

## **CHAPTER 841. WORKFORCE INVESTMENT ACT**

**ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**

**ON NOVEMBER 6, 2007**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **November 23, 2007**

The rules will take effect: **November 26, 2007**

The Texas Workforce Commission (Commission) adopts the repeal of the following sections of Chapter 841 relating to the Workforce Investment Act (WIA), as published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4373):

Subchapter C. Training Provider Certification, §§841.48 and §841.49

Subchapter D. Local Area Grievance Procedure, §§841.61–841.69

Subchapter E. State Level Hearing, §§841.91–841.93 and §§841.95–841.96

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The purpose of the adopted rule change is to establish detailed and consistent procedures for complaints, hearings, and appeals related to workforce services administered by Local Workforce Development Boards (Boards). Texas Labor Code §302.065 requires that the Commission integrate the administration of multiple federal block grant programs and identify policy changes that support this integration. The Commission expanded this integration to state-funded workforce services, including examining the existing complaints and appeals processes for workforce services administered by the Boards. An absence of unified and integrated rules on complaints, hearings, and appeals related to workforce services makes the existing rules difficult to understand or interpret consistently and works as a barrier to integrating workforce services.

To maintain uniformity and consistency across all Board-administered workforce services and to protect due process rights of Texas Workforce Center customers, in a separate, but concurrent, rulemaking, the Commission has repealed Chapter 823, General Hearings rules, and adopted new Chapter 823, Integrated Complaints, Hearings, and Appeals rules. New Chapter 823 requires Boards to establish local policies related to filing complaints, to provide opportunities for informal resolutions, and to establish procedures for Board hearings and appeals.

The Commission has reviewed sections of Chapter 841 relating to complaints or grievances, local-level appeals, and state-level hearings. The Commission repeals these sections and

incorporates similar processes related to complaints, hearings, and appeals in new Chapter 823, including the complaints and appeals process that is currently established in the Workforce Investment Act (WIA) regulations at 20 C.F.R. §667.600 and §667.640.

## **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES**

### **SUBCHAPTER C. TRAINING PROVIDER CERTIFICATION**

**The Commission adopts amendments to Subchapter C, as follows:**

Under a separate, but concurrent, rulemaking, the Commission has adopted new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including the information in the following sections.

#### **§841.48. Local Appeals**

Section 841.48, procedures established by Boards for appeals requested by eligible training providers found by the Boards to be ineligible to receive WIA funding for training services, is repealed and the information is relocated in new Chapter 823.

#### **§841.49. State Level Appeals**

Section 841.49, procedures established by the Agency for appeals requested by eligible training providers found by the Agency to be ineligible to receive WIA funding for training services, is repealed and the information relocated in new Chapter 823.

### **SUBCHAPTER D. LOCAL AREA GRIEVANCE PROCEDURE**

**The Commission adopts the repeal of Subchapter D, as follows:**

Under a separate, but concurrent, rulemaking, the Commission has adopted new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including the information in the following sections.

#### **§841.61. Purpose and Coverage**

Section 841.61, procedures for resolving allegations of violations of the requirements of WIA in the operation of local WIA programs and activities, is repealed and the information is relocated in new Chapter 823.

#### **§841.62. Grievance Filing Procedures at the Local Level**

Section 841.62, grievance procedures established by the Board to notify any participant or other affected party alleging a violation of the requirements of WIA at the local level of the right to file a complaint, is repealed and the information is relocated in new Chapter 823.

**§841.63. Time Limitations at Local Level**

Section 841.63, the length of time required to file a complaint alleging noncriminal violations of the requirements of WIA, is repealed and the information is relocated in new Chapter 823.

**§841.64. LWDB Responsibilities**

Section 841.64, responsibilities of the Boards regarding grievance procedures, is repealed and the information is relocated in new Chapter 823.

**§841.65. Local Level Informal Conference Procedure**

Section 841.65, Board requirements regarding informal resolutions, is repealed and the information is relocated in new Chapter 823.

**§841.66. Local Level Hearing Procedure**

Section 841.66, Board requirements to establish local hearing procedures for parties dissatisfied with the results of an informal conference, is repealed and the information is relocated in new Chapter 823.

**§841.67. Written Decision**

Section 841.67, requirements for hearing officers to provide a written decision to all parties to a complaint, is repealed and the information is relocated in new Chapter 823.

**§841.68. Remedies**

Section 841.68, remedies that may be imposed as enumerated at WIA §181(c)(3), is repealed and the information is relocated in new Chapter 823.

