

# WEST PIEDMONT WORKFORCE INVESTMENT BOARD

## Equal Opportunity and Nondiscrimination Policy

**Effective Date:** 2001

**Revision Date:** December 2013

**Title:** Equal Opportunity and Nondiscrimination Policy

### **PURPOSE**

The purpose of this Equal Opportunity and Nondiscrimination Policy (hereafter referred to as this “**Nondiscrimination Policy**”) is to communicate the requirement of the West Piedmont Workforce Investment Board’s Workforce Centers, Program Operators, and Training Providers to adopt and publish procedures providing for the prompt and equitable resolution of complaints alleging violation of the Workforce Investment Act’s nondiscrimination and equal opportunity provision.

### **REFERENCES**

- ❖ P.L. 105-220, Workforce Investment Act of 1998 (hereafter referred to as the “**WIA**”), Section 188(a), (e), 29 U.S.C. § 2938(a), (e)
- ❖ 29 CFR Part 37, Department of Labor, Office of the Secretary, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA)

### **POLICY**

The West Piedmont Workforce Investment Board (hereafter referred to as “**WPWIB**”) shall 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 WIA funds. Any person who believes he or she has been subjected to discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship, or participation in WIA, has the right to file a complaint within 180 days of the alleged discrimination. The person has the right to file a complaint at the local level with the Equal Opportunity Officer, West Piedmont Workforce Investment Board, P. O. Box 4043, Martinsville, Virginia, 24114, or directly with the Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4123, Washington, D.C. 20210. If the complainant elects to file a complaint with WPWIB, WPWIB shall have 90 days to process a complaint and issue a decision. If WPWIB does not provide a written decision within 90 days of the filing of the complaint, the complainant need not wait for a decision to be issued, but may file a complaint with the Civil Rights Center (hereafter referred to as the “**CRC**”) within 30 days of the expiration of the 90-day period. If a complainant is not satisfied with WPWIB’s resolution, the complainant may file a complaint with the CRC. Such complaint must be filed within 30 days of the date the complainant received the Notice of Final Action from WPWIB.

WPWIB has designated the **Executive Director, Lisa Fultz**, as its Equal Opportunity Officer (hereafter referred to as the “**EO Officer**”), who will be responsible for adopting and publishing complaint procedures, and ensuring that they are followed. 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 for employment, applicants for program services and/or funding, participants, employees, terminated individuals, and other interested parties. The poster contains a nondiscrimination and equal opportunity statement, as well as information about filing a complaint.

WPWIB's Workforce Centers, Program Operators, and Training Providers shall include in orientations to employees and/or participants a discussion of their rights under the nondiscrimination and equal opportunity provisions of the WIA and the right to file a complaint of discrimination with either the local workforce investment board or the CRC. Communication of policy shall be documented on a notification instrument for employees and applicants/participants, and shall be retained in individuals' files. WPWIB shall ensure audiotape access to the tape "Equal Opportunity Is the Law" for individuals with visual disabilities, as well as persons who have difficulty reading and/or comprehending written materials. Where a significant portion of eligible population may need service or information in a language other than English or Spanish, WPWIB shall provide the initial notice and other material in the needed language to the extent possible.

### **Intimidation and Retaliation Prohibited**

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

## **PROCEDURES**

### **❖ Filing a Discrimination Complaint at the Local Level**

- A complaint of discrimination may be filed with the WPWIB EO Officer or the State WIA EO Officer. A complaint must be filed within 180 days of the alleged discrimination. The complaint may be filed by the individual or on behalf of the individual by an authorized representative. A complaint must be filed in writing and signed by the complainant or by his or her authorized representative. It is recommended (but not required) that the complaint be filed on a U.S. Department of Labor Complaint Information Form (found at the website addresses listed below), or on the WPWIB EO Complaint Form (which is attached).
  - The English-language website is:  
[http://www.dol.gov/oasam/programs/crc/CIFEng\(Wd\)08.doc](http://www.dol.gov/oasam/programs/crc/CIFEng(Wd)08.doc)
  - The Spanish-language website is:  
[http://www.dol.gov/oasam/programs/crc/CIF\(Span\)08.doc](http://www.dol.gov/oasam/programs/crc/CIF(Span)08.doc)
- The complaint must be filed in writing and must contain the following information:
  1. The complainant's name and address (or another means of contacting the complainant);
  2. The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
  3. A description of the complainant's allegations, which must include enough detail to allow the recipient to decide whether:

- i. WPWIB or the CRC, as applicable, has jurisdiction over the complaint;
    - ii. the complaint was filed in time; and
    - iii. the complaint has apparent merit—whether the complainant’s allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of the WIA or 29 C.F.R. Part 37; and
  4. The complainant’s signature or the signature of the complainant’s authorized representative.
- The WPWIB EO Officer is responsible for ensuring publication of the name, title, address, telephone number, and TDD number of the EO Officers or other individuals responsible for receiving complaints.

