

1 **CHAPTER 823. INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
8 Chapter 823, relating to Integrated Complaints, Hearings, and Appeals:

- 9
- 10 Subchapter A. General Provisions, §§823.1 - 823.4
- 11 Subchapter B. Board Complaint and Appeal Procedures, §§823.10 - 823.14
- 12 Subchapter C. Agency Complaint and Appeal Procedures, §§823.20 - 823.22 and 823.24
- 13 Subchapter D. Agency-Level Decisions, Reopenings, and Rehearings, §§823.30 - 823.32
- 14

15 TWC proposes the following new section of Chapter 823, relating to Integrated Complaints,
16 Hearings, and Appeals:

- 17
- 18 Subchapter D. Agency-Level Decisions, Reopenings, and Rehearings, §823.34
- 19

- 20 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 21 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 22 PART III. IMPACT STATEMENTS
- 23 PART IV. COORDINATION ACTIVITIES
- 24

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

26 TWC Chapter 823 rules set forth uniform procedures and time frames for complaints and appeals
27 processes for all workforce services administered by Local Workforce Development Boards
28 (Boards). The purpose of the proposed Chapter 823 amendments is to specify the parties and
29 programs to which Chapter 823 applies and does not apply, establish a distinction between state-
30 level hearing officers and individuals who handle complaints at the Board level, align Chapter
31 823 with the Workforce Innovation and Opportunity Act (WIOA), and implement 20 Code of
32 Federal Regulations (CFR) §683.600 relating to participants' and interested or affected parties'
33 right to appeal local-level decisions and TWC's final decisions to the US Secretary of Labor.
34

35 This rulemaking serves as a rule review in accordance with Texas Government Code, §2001.039,
36 which requires that every four years each state agency review and consider for re adoption,
37 revision, or repeal each rule adopted by that agency.
38

39 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

40 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
41 therefore, are not discussed in the Explanation of Individual Provisions.)
42

43 **SUBCHAPTER A. GENERAL PROVISIONS**

44 **TWC proposes the following amendments to Subchapter A:**
45

46 **§823.1. Short Title and Purpose**

1 Section 823.1 is amended to update the list of programs that are subject to Chapter 823, add that
2 Chapter 823 does not apply to contract disputes, and add subsection (c)(9) and (10) to clarify
3 which actions or disputes are not covered by Chapter 823.
4

5 **§823.2. Definitions**

6 Section 823.2 is amended to add a definition of "Board adjudicator" and to update language to
7 distinguish between individuals who preside over Board-level and Agency-level disputes.
8

9 **§823.3. Timeliness**

10 Section 823.3 is amended to distinguish between Board-level complaints and reviews and
11 Agency-level appeals.
12

13 **§823.4. Representation**

14 Section 823.4 is amended to clarify that a party may have a representative at an informal
15 resolution proceeding in addition to a Board adjudication or an Agency hearing.
16

17 **SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES**

18 **TWC proposes the following amendments to Subchapter B:**
19

20 **§823.10. Board-Level Complaints**

21 Section 823.10 is amended to clarify and update language consistent with WIOA and current
22 TWC terminology.
23

24 **§823.11. Determinations**

25 Section 823.11 is amended to reflect changes from the WIA program name to the current WIOA
26 program name with related section updates.
27

28 **§823.12. Board Informal Resolution Procedure**

29 Section 823.12 is amended to provide clarity by changing "Boards" to "Each Board."
30

31 **§823.13. Board Reviews**

32 Section 823.13 is amended to reflect that Boards conduct reviews rather than hearings and the
33 section title is changed from "Board Hearings" to "Board Reviews."
34

35 Section 823.13 is also amended to distinguish Board processes from Agency processes and to
36 indicate that Board reviews are conducted by Board adjudicators and hearings are conducted by
37 Agency hearing officers. The amendments also update the mailing address for submitting
38 appeals to the Agency.
39

40 **§823.14. Board Policies for Resolving Complaints and Appeals of Determinations**

41 Section 823.14 is amended to reflect that individuals handling Board-level complaints are
42 adjudicators and that the process by which they resolve disputes is called Board review.
43

44 **SUBCHAPTER C. AGENCY COMPLAINT AND APPEAL PROCEDURES**

45 **TWC proposes the following amendments to Subchapter C:**
46

1 **§823.20. State-Level Complaints**

2 Section 823.20 is amended to update the mailing address for submitting appeals made directly to
3 the Agency.

4
5 **§823.21. Hearings**

6 Section 823.21 is amended to update the WIOA program name and to state that parties may
7 request accommodations for Board reviews and Agency hearings.