**§841.69. Appeal**

Section 841.69, procedures for filing an appeal to the Agency if a party is dissatisfied with the results of a local level hearing, is repealed and the information is relocated in new Chapter 823.

**SUBCHAPTER E. STATE LEVEL HEARING**

**The Commission adopts amendments to Subchapter E, as follows:**

Under a separate, but concurrent, rulemaking, the Commission has adopted new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including the information in the following sections.

**§841.91. Scope**

Section 841.91, related to the scope of this subchapter, is repealed and the information is relocated in new Chapter 823.

**§841.92. Review Procedure for Appeals Made Under §841.69**

Section 841.92, procedures established by the Agency to select an impartial hearing officer to review the record to determine if a party was afforded a process that was held in compliance with WIA and local grievance procedures, is repealed and the information is relocated in new Chapter 823.

**§841.93. State Level Informal Resolution and Hearing for Alleged Violations of the Requirements of WIA by the State or for Complaints by Individuals Affected by the Statewide Program**

Section 841.93, Agency requirements to establish procedures for state level informal resolutions and hearings for alleged violations of the requirements of WIA by the state or for complaints by individuals affected by the statewide program, is repealed and the information is relocated in new Chapter 823.

**§841.95. Referral of Local Complaints**

Section 841.95, complaints arising under Subchapter D and made directly to the Commission, is repealed and the information is relocated in new Chapter 823.

**§841.96. Appeal to Secretary of Labor**

Section 841.96, appeals made to the Secretary of Labor pursuant to 20 C.F.R. §§667.610, 667.640, 667.645, and 667.650, is repealed and the information is relocated in new Chapter 823.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

## Chapter 841. WORKFORCE INVESTMENT ACT

### SUBCHAPTER C. TRAINING PROVIDER CERTIFICATION

#### ~~§841.48. Local Appeals~~

- ~~(a) Each LWDB shall develop a written appeals process for appeals requested by providers found by the LWDB to be ineligible to receive WIA funding for training services.~~
- ~~(b) This procedure shall include an opportunity for a hearing.~~
- ~~(c) A final written decision on the appeal shall be provided within 60 days of the date of the LWDB's receipt of the request for appeal.~~
- ~~(d) A provider claiming that it was denied a hearing under this section may file a grievance under §841.62(a).~~

#### ~~§841.49. State Level Appeals~~

- ~~(a) A Commission determination that a provider is not eligible to receive WIA funding may be appealed. The written request for an appeal must be received by the Commission within 30 days of the date of the written notification to the provider of the determination of ineligibility. Either the LWDB in the area in which the training provider is located or the training provider may request an appeal.~~
- ~~(b) A hearing shall be conducted by a hearing officer employed by the Commission.~~
- ~~(c) A written decision shall be provided within 60 days of the date of receipt of the request for a hearing.~~
- ~~(d) The decision of the hearing officer shall be final.~~

### SUBCHAPTER D. LOCAL AREA GRIEVANCE PROCEDURE

#### ~~§ 841.61. Purpose and Coverage~~

- ~~(a) This subchapter establishes procedures for resolving allegations of violations of the requirements of WIA in the operation of local WIA programs and activities.~~
- ~~(b) These procedures cover complaints alleging a noncriminal violation of the requirements of WIA pursuant to WIA §181, and do not apply to complaints of discrimination. The Commission may waive specific provisions of this grievance procedure.~~
- ~~(c) All information and complaints involving allegations of fraud, abuse or other criminal activity shall be reported directly to the Texas Workforce Commission, Office of Investigations, 101 E. 15th Street, Austin, TX 78778-0001.~~
- ~~(d) All complaints of discrimination shall be handled in accordance with WIA §188.~~

### **~~§841.62. Grievance Filing Procedures at the Local Level~~**

- ~~(a) Any participant or other personally interested or personally affected party alleging a violation of the requirements of WIA at the local level may file a complaint by submitting a written grievance to the LWDB where the alleged action took place. The grievance must be signed and dated by the complainant and shall include the following information:~~
- ~~(1) the name, complete address, and telephone number for the person or organization filing the complaint;~~
  - ~~(2) a detailed description of the action which is the subject of the complaint, including reference or description of the provision that was allegedly violated;~~
  - ~~(3) a description of how they were personally affected; and~~
  - ~~(4) the name and address of each party or parties believed to be responsible for the action which is the subject of the complaint. The complainant must explain how each party is responsible for the action which is the subject of the complaint.~~
- ~~(b) To facilitate the filing of a grievance or complaint, the complainant may request a WIA Grievance Information Form from the LWDB or send a written request to the Texas Workforce Commission, Equal Opportunity Officer, at 101 E. 15th Street, Austin, TX 78778-0001.~~

