

871—58.21(7B,PL97-300,PL102-367) Department complaint procedures.**58.21(1) General information.**

a. These rules indicate and specify the minimum procedural requirements for resolving complaints about the Job Training Partnership Act (JTPA) program administered by the department and operated by grantees within each service delivery area (SDA) alleging a violation of the JTPA, state or federal regulations, grant or other agreements under the Act. For complaints involving audit reports, compliance review reports and the imposition of sanctions on the grantee, refer to the rules applicable to audit resolution, debt collection, compliance reviews and sanctions for filing deadlines and procedures.

b. The JTPA and federal implementing regulations require the establishment of both local and state level complaint procedures. Grievances or complaints about local level actions, decisions, activities, and programs are to be resolved through the SDA level complaint procedure. As provided in subrule 58.21(3) the state may, upon request of a party or upon its own motion, review a final local complaint decision. Complainants may file initially with the state if the requirements of subrule 58.21(4) are met.

c. These rules do not apply to proceedings that determine law or policy of general applicability based on legislative fact nor to automatic grant adjustments for classes of contractors, subcontractors or participants when adjustments are required by state or federal law.

d. Complaints may be brought by participants, subgrantees, subcontractors, and other interested persons. The department may also initiate complaints as required by statute or constitution in order to determine the legal rights, duties, or privileges of a party which are at issue.

e. The identity of any person who has furnished information relating to, or assisting in an investigation of a possible violation of JTPA shall be kept confidential to the extent possible, consistent with due process and a fair determination of the issues.

f. No grantee, administrative entity, private industry council, or subgrantee shall in any manner discriminate against or discharge any individual because the individual has filed a complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any proceeding or investigation under or related to this Act.

58.21(2) Definitions. As used in this complaint procedure the following definitions apply, unless the context otherwise requires.

“*Complaint*” means an alleged injury, injustice or wrong and includes the term grievance.

“*Contested case*” means a proceeding in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by the department, after an opportunity for an evidentiary hearing.

“*Director*” means the director of the department of workforce development.

“*Dismissal*” means that a complaint will not be pursued for the following reasons:

1. The alleged violation is not one that arises in connection with JTPA Act, regulations, grant, or other agreements under the Act; or
2. No useful purpose would be derived in pursuing further action on the complaint.

“*Final action*” means resolution of the complaint by withdrawal, settlement agreement, dismissal, or final decision.

“*Interested person*” incorporates the legal concept of “standing” and means a person who has some personal and legal interest in the matter which is the subject of the complaint and can demonstrate a specific injurious effect on this interest.

“*Settlement agreement*” means a written agreement, signed by the parties, that has been executed and which recites the subject of the controversy, the solution mutually agreed upon by the parties, and a statement of the action to be taken, or prohibited in the future, by each of the parties.

“*Withdrawal*” means the complainant requested, prior to a hearing, that no further action be taken by the state on the complaint.

58.21(3) State review of SDA complaint decisions. If a party does not receive a final decision at the SDA level within 60 days of filing of the complaint or receives an adverse decision, a party may request a review of the complaint by the department.

a. *Filing deadline.* To be considered, a request must be filed with the department within 10 days of receipt of the adverse decision or 15 days after the decision was mailed.

b. Exhaustion of local procedures. No party may file a request for review by the department until the SDA procedures have been exhausted, unless a decision has not been issued within 60 days of the filing of the complaint.

c. Where to file. The request shall be filed with the JTPA complaint officer at the department.

d. Contents. The request shall be in writing and shall include:

- (1) The date of filing the request for review;
- (2) The names and addresses of all parties involved;
- (3) A clear statement of the facts, relevant dates, and which provision(s) needs review. Provisions not identified for review will be considered resolved, unless the agency desires to review a provision on its own motion;

- (4) The date the complaint was filed with the SDA and the date the SDA decision was issued or should have been issued;

- (5) Signature of the party requesting the review; and

- (6) A copy of the SDA level decision, if issued.

e. Notice. After receipt of the request for review, the JTPA complaint officer will:

- (1) Send written notice of the filing and a description of the review process to each party;

- (2) Request from the SDA complaint officer a copy of the SDA complaint file consisting of all pertinent documents including, but not limited to, the original complaint, evidence, hearing transcript, briefs, pleadings and written decision(s);

- (3) Transmit the request to appropriate personnel; and

- (4) Establish a deadline for submission of briefs, exceptions or additional evidence.

f. State review process.