8
9 **§823.22. Postponement and Continuance**

10 Section 823.22 is amended to give Agency hearing officers the ability to postpone or continue
11 hearings using their best judgment.

12
13 **§823.24. Hearing Procedures**

14 Section 823.24 is amended to remove language indicating that would provide transcripts of
15 hearing recordings if a party pays the cost. The Agency does not transcribe hearings.

16
17 **SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS**

18 **TWC proposes the following amendments to Subchapter D:**

19
20 **§823.30. Hearing Decision**

21 Section 823.30 is amended to add language indicating that the Agency may take continuing
22 jurisdiction over an Agency decision for the purposes of reconsidering issues and taking
23 additional evidence, in addition to issuing a corrected decision. The section is also amended to
24 clarify that representatives and observers who attended a hearing need to be listed in the
25 Agency's decision.

26
27 **§823.31. Petition for Reopening**

28 Section 823.31 is amended to update the name of the process by which a party requests that a
29 hearing be reopened to petition. Additionally, the section is amended to state that a party must
30 show good cause for failure to appear at the hearing and that timeliness rules in Chapter 823
31 apply to the petition.

32
33 **§823.32. Motion for Rehearing and Decision**

34 Section 823.32 is amended to align with Motion for Rehearing rules for other programs within
35 the Agency which that require a Motion for Rehearing to meet certain criteria. The section is also
36 amended to clarify that the Agency hearing officer may take certain actions in relation to that
37 motion.

38
39 **§823.34. Federal Appeals**

40 New §823.34 implements 20 CFR §683.600, relating to participants' and interested or affected
41 parties' right to appeal local-level decisions and final Agency decisions to the US Secretary of
42 Labor.

43
44 **PART III. IMPACT STATEMENTS**

45 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
46 rules will be in effect, the following statements will apply:

1
2 There are no additional estimated costs to the state and to local governments expected as a result
3 of enforcing or administering the rules.

4
5 There are no estimated cost reductions to the state and to local governments as a result of
6 enforcing or administering the rules.

7
8 There are no estimated losses or increases in revenue to the state or to local governments as a
9 result of enforcing or administering the rules.

10
11 There are no foreseeable implications relating to costs or revenue of the state or local
12 governments as a result of enforcing or administering the rules.

13
14 There are no anticipated economic costs to individuals required to comply with the rules.

15
16 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
17 communities as a result of enforcing or administering the rules.

18
19 Based on the analyses required by Texas Government Code, §2001.024, TWC has determined
20 that the requirement to repeal or amend a rule, as required by Texas Government Code,
21 §2001.0045), does not apply to this rulemaking.

22
23 Takings Impact Assessment

24 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
25 affects private real property, in whole or in part or temporarily or permanently, in a manner that
26 requires the governmental entity to compensate the private real property owner as provided by
27 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
28 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
29 would otherwise exist in the absence of the governmental action, and is the producing cause of a
30 reduction of at least 25 percent in the market value of the affected private real property,
31 determined by comparing the market value of the property as if the governmental action is not in
32 effect and the market value of the property determined as if the governmental action is in
33 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking
34 action under Texas Government Code, §2007.043. The primary purpose of this proposed
35 rulemaking action, as discussed elsewhere in this preamble, is to specify the parties and
36 programs to which Chapter 823 applies and does not apply, establish a distinction between state-
37 level hearing officers and individuals who handle complaints at the Board level, align Chapter
38 823 with WIOA, and implement 20 CFR §683.600 relating to participants' and interested or
39 affected parties' right to appeal local-level decisions and TWC's final decisions to the US
40 Secretary of Labor.

41
42 The proposed rulemaking action will not create any additional burden on private real property or
43 affect private real property in a manner that would require compensation to private real property
44 owners under the United States Constitution or the Texas Constitution. The proposal also will
45 not affect private real property in a manner that restricts or limits an owner's right to the property

1 that would otherwise exist in the absence of the governmental action. Therefore, the proposed
2 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

3
4 Government Growth Impact Statement

5 TWC has determined that during the first five years the amendments will be in effect:

- 6 --the amendments will not create or eliminate a government program;
- 7 --implementation of the amendments will not require the creation or elimination of employee
8 positions;
- 9 --implementation of the amendments will not require an increase or decrease in future legislative
10 appropriations to TWC;
- 11 --the amendments will not require an increase or decrease in fees paid to TWC;
- 12 --the amendments will not create a new regulation;
- 13 --the amendments will not expand, limit, or eliminate an existing regulation;
- 14 --the amendments will not change the number of individuals subject to the rules; and
- 15 --the amendments will not positively or adversely affect the state's economy.