#### ❖ **Timeframes**

- Generally, a complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the Director of the CRC may extend the filing time. The time period for filing is for the administrative convenience of the CRC, and does not create a defense for the respondent.
- The WPWIB EO Officer shall notify complainants, in writing, of the specific time frames for processing a complaint of discrimination, as follows:
- If the complainant elects to file with WPWIB, WPWIB shall have 90 days to process the complaint and provide a determination. Virginia’s discrimination complaint process includes 60 days for WPWIB to investigate and 30 days for a review at the State level, if warranted.
  - If the complainant elects to file with both the CRC and WPWIB, the complainant shall be informed that WPWIB 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 WPWIB 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.
  - If, during the 90-day period, WPWIB issues its Notice of Final Action, but the complainant is dissatisfied with WPWIB’s decision on the complaint, the complainant or his/her representative may file a complaint with the Director of the CRC within 30 days after the date on which the complainant receives the Notice of Final Action.
  - If the WPWIB determines that it does not have jurisdiction over the complaint, the WPWIB EO Officer shall notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction must include:
    - i. A statement of the reasons for WPWIB’s determination that it does not have jurisdiction; and
    - ii. Notice that the complainant has a right to file a complaint with the CRC within 30 days of the date on which the complainant receives the Notice of Lack of Jurisdiction.

#### ❖ **Processing a Discrimination Complaint**

- It is the responsibility of WPWIB’s EO Officer to determine which Workforce entity has jurisdiction over the complaint. Upon determining that a Workforce partner has jurisdiction, the complaint shall be recorded in the complaint log (see “Record keeping” below) and referred to

the appropriate Workforce partner for resolution in accordance with that partner's complaint processing procedures. Where the WPWIB EO Officer has jurisdiction for a complaint, he or she shall notify complainants, in writing, of the specific time frames for the processing of a discrimination complaint.

- If the complainant elects to file with WPWIB, WPWIB shall have 90 days to process the complaint and provide a determination.
  
- **Alternate Dispute Resolution**
  - During the 90-day period, complainants may elect to participate in mediation. The choice whether to use mediation or the customary investigation process rests with the complainant.
  - Requests for mediation shall be referred to WPWIB's EO Officer. If the complainant elects mediation and there is no resolution, the complaint will be referred for investigation or the complainant may file a complaint with the Director of the CRC.
  - A party to any agreement reached under mediation may file a complaint with the Director of the CRC in the event that the agreement is breached. In such circumstances, the following rules will apply:
    - iii. The non-breaching party may file a complaint with the Director of the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach;
    - iv. The Director of the CRC must evaluate the circumstances to determine whether the agreement has been breached. If he or she determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his/her original allegation(s), and the Director of the CRC will waive the time deadline for filing such a complaint.
  
- **Investigation Procedures**
  - If mediation is not elected, the complaint shall be investigated in accordance with WPWIB's complaint-processing procedures. Such complaint procedures shall include the following elements:
    1. Initial, written notice to the complainant, and a notice that the complainant has the right to be represented by an attorney in the complaint process;
    2. 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 WPWIB will accept or reject the issue, and the reasons for each rejection;
    3. A period for fact-finding or investigation of the issues;
    4. A 15-day period during which WPWIB will attempt to resolve the complaint through mediation; and
    5. A written Notice of Final Action containing WPWIB's determination, provided to the complainant within 90 days of the date on which the complaint was filed.
  
- ❖ **Discrimination Complaint Investigation Procedure**
  - Within 90 days of the date a discrimination complaint is filed, an investigation shall be conducted by WPWIB's EO Officer or by a designee under the direction of the EO Officer, consistent with the Discrimination Complaint Investigation procedure. This procedure shall be used for any

discrimination complaint for which a written and signed complaint has been received. All activities and records related to an investigation shall ensure the confidentiality of the complaint 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**

- WPWIB's EO Officer shall sign the investigation, including the determination and recommendation. WPWIB 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. For each issue filed, the Notice of Final Action will include:
  1. WPWIB'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. a notice that the complainant has the 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 WPWIB's final action on the complaint.

❖ **Determinations**

- WPWIB'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, WPWIB's EO Officer shall submit the signed investigative report, including the determination and recommendation, to the State EO Officer for review within 60 days of the filing date. Based on review of the determination, the State EO Officer will determine if further review by the Attorney General's Office and the Virginia Community College System (hereafter referred to as the "VCCS") Vice Chancellor of Workforce Development Services, or his designee, is warranted. If the VCCS concurs with the determination, WPWIB's 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.
  - If an investigation results in a "no cause" finding, the complainant shall be notified in writing. Such a determination represents the final action of WPWIB's EO Officer. WPWIB's EO Officer shall notify the complainant of his or her right to file a complaint (not an appeal) with the CRC if he or she believes WPWIB's resolution is unsatisfactory. The complainant shall be informed that this right must be exercised within 30 days.

❖ **Corrective Action**

- If discrimination is found through the process of a complaint investigation, the respondent shall be requested to voluntarily comply with corrective action(s) or 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.

❖ **Record Keeping Requirements**

- WPWIB shall maintain an automated or manual log of discrimination complaints, which shall include:
  - the name and address of the complainant;
  - the basis of the complaint (i.e., race, sex, 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 (3) years from the date of 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. In the event that it is necessary that a person's identity be disclosed, the person(s) shall be protected from retaliation.