



COMMONWEALTH OF VIRGINIA
VIRGINIA COMMUNITY COLLEGE SYSTEM

WORKFORCE INNOVATION AND OPPORTUNITY ACT

The Virginia Community College System
VIRGINIA WORKFORCE LETTER (VWL) #15- 05 (Replaces VBWD Policy #01-02)

TO: LOCAL WORKFORCE DEVELOPMENT BOARDS

FROM: George Taratsas
Administrator, Federal Workforce Programs

A handwritten signature in black ink, appearing to read "George Taratsas", written over the printed name in the "FROM:" field.

SUBJECT: WIOA Discrimination Complaint Process

DATE: June 17, 2016

PURPOSE:

To communicate the requirement of grant recipients to adopt and publish procedures providing for the prompt and equitable resolution of complaints alleging violations of the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act of 2014 (WIOA).

REFERENCES:

Section 188, "Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act of 2014"

29 CFR Part 37, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act of 2014

Training and Employment Guidance Letter (TEGL), WIOA No. 37-14 "Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System"

Age Discrimination Act of 1975, as amended

Section 504 of the Rehabilitation Act of 1973, as amended

Title IX of the Education Amendments of 1972

Title VI and VII of the Civil Rights Act of 1964, as amended

Immigration and Nationality Act

BACKGROUND:

29 CFR Part 37 requires that all WIOA grant recipients ensure nondiscrimination and equal opportunity in admission or access to, opportunity or treatment in, or employment in the administration of or in connection with any program or activity funded in whole or in part with WIOA funds. To that end, the VCCS and each Local Workforce Development Area (LWDA) within the Commonwealth of Virginia must have an assigned Equal Opportunity (EO) Officer¹ who is responsible for providing initial and continued notice that grant recipients/program providers do not discriminate on any prohibited grounds; adopting and publishing complaint procedures; providing participants with a notice of the right to file a complaint, and ensuring that the complaint processing procedures are followed if a complaint is filed.

GUIDANCE:

According to the requirements outlined in the Act and Code of Federal Regulations, each grant recipient is required to comply with the Discrimination Complaint Process established for resolving complaints in connection with WIOA programs. Each grant recipient's complaint process must address who may file, where a complaint may be sent, including electing to file with the respective grant recipient, the Commonwealth, or the Civil Rights Center (CRC), time frames, including extensions of filing times, what a complaint should include, and the complainant's right to representation.

To communicate the discrimination complaint policy, "Equal Opportunity is the Law" posters in English and Spanish shall be placed in prominent locations which are accessible to applicants, eligible participants, participants, terminees, applicants for employment and employees, applicants for funding and other interested parties. The posters shall contain a nondiscrimination and equal opportunity statement, as well as information about filing a complaint. Grant recipients shall include in orientations to employees and participants a discussion of their rights under the nondiscrimination and equal opportunity provisions of WIOA and the right to file a complaint of discrimination with the WIOA Title I Service provider, LWDA, State, or the CRC. Communication of the policy shall be documented on a notification instrument for employees and applicants/participants, and retained in individuals' file. Also, grant recipients shall ensure audible access to "Equal Opportunity is the Law" for individuals with visual disabilities, as well as persons who have difficulty reading and comprehending written materials. Where a significant portion of the eligible population may need service or information in a language other than English or Spanish, the LWDA shall provide the initial notice and other materials in the needed language to the extent possible.

Each local-level EO Officer is responsible for ensuring publication of the name, title, address, telephone number, and TDD number of the EO Officer or other individuals responsible for receiving, investigating and resolving complaints.

¹ Training and service providers are not required to designate an Equal Opportunity Officer. The LWIOA EO Officer is responsible for ensuring training provider compliance with the nondiscrimination and equal opportunity requirements of WIOA.

WHO MAY FILE A COMPLAINT

Any person who believes he or she has been subjected to discrimination based on race, color, religion, gender, national origin, age disability, political affiliation or belief, and for beneficiaries only, citizenship, or participation in WIOA, has the right to file a complaint within 180 days of the alleged discrimination.

