of the complainant, and the name of the party against whom the complaint is filed.
2. The date, time, and place of the hearing.
3. A statement of the alleged violations – these statements must accurately reflect the content of the grievance or complaint as submitted by the complainant (however, clarifying notes may be added to assure that the complaint is addressed accurately), and the contact information for the EO Officer.

### **B. Production of Evidence:**

1. The FRWDB does not have authority to issue subpoenas to compel the attendance of witnesses or the production of other physical evidence. Each party shall have the responsibility for securing the attendance of his/her own witnesses and producing documents or other physical evidence.
2. Unsworn statements from absent witnesses are not acceptable in lieu of testimony. Sworn statements may not be accepted unless there is good cause for that witness' absence; providing the acceptance of their sworn statement, in lieu of the witness' personal appearance, would not substantially prejudice the other party's case because of the other party's inability to confront and cross-examine the absent witness.
3. If any party-in-interest is a sub-recipient under contract with, or was under contract with, the FRWDB at the time of the alleged violation(s), that sub-recipient shall be expected to produce any and all documents, or other physical evidence, in its possession, or under its control, that are relevant and material to the issues raised by the complainant. Where such documents include the records of other participants, the EO Officer shall examine those records in private, and the contents thereof shall not be released to any other party, or made a part of the record, except under seal, unless the other participant has executed and delivered a written release of information and gives authorization to the FRWDB that such records may be presented as evidence at the formal conference.
4. A failure or refusal on the part of either party to produce relevant and material evidence in his/her possession, or under his/her control, without good cause, may lead to a finding by the EO Officer that the evidence, if produced, would have been favorable to the other party. If the failure is on the part of a respondent, it may be considered a breach of the respondent's WIOA contract with the FRWDB.

5. The complainant shall have the burden of proof of his/her case by a preponderance of the evidence, and the respondent shall have the burden of proof of any defenses by a preponderance of the evidence.

C. Conduct of the Formal Conference:

1. The EO Officer may make such rulings, regarding the production of evidence and the conduct of the conference that may be reasonable and necessary to enable a fair, equitable, and orderly administration of the conference.
2. The conference will be electronically recorded by FRWDB staff. Either party may request a written transcript of the formal conference or may arrange, at his/her own expense, the services of a Certified Shorthand Reporter, or bring his/her own recording equipment. The FRWDB will not provide a written transcript to a third party.
3. The conference will be conducted in a relatively informal manner; however, certain basic procedures will be observed:
  - (a) The EO Officer may, at the request of either party or on his/her own initiative, exclude witnesses who are parties-in-interest, so those witnesses cannot hear the testimony of the parties or any other witnesses.
  - (b) Each party shall have the right to call the other party as a witness.
  - (c) The complainant shall present his/her case first, and the respondent shall have the right of cross-examination.
  - (d) After the complainant has concluded the presentation of his/her case, the respondent shall present its case or defense, and the complainant shall have the right of cross-examination.
  - (e) After the respondent has concluded the presentation of its case, the complainant shall be given an opportunity to respond to any evidence presented by the respondent that the complainant did not have an adequate opportunity to address during the respondent's presentation.
  - (f) After the conclusion of the presentation of the evidence, each party shall have the opportunity to make a closing statement.
4. In order to ensure all relevant and material evidence has been presented, the EO Officer may, at his/her discretion, and where the interests of justice so require, examine any party's witness.

D. Notice of Final Action:

The EO Officer shall issue a Final Determination no later than 90 days after the date the complaint was filed, and shall serve copies by first-class mail, on all parties and their representatives, if any. The Final Determination shall contain the following:

1. The names of the parties
2. A statement of the alleged violation(s) and issues related to the alleged violation
3. A statement of the facts
4. The decision of the EO Officer and the reason for the decision
5. A statement of the corrective action, if any, to be taken
6. A notice of the right of either party to appeal the decision to the Civil Rights Center (CRC)

A copy of the Final Determination is to be sent to the CRC and the Employment Development Department's (EDD) Equal Opportunity Office.