- (1) Review procedure. The director, or the director's designee, will review the SDA decision, complaint file, all timely filed briefs and exceptions, and any other relevant information. The director, or the director's designee, may request additional information from the parties, investigate any matter, request oral arguments on the complaint, or take any other appropriate action to aid in the review process;

- (2) Standard of review. Deference will be given to the findings of fact made at the local level. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence and decision. The local decision will be reviewed to determine:

1. Consistency with state, federal and local law, regulation and policy under the JTPA;

2. The lawfulness of the local procedure;

3. Whether the decision is in violation of any statutory or regulatory provision;

4. Whether it is in excess of the authority delegated to the SDA;

5. Whether it is supported by substantial evidence in the record when that record is reviewed as a whole; and

6. Whether it is unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

- (3) Final decision.

1. When the director reviews the SDA decision, the decision of the director is final. When an individual designated by the director reviews the SDA decision, the designee will prepare a recommended decision which the director may adopt, modify or reject. The director shall issue a final written agency decision.

2. A final written agency decision will be made within 30 days of the filing of the request for department review. This written decision of the director is final agency action and subject to judicial review as provided in Iowa Code section 17A.19.

58.21(4) *State complaint procedure.*

a. Who may file. A participant, subgrantee, subcontractor or other interested person may file a complaint.

b. Jurisdiction. A complaint may be filed with the state to adjudicate or otherwise resolve an allegation that the department has violated the JTPA, applicable federal or state regulations, grants, contracts or other agreements under the JTPA. For complaints involving audit reports, compliance review

reports, and the imposition of sanctions on the grantee, refer to the sections on audit resolution, debt collection, compliance reviews and sanctions for special filing deadlines and procedures.

c. Time.

(1) Except for complaints alleging fraud or discrimination prohibited under the Act, complaints shall be filed within one year of the alleged occurrence. For appeals of final audit reports, compliance review reports and the imposition of sanctions refer to the applicable rules for filing deadlines.

(2) Discrimination-based complaints. All complaints alleging discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation, or belief and, for beneficiaries only, citizenship or participation in JTPA must be filed within 180 days of occurrence. Discrimination-based complaints may be filed with the DWD or Directorate of Civil Rights, U.S. Department of Labor at the following address: Director, Directorate of Civil Rights, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, D.C. 20210. The state JTPA complaint officer will provide the charging party with the U.S. Department of Labor complaint information form and assistance in completing and filing the complaint. If the complainant elects to file with DWD, a written decision will be issued within 60 days of the filing date of the complaint. If the complainant is not satisfied with DWD's resolution of the complaint or if no decision is released within the 60 days, the complainant has the right to file a complaint with the Directorate of Civil Rights. This right must be exercised within 30 days after DWD notifies the complainant of the proposed resolution or within 30 days of the expiration of the 60-day period.

d. Contents. Complaints shall:

- (1) Be clearly portrayed as a complaint by the complainant;
- (2) Be legible and signed by the complainant or the complainant's authorized representative;
- (3) Pertain to a single subject, situation or set of facts;
- (4) State the name, address and telephone number (or TTY - Telecommunications Device for the Deaf - number) of the complainant and the name, address and telephone number of an attorney or other representative of the complainant's choice;
- (5) State the name of the party or parties complained against and, if known to the complainant, the address and telephone number of the party or parties complained against;
- (6) Contain a clear and concise statement of the facts, including pertinent dates, constituting the alleged violations;
- (7) Cite the provisions of JTPA regulations, grants or other agreements under JTPA believed to have been violated;
- (8) State the relief or remedial action(s) sought;
- (9) Include copies of documents supporting or referred to in the complaint; and
- (10) State whether or not an oral hearing is requested.