16
17 Economic Impact Statement and Regulatory Flexibility Analysis

18 TWC has determined that the rules will not have an adverse economic impact on small
19 businesses or rural communities, as these rules place no requirements on small businesses or
20 rural communities.

21
22 Mariana Vega, Director, Labor Market and Career Information, has determined that there is no
23 significant negative impact upon employment conditions in the state as a result of the rules.

24
25 Clay Cole, Director, Unemployment Insurance Division, has determined that for each year of the
26 first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
27 rules will be to ensure that the rules set forth in Chapter 823 align with WIOA, which replaced
28 WIA.

29
30 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
31 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
32 the rules will be to ensure that the rules set forth in Chapter 823 align with WIOA, which
33 replaced the WIA.

34
35 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
36 within TWC's legal authority to adopt.

37
38 **PART IV. COORDINATION ACTIVITIES**

39 In the development of these rules for publication and public comment, TWC sought the
40 involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule
41 amendments to the Boards for consideration and review on June 23, 2020. TWC also conducted
42 a conference call with Board executive directors and Board staff on June 26, 2020, to discuss the
43 concept paper. During the rulemaking process, TWC considered all information gathered in
44 order to develop rules that provide clear and concise direction to all parties involved.

1 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us.
2 Comments must be received no later than 30 days from the date this proposal is published in the
3 *Texas Register*.

4
5 The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide
6 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
7 effective administration of TWC services and activities.

8
9 The proposed rules implement the appeal, complaint, and grievance provisions set forth in Texas
10 Labor Code, Title 4, Subtitle B, Section 301.192, Texas Human Resources Code Section 44.002,
11 as well as those set forth in 29 USC 3241 and 29 USC 3152.
12

1 Chapter 823. INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS

2
3
4 SUBCHAPTER A. GENERAL PROVISIONS

5
6 §823.1. Short Title and Purpose.

7
8 (a) This chapter provides an appeals process to the extent authorized by federal and state
9 law and by rules administered by the Texas Workforce Commission (Agency).

10
11 (b) This section applies only to complaints or determinations regarding federal- or state-
12 funded workforce services administered by the Agency or Local Workforce
13 Development Boards (Boards), as follows:

14
15 (1) Child care;

16
17 (2) Temporary Assistance for Needy Families (TANF) Choices;

18
19 (3) Supplemental Nutrition Assistance Program (SNAP) Employment and
20 Training (E&T);~~Food Stamp Employment and Training (FSE&T);~~

21
22 ~~(4)(5)~~ Workforce Innovation and Opportunity Act (WIOA) adult, dislocated
23 worker, and youth programs~~Workforce Investment Act (WIA) Adult,~~
24 ~~Dislocated Worker, and Youth programs; and~~

25
26 ~~(5)(6)~~ Eligible Training Providers (ETPs); receiving WIOA ~~WIA~~ funds or other
27 funds for training services;

28
29 (c) Determinations or complaints relating to the following matters are not governed by
30 this chapter:

31
32 (1) Across-the-board reductions of services, benefits, or assistance to a class of
33 recipients;

34
35 (2) Matters governed by hearing procedures otherwise provided for in this title;

36
37 (3) Alleged violations of nondiscrimination and equal opportunity requirements;

38
39 (4) Denial of benefits as related~~it relates~~ to mandatory work requirements for
40 individuals receiving TANF and SNAP E&T ~~FSE&T~~ services and is
41 administered through the Texas Health and Human Services Commission
42 (HHSC);

43
44 (5) Matters governing job service-related complaints as referenced in 20 CFR
45 C.F.R. Part 658, Subpart E, §§658.400, 658.410, 658.411, 658.417, and
46 658.418 ~~§§400—418~~ and the federal Employment Service law;

- (6) Services provided by the Commission pursuant to Texas Labor Code §301.023, relating to Complaints Against ~~the~~ Commission; ~~or~~
- (7) Alleged criminal violations of any services referenced in ~~§823.1~~ subsection (b) of this section;
- (8) Disputes between contractors and Boards;
- (9) Contract disputes; ~~or~~
- (10) Any other determination or complaint not listed in subsection (b) of this section.