Individuals wishing to file a complaint must be given the option to file a complaint with the respective WIOA Title I service provider, LWDA EO Officer, the State WIOA EO Officer and directly with the Director of the Civil Rights Center (CRC) of the United States Department of Labor. The contact information for the State WIOA EO Officer and the Director for the CRC is listed below:

Vicki Tanner, State WIOA EO Officer
Workforce Development Services
Virginia Community College System
300 Arboretum Place, Suite 200
Richmond, VA 23236
Email: vtanner@vccs.edu
Telephone: (804) 819-1682

or

Director, Civil Rights Center (CRC)
U.S. Department of Labor,
200 Constitution Avenue, N.W., Room N-4123
Washington, D.C. 20210.

FILING A DISCRIMINATION COMPLAINT AT THE GRANT RECIPIENT LEVEL

A complaint of discrimination may be filed with the respective WIOA Title I service provider, LWDA EO Officer or the State WIOA EO Officer. Complaints filed with the State WIOA EO Officer against an LWDA service provider may be referred back to the LWDA EO Officer where there is not a conflict of interest.²

Complaints must be filed within 180 days of the alleged act of discrimination. Complaints may be filed by the individual or on behalf of the individual by an authorized representative³. Complaints must be filed in writing and signed by the complainant or by his or her representative. It is recommended but not required that complaints be filed on the USDOL Complaint Information Form.

The complaint document must contain the following:

² In instances where the Local Workforce Development Board (LWDB) is named in a complaint, and the LWDB executive also serves as the LWDA EO officer, the complaint will be handled by the State WIOA EO Officer or be referred to the CRC.

³ An authorized individual is anyone the complainant designates to conduct business on their behalf.

- Complainant's name and address, or other means by which the complainant may be contacted;
- Identification of individual(s) and/or organization responsible for the alleged discrimination;
- Descriptions of the complainant's allegations to (1) determine the grant recipient's jurisdiction of the complaint, (2) timeline of the alleged act of discrimination, (3) specific prohibited basis or bases for the alleged discrimination (i.e., race, sex, etc.) and (4) apparent merit of the complaint.

TIME FRAMES

- If the complainant elects to file with the grant recipient, the grant recipient shall have 90 days to process the complaint and provide a determination. Virginia's discrimination complaint process includes 60 days for the grant recipient to investigate and provide a determination to the complainant and 30 days for a review at the state level if warranted.
- If the complainant elects to file with both the CRC and the grant recipient, the complainant shall be informed that the grant recipient has 90 days to process the complaint and that the CRC shall not investigate the complaint until the 90 day period has expired.
- If by the end of 90 days from the date on which the complaint was filed the grant recipient fails to issue a Notice of Final Action, the complainant may file a complaint with the Director of the CRC within 30 days of the expiration of the 90 day period.
- Immediately upon determining that it does not have jurisdiction, the grant recipient's EO Officer shall notify the complainant in writing that he or she does not have jurisdiction over the complaint, including reasons for the determination and the complainant's right to file with the appropriate party or the Director of the CRC within 30 days of the notice.
- The complainant shall be notified that if the complaint is not filed within 180 days of the alleged act of discrimination or a complaint has not been filed within 30 days of the receipt of the grant recipient's determination of expiration of the 90 day period, the Director of the CRC may extend the time limits for good cause shown.

PROCESSING A DISCRIMINATION COMPLAINT

It is the responsibility of the EO Officer receiving the complaint to determine the appropriate jurisdiction over the complaint. Upon determining that a One-Stop partner/ WIOA Title I service provider has jurisdiction, the complaint shall be recorded in the EO Officer's complaint log (see record keeping) and referred to the appropriate One-Stop partner/ service provider for resolution in accordance with that

partner's complaint processing procedures. Where the EO Officer has jurisdiction for a complaint, he or she shall notify the complainants, in writing, of the specific timeframes for processing of the complaint. Where the EO Officer determines there is no jurisdiction over the complaint (i.e. the complaint is not related to WIOA Title I services), or the complaint has been filed after 180 days from the alleged act of discrimination, he or she shall notify the complainant(s), in writing, detailing that determination and applicable next steps.

All complaints shall be investigated in accordance with the Discrimination Complaint Process and procedures outlined below. WIOA Title I service providers must follow the LWDA's complaint processing procedures if they do not have their own. Such complaint procedures must include the following elements:

- Initial, written notice to the complainant, including notice that the complainant has the right to be represented in the complaint process;
- A written statement provided to the complainant that contains a list of the issues raised in the complaint and, for each issue, a statement whether the grant recipient will accept or reject the issue, and the reasons for each rejection;
- A period of fact-finding or investigation of the issues, which includes interviews with the complainant and individual or entity named in the complaint;
- A written Notice of Final Action provided to the complainant within 90 days of the date on which the complaint was filed; that contains the grant recipient's determination.