E. Appeal:

If the complainant does not receive a Final Determination from the FRWDB within 90 days of the filing of the complaint, or the decision is not acceptable, the complainant then has the right to file an appeal with the CRC:

F. Records Retention:

The FRWDB shall maintain all records and supporting documents of the complaint for a period of three (3) years from the date the Final Determination was served on the parties and the complaint closed.

**VIII. GENERAL CONSIDERATIONS**

A. Filing a Discrimination Complaint with the Civil Rights Center (CRC)

The CRC determines acceptance of a complaint filed pursuant to 29 CFR Section 38.78. When the CRC accepts a complaint for investigation, it shall do the following:

1. Notify the Local Area and the complainant of the acceptance of the complaint for investigation.
2. Advise the Local Area and complainant on the issues over which the CRC has accepted jurisdiction.

The Local Area, the complainant, or a representative may contact the CRC for information regarding the complaint filed. When a complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address (29 CFR Section 38.79).

In accordance with WIOA Section 183(c), the CRC may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the U.S., at any designated time and place.

Where the CRC lacks jurisdiction over a complaint, the CRC shall do the following:

1. Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of the WIOA or 29 CFR Part 38.
2. Refer the complainant to the appropriate federal, state, or local authority, when possible.

The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.

The CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in 45 CFR Section 90.43(c)(3).

If the complainant alleges more than one kind of complaint, "joint complaint" (e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc.), the CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation

and conciliation under the procedures described in 29 CFR, Parts 1690 or 1691, as appropriate. The CRC will advise the complainant and the Local Area of the referral.

Under the AJCC delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grant making agency other than DOL, but participates as a partner in the AJCC delivery system, the following procedures apply:

1. If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of the WIOA and by a civil rights law enforced by the federal grant making agency, the CRC and the grant making agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grant making agency for processing. The grant making agency's regulations will govern the processing of the complaint.
2. If the complainant alleges discrimination on the basis that is prohibited by Section 188 of the WIOA, but not by any civil rights laws enforced by the federal grant making agency, the CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to 29 CFR Part 38. The CRC will advise the complainant and the Local Area of the referral.

The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:

1. Because mediation is voluntary, both parties must consent before the mediation process proceeds.
2. The mediation will be conducted under the guidance issued by the CRC.
3. If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under 29 CFR Sections 38.82 through 38.88.

After making such a cause finding, the CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and the Local Area, in writing, of the following:

1. The specific findings of the investigation
2. The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed
3. Whether it will be necessary for the Local Area to enter into a written agreement
4. The opportunity to participate in voluntary compliance negotiations

Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and the Local Area. The Final Determination represents the DOL's final agency action on the complaint.

## B. Complaint Determinations

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to 29 CFR Sections 38.86 or 38.87, 38.88 and 38.89, or 38.90, respectively, must include the steps and the specific time period it will take the Local Area to achieve voluntary compliance. See Section 38.90 for corrective action steps. Monetary corrective action may not be paid from federal funds.



If the Local Area receives a finding of noncompliance, the following sections of 29 CFR Part 38 may be referred to for detailed information:

1. "Final Determinations," Sections 38.96 through 38.97
2. "Breaches of Conciliation Agreements," Sections 38.98 through 38.100
3. Subpart E – "Federal Procedures for Effecting Compliance," Sections 38.110 through 38.115

## **IX. INTIMIDATION AND RETALIATION PROHIBITED**

- A. No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging any of the following:
1. A violation of the WIOA.
  2. Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA.
  3. Furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38.

The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

## **Forms**

QUA-028, Discrimination Complaint Form

GEN-004, Providers Statement of Alternative Service Delivery Summary

QUA-031E, Summary Discrimination Complaint Filing Process (prints on legal size paper)