### **~~§ 841.63. Time Limitations at Local Level~~**

- ~~(a) All complaints of noncriminal violations of the requirements of WIA must be made within 180 days of the alleged action. The time limitations for complaint resolution shall begin to run upon the date of receipt by the LWDB of a properly completed written grievance.~~
- ~~(b) All of the complainant's outstanding and unresolved allegations against the respondent must be described and consolidated into a single complaint at the time of filing. Any allegation not consolidated into the filed complaint prior to the informal resolution shall be deemed waived.~~

### **~~§ 841.64. LWDB Responsibilities~~**

~~Each LWDB shall adopt a written grievance procedure and ensure that its WIA contractor and subrecipients post in a public location a notice that a copy of the grievance rules are available upon request. The LWDB shall also ensure that:~~

- ~~(1) the Commission receives a photocopy of each complaint postmarked within three working days following the filing of such complaint;~~
- ~~(2) upon request, the complainant receives information regarding WIA grievance procedures;~~
- ~~(3) complete and accurate copies of all complaint correspondence and records of all complaint proceedings are maintained; and~~
- ~~(4) all LWDB contractors are fully complying with the terms of the WIA grievance procedures.~~

### **§ 841.65. Local Level Informal Conference Procedure**

- ~~(a) The LWDB shall ensure that there is an opportunity for an informal resolution.~~
- ~~(b) The LWDB shall appoint an impartial Hearing Officer to preside at the informal conference.~~
- ~~(c) The informal conference may be attended by the complainant, the respondent, and any other persons with information or knowledge relevant to the complaint considered necessary by the Hearing Officer for a fair determination of the issues. Only those issues presented at the informal conference may be addressed in subsequent hearings.~~
- ~~(d) The Hearing Officer shall notify all parties of the time, date, and location for the informal conference.~~
- ~~(e) The Hearing Officer shall provide each party with a written determination, including a statement of whether or not a resolution was reached, the details of any resolution and, if the complaint was unresolved, notice to the complainant of the opportunity for a local level hearing.~~
- ~~(f) The LWDB shall ensure that the informal conference, issuance of the written determination, and notice of the opportunity for a local level hearing, is completed within 20 days of the LWDB's receipt of a properly completed complaint form.~~

### **§ 841.66. Local Level Hearing Procedure**

- ~~(a) An LWDB shall provide a hearing at the request of either party who is dissatisfied with the results of the informal conference. The request for a hearing must be in writing and mailed within 14 days of the date the written determination was mailed.~~
- ~~(b) The LWDB shall select an impartial Hearing Officer who was not involved in the original decision.~~
- ~~(c) The LWDB shall ensure that the hearing, issuance of the written determination, and notice of the opportunity to appeal to the Texas Workforce Commission, are completed within 60 days of the LWDB's receipt of a properly completed complaint form.~~
- ~~(d) The LWDB shall ensure that the complainant is informed that withdrawal of the request for a hearing may be submitted by written notice of withdrawal to the Hearing Officer at any time prior to the hearing date.~~
- ~~(e) The Hearing Officer shall conduct the hearing, which may be attended by the complainant, the respondent, and any other persons with information or knowledge relevant to the complaint and considered necessary by the hearing officer for a fair determination of the issues.~~
- ~~(f) The Hearing Officer shall fully consider evidence relevant to the complaint in order to reach a fair decision based on such evidence. At any time during testimony, the Hearing Officer may ask questions to elicit additional facts and to clarify the issues or statements of a party or witness. The Hearing Officer may interrupt testimony to discourage irrelevant lines of testimony or inquiry, to avoid cumulative evidence, and to maintain or restore efficient order to the proceeding.~~

- ~~(g) The Hearing Officer shall make an audible, understandable electronic recording of the hearing.~~
- ~~(h) The Hearing Officer shall inform all parties that, for each issue considered, the complainant is responsible for proving that the actions complained of involved a violation of WIA, WIA regulations and rules, a contract or other agreement under WIA, or were committed in connection with the operation of a WIA program, and caused specific harm or injury either to the complainant or to the WIA program.~~