§823.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) Adverse action--Any denial or reduction in benefits or services to a party or; ~~including~~ displacement of an individual from current employment by a ~~Texas Workforce Solutions Office~~ Texas Workforce Center customer.
- (2) Agency decision--The written finding issued by an Agency hearing officer following a hearing before that hearing officer.
- (3) Appeal--A written request for a review filed with the Board or the Agency by an individual ~~a person~~ in response to a determination or decision.
- (4) Board adjudicator--An impartial individual designated by the Board to participate in informal dispute resolutions ~~of disputes~~ and to review and issue Board decisions.
- (5)(4) Board decision--The written finding issued by a Board adjudicator ~~hearing officer~~ following a hearing before that adjudicator ~~hearing officer~~ in response to an appeal or complaint.
- (6)(5) Complaint--A written statement alleging a violation of any law, regulation, or rule relating to any federal- or state-funded workforce service covered by this ~~Chapter~~.
- (7)(6) Determination--A written order ~~statement~~ issued to a Workforce Solutions Office ~~Texas Workforce Center~~ Texas customer by a Board, its designee, or the Agency relating to an adverse action, or to a provider or contractor relating to denial or termination of eligibility under programs administered by the

1 Agency or a Board listed in §823.1(b) of this subchapter (relating to Short Title
2 and Purpose).

3
4 ~~(8)(7)~~ Hearing officer--An impartial individual designated by ~~either the Board or~~
5 the Agency to conduct hearings and issue Agency ~~administrative~~ decisions.

6
7 ~~(9)(8)~~ Informal resolution--Any procedure that results in an agreed final settlement
8 between all parties to a complaint.

9
10 ~~(10)(9)~~ Party--An individual ~~A person~~ who files a complaint or who appeals a
11 determination or the entity against which the complaint is filed or that issued
12 the determination.

13
14 **§823.3. ~~Agency and Board~~ Timeliness.**

15
16 (a) A properly addressed determination or decision is final for all purposes unless the
17 party to whom it is mailed files an appeal no later than 14 ~~the fourteenth~~ calendar
18 days ~~day~~ after the mailing date.

19
20 (b) Each party to a complaint, adjudication, or ~~an~~ appeal shall promptly notify, in
21 writing, the Board, Board's designee, or the Agency with which the complaint or
22 appeal was filed of any change of mailing address. Determinations and decisions
23 shall be mailed to the new ~~this~~ address.

24
25 (1) A copy of the determination or decision must be mailed to a properly
26 designated party representative in order for it to become final.

27
28 (2) The Board or Agency is responsible for making an address change only if the
29 Board or Agency is specifically directed by the party to mail subsequent
30 correspondence to the new address.

31
32 (3) If the Board, Board's designee, or Agency addresses a document incorrectly,
33 but the party receives the document, the time frame for filing an appeal shall
34 begin as of the actual date of receipt by the party, whether or not the party
35 receives the document within the appeal time frame set forth in subsection (a)
36 of this section. However, this does not apply if the party fails to provide a
37 current address or provides an incorrect address.

38
39 (c) A determination or decision mailed to a party shall be presumed to have been
40 delivered if the document was mailed as specified in subsection (b) of this section.

41
42 (1) A determination or decision shall not be presumed to have been delivered:

43
44 (A) if there is tangible evidence of nondelivery, such as being returned to the
45 sender by the USU.S. Postal Service; or

1 (B) if credible and persuasive evidence is submitted to establish nondelivery
2 or delayed delivery to the proper address.
3

4 (2) If a party provides the Board or Agency with an incorrect mailing address, a
5 mailing to that address shall be considered a proper mailing, even if there is
6 proof that the party never received the document.
7

8 (d) A complaint or an appeal shall be in writing. Complaints or appeals may be filed
9 electronically only if filed in a form approved by the Agency in writing. The filing
10 date for a complaint or an appeal shall be:
11

12 (1) the ~~postmark~~ ~~postmarked~~ date or the postal meter date (where there is only one
13 or the other);
14

15 (2) the ~~postmark~~ ~~postmarked~~ date, if there is both a postmark date and a postal
16 meter date;
17

18 (3) the date the document was delivered to a common carrier, which is equivalent
19 to the ~~postmark~~ ~~postmarked~~ date;
20