All activities and records of the EO Officer related to an investigation shall ensure the confidentiality of the complainant and any resulting actions. The investigation must be managed in a manner that does not have an adverse effect on the complainant or any other party related to the complaint.

RESPONDING TO A DISCRIMINATION COMPLAINT

It is the responsibility of the EO Officer investigating the complaint to sign the investigation documentation, including the determination and recommendation. The EO Officer shall provide a written determination (Notice of Final Action) of the complaint and offer resolution within 90 days of the date the complaint was filed. The determination of each issue filed should include (1) the grant recipient EO Office's decision on the issue and an explanation of the reasons underlying the decision; (2) a description of the way the parties resolved the issue; and (3) notice that the complainant has a right to file a complaint with the Director of the CRC within 30 days of the Notice of Final Action if he or she is dissatisfied with the grant recipient's final action on the complaint.

Determinations: The grant recipient's EO Officer shall determine at the conclusion of the investigation of a complaint whether there is reasonable cause to believe that a violation occurred. If an investigation results in a reasonable cause finding, the EO Officer shall submit the signed investigative report including determination and recommendation to the State WIOA EO Officer for review within 60 days of the filing date. Based on a review of the determination, the State WIOA EO Officer will determine if

further review by the VCCS Administrator of Federal Workforce Development Programs or the Attorney General's Office is warranted. If the VCCS State WIOA EO Officer or Administrator of Federal Workforce Development Programs concurs with the determination, the originating grant recipient EO Officer shall issue a written determination. The determination shall notify the complainant of the specific findings; the proposed remedial or corrective action and the time in which corrective action must be completed.

Where a no cause finding is made by the grant recipient's EO Officer, the complainant shall be notified in writing. Such a determination represents the final action of the grant recipient's EO Officer and should include notification to the complainant of his or her right to file a complaint (not an appeal) with the State WIOA EO Officer or the CRC if he or she believes the grant recipient's resolution is unsatisfactory. The complainant shall be informed that this right must be exercised within 30 days.

CORRECTIVE ACTION

If a determination of discrimination is found through the process of a complaint investigation, the respondent shall be requested to comply voluntarily with corrective action(s) or a conciliation agreement to correct the discriminatory actions or conditions. Actions to correct discrimination deficiencies may include any of the following:

- Back pay, or other monetary relief (Federal funds shall not be used to provide monetary relief);
- Hire or reinstatement;
- Promotion;
- Benefits or other services denied; and
- Any other remedial or affirmative relief such as outreach, recruitment, and training to ensure equal opportunity.

It is the responsibility of the investigating EO Officer to provide technical assistance and evaluate respondent progress made toward completion of corrective actions. The State WIOA EO Officer must be notified in writing of all investigations resulting in determinations of discrimination. If respondent compliance with the corrective actions or conciliation agreement is not secured through voluntary means, the State WIOA EO Officer must be notified and shall consult with the VCCS Administrator of Federal Workforce Development Programs regarding appropriate sanctions to be imposed, which could include but not be limited to termination of funding, termination of partial funding, and disallowance of selected costs.

RECORDKEEPING

Grant recipient's EO Officers shall maintain an automated or manual log of discrimination complaints to include, name and address of the complainant; the basis of the complaint, (i.e., race, gender, age, etc.), a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Records pertaining to discrimination complaints,

investigations or any other such actions shall be retained for a minimum of three years from the date of the resolution. Information pertaining to the identity of any persons providing information related to or assisting in an investigation or a compliance review shall be maintained in a confidential manner to the extent possible. If it is necessary that a person's identity be disclosed, the person shall be protected from retaliation.

INTIMIDATION AND RETALIATION ARE PROHIBITED

Consistent with 29 CFR 37.11, intimidation and retaliation against individuals for filing a complaint; opposing a prohibited practice; furnishing information; assisting or participating in any manner in an investigation, review, hearing or any other activity related to administration of, exercise or authority under, or privilege secured by, the nondiscrimination and equal opportunity provisions of WIOA are prohibited. In accordance with 29 CFR 37.11, complaints may be filed alleging intimidation and retaliation.