e. Where filed. Complaints shall be filed with the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

58.21(5) *Acknowledgment of complaint and notice of opportunity for hearing.*

a. A complaint shall be deemed filed with the state when it has been received by the JTPA complaint officer in a form which satisfies the requirements of paragraph 58.21(4) "d."

b. Upon receipt of a complaint in proper form, the department of workforce development will send by personal service or certified mail, a copy of the complaint and a letter of acknowledgment and notice to the parties. The letter of acknowledgment and notice shall contain the filing date, the docket number, and guidance concerning the following:

- (1) The opportunity for informal resolution of the complaint at any time before a contested case hearing is convened.
- (2) The opportunity for a party to request a hearing by filing a request for hearing with the complaint officer within seven days of receipt of the acknowledgment of the complaint.
- (3) Opportunity for a party to be represented by counsel at the party's own expense.
- (4) Failure to file a written request for a hearing within the time provided constitutes a waiver of the right to a hearing. The presiding officer will rule on the complaint based upon the pleadings, evidence and briefs submitted.
- (5) If a hearing is requested, the hearing shall be held within 30 days of the filing of the complaint.

(6) The opportunity for a party to submit written evidence, pleadings and briefs in a time and manner prescribed by the presiding officer.

(7) When an administrative law judge presides, the administrative law judge shall issue a proposed decision within 60 days of the filing date of the complaint and forward a copy to each party, the complaint officer and the director.

(8) Should the administrative law judge fail to issue a written decision within 60 days or if a party receives an adverse decision, a party may request an independent state review of the complaint. The request must be filed with the director within 10 days of the issuance date of the adverse decision or within 10 days from the date on which the decision should have been issued. If accepted for review, a decision shall be made within 30 days and the director's decision is final.

(9) Parties may file exceptions to and appeals of the proposed decision for review by the director no later than 10 days from the issuance date of the proposed decision by filing with the complaint officer exceptions, appeals, and appeal briefs or briefs in support of the exceptions. The parties will receive written notice of the acceptance or denial of the request for review. The state reserves the right to review the administrative law judge's decision on its own motion.

(10) If no exceptions to or appeals of the proposed decision are filed within the time provided or not reviewed upon agency motion, the proposed decision of the administrative law judge shall become the final agency decision.

58.21(6) *Settlement.* A controversy may, unless precluded by statute, be informally settled by mutual agreement of the parties any time before or after a controversy is formally identified by the filing of a complaint, notice, or petition, and before a contested case hearing is convened. The settlement shall be effected by a written settlement agreement signed by all parties or a written statement from the complainant that the complaint has been withdrawn or resolved to the complainant's satisfaction. The complaint officer shall acknowledge the informal settlement and notify the parties of the final action. With respect to the specific factual situation which is the subject of controversy, the informal settlement shall constitute a waiver, by all parties of the formalities to which they are entitled under the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A, JTPA and the rules and regulations under JTPA.

58.21(7) *Waiver of right to a hearing.* Failure to request a hearing in a timely fashion constitutes a waiver of a right to a hearing. If no hearing is requested, the presiding officer shall make a record of the written evidence, pleadings and briefs submitted by the parties. These documents shall be considered the complete record and will be the basis for the administrative law judge's proposed decision.

58.21(8) *Notice of hearing.* Upon receipt of a timely request for a hearing, the JTPA complaint officer will assign the matter to an administrative law judge. The parties shall be notified of this assignment and all future correspondence and filings shall be directed to the administrative law judge and copies of the documents shall be served on all parties and the JTPA complaint officer. All hearings shall be conducted in accordance with the procedures required in Iowa Administrative Code 871—Chapter 26.

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