**§ 841.67. ~~Written Decision~~**

~~The Hearing Officer shall provide a written decision to all parties to the complaint and to the Commission. Such written decision shall contain at minimum the following information:~~

- ~~(1) the time, date, and location of the hearing;~~
- ~~(2) the names of all persons present at the hearing and the capacities in which they appeared;~~
- ~~(3) a synopsis of the issues and the facts found to exist by the Hearing Officer;~~
- ~~(4) a statement of the decision and the basis for such decision; and~~
- ~~(5) a statement of any remedies to be imposed.~~

**§ 841.68. ~~Remedies~~**

~~The remedies that may be imposed are enumerated at WIA §181(c)(3).~~

**§ 841.69. ~~Appeal~~**

- ~~(a) If no decision is mailed within 60 days or if either party is dissatisfied with the local hearing decision, the parties may appeal to the Texas Workforce Commission by sending a written notice of appeal to the Equal Opportunity Officer, 101 E. 15th Street, Austin, TX 78778-0001.~~
- ~~(b) The following time limitations apply to appeals to the Commission:~~
  - ~~(1) if no decision is mailed within 60 days of the date of receipt of the complaint, the appeal must be filed with the Commission no later than 90 days after the original complaint had been filed; and~~
  - ~~(2) if either party is dissatisfied with the local level hearing decision, the appeal must be filed no later than 14 calendar days after the decision has been mailed.~~

**SUBCHAPTER E. STATE LEVEL HEARING**

**§ 841.91. ~~Scope~~**

~~This subchapter applies to the following:~~

- ~~(1) appeals made under § 841.69 of this title (relating to Appeal);~~
- ~~(2) alleged violations of the requirements of WIA by the State;~~

- ~~(3) complaints from individuals affected by the statewide program;~~
- ~~(4) denials of area certification;~~
- ~~(5) referral to local level grievance process; and~~
- ~~(6) appeal to the Secretary of Labor.~~

**~~§ 841.92. Review Procedure for Appeals Made Under § 841.69~~**

- ~~(a) The state shall select an impartial Hearing Officer.~~
- ~~(b) The Hearing Officer shall review the record to determine if the party was afforded a process that was held in compliance with WIA and the local grievance procedure.~~
- ~~(c) Within 60 days of receipt of the request for review, the Hearing Officer shall render a written decision either affirming the local level decision or remanding.~~
- ~~(d) If the Hearing Officer remands the complaint to the local area grievance process, the LWDB shall hold a hearing on the complaint within 10 days of receipt of the Hearing Officer's decision and render a decision within 10 days of the hearing.~~

**~~§ 841.93. State Level Informal Resolution and Hearing for Alleged Violations of the Requirements of WIA by the State or for Complaints by Individuals Affected by the Statewide Program~~**

- ~~(a) All complaints of noncriminal violations of the requirements of WIA must be made within 30 days of the alleged action. The time limitations for complaint resolution shall begin to run upon the date of receipt by the Commission of a properly completed written grievance.~~
- ~~(b) All of the complainant's outstanding and unresolved allegations against the respondent must be described and consolidated into a single complaint at the time of filing. Any allegation not consolidated into the filed complaint prior to the informal resolution shall be deemed waived.~~
- ~~(c) The state shall select an impartial Hearing Officer.~~
- ~~(d) The Hearing Officer shall provide an opportunity for an informal resolution and for a formal hearing to be held, and decision to be rendered, within 60 days of receipt of the complaint.~~
- ~~(e) The complainant and respondent may be represented at the hearing by an attorney or other representative, and shall have the right to call witnesses and introduce documentary evidence at the hearing, as deemed necessary by the Hearing Officer. The individual parties shall bear the cost of such representation.~~
- ~~(f) The complainant shall bear the burden of proof by a preponderance of the evidence.~~
- ~~(g) The Hearing Officer shall ensure that an audible, understandable electronic recording is made of the hearing.~~
- ~~(h) Within 60 days of receipt of a complaint, the Hearing Officer shall mail a written Decision.~~

**§ 841.95. Referral of Local Complaints**

~~Complaints arising under Subchapter D, and made directly to the Commission, shall be referred to the appropriate LWDA for resolution in accordance with Subchapter D.~~

**§ 841.96. Appeal to Secretary of Labor**

~~An appeal may be made to the Secretary of Labor pursuant to 20 CFR §§667.610, 667.640, 667.645, and 667.650.~~