21 (4) three business days before receipt by the Board or Agency, if the document
22 was received in an envelope bearing no legible postmark, postal meter date, or
23 date of delivery by a common carrier;
24

25 (5) the date of the document itself, if the document date is fewer than three days
26 earlier than the date of receipt and if the document was received in an envelope
27 bearing no legible postmark, postal meter date, or date of delivery by a
28 common carrier;
29

30 (6) the date of the document itself, if the mailing envelope containing the
31 complaint or appeal is lost after delivery to the Board or Agency. If the
32 document is undated, the filing date shall be deemed to be three business days
33 before receipt by the Board or Agency; or
34

35 (7) the date of receipt by the Board or Agency, if the document was filed by fax.
36

37 (e) Credible and persuasive testimony under oath, subject to cross-examination, may
38 establish a filing date that is earlier than the dates established under subsection (d) of
39 this section. A party shall be allowed to establish a filing date earlier than a postal
40 meter date or the date of the document itself only upon a showing of extremely
41 credible and persuasive evidence. Likewise, when a party alleges that a complaint or
42 appeal has been filed that the Board or Agency has never received, the party must
43 present ~~extremely~~ credible and persuasive evidence to support the allegation.
44

1 (f) A decision or determination shall not be deemed final if a party shows that a
2 representative of the Board, the Board's designee, or Agency has given misleading
3 information on appeal rights to the party. The party shall specifically establish:

4
5 (1) how the party was misled; or

6
7 (2) what misleading information the party was given, and, if possible, by whom
8 the party was misled.

9
10 (g) There is no good cause exception to the timeliness rules.

11
12 **§823.4. Representation.**

13
14 ~~A Each~~ party may authorize a ~~hearing~~-representative to assist with participating in an
15 informal resolution or in presenting a complaint or an appeal on behalf of the party under
16 this chapter. The Agency or Board may require the authorization to be in writing. On
17 behalf of the party, the ~~hearing~~-representative may exercise any of the party's rights under
18 this chapter.

19
20 **SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES**

21
22 **§823.10. Board-Level Complaints.**

23
24 (a) Individuals~~Persons~~ who may file a complaint include:

25
26 (1) ~~Texas Workforce Solutions Office~~Texas Workforce Center customers;

27
28 (2) other interested individuals~~persons~~ affected by the One-Stop Service Delivery
29 System, Network, including subrecipients and eligible training providers; and

30
31 (3) previously employed individuals who believe they were displaced by a Texas
32 Workforce Solutions Office~~Texas Workforce Center~~ customer participating in
33 work-based services such as subsidized employment, work experience, or
34 workfare.

35
36 (b) Complaints shall be in writing and filed within 180 calendar days of the alleged
37 violation.

38
39 (c) The complaint shall include:

40
41 (1) the complainant's~~party's~~ name and current mailing address; and

42
43 (2) a brief statement of the alleged violation stating~~identifying~~ the facts on which
44 the complaint is based.

1 (d) Each Board shall ensure that information about complaint procedures is provided to
2 individuals, eligible training providers, and subrecipients. The information provided
3 shall be presented in such a manner as to be understood by the affected individuals,
4 including youth, individuals with disabilities, and individuals with limited English
5 proficiency. This information shall be:

- 6
- 7 (1) posted in a conspicuous public location at each Texas Workforce Solutions
8 Office~~Texas Workforce Center~~;
 - 9 (2) provided in writing to any customer;
 - 10 (3) made available in writing to any individual upon request; and
 - 11 (4) placed in each Texas Workforce Solutions Office ~~Texas Workforce Center~~
12 customer's file.
- 13

14
15
16
17 **§823.11. Determinations.**

18
19 (a) A determination affecting the type and level of services or benefits to be provided by
20 a Board or its designee shall be promptly provided to any individual~~person~~ directly
21 affected.

22
23 (b) The determination shall include the following:

- 24
- 25 (1) ~~a~~A brief statement of the adverse action;
 - 26 (2) ~~the~~The mailing date of the determination;
 - 27 (3) ~~an~~An explanation of the individual's right to an appeal;
 - 28 (4) ~~the~~The procedures for requesting informal resolution with the Board and for
29 filing an appeal to the Board, including applicable time frames as required in
30 §823.3 of this chapter (Timeliness);
 - 31 (5) ~~the~~The right to have a ~~hearing~~ representative, including legal counsel; and
 - 32 (6) ~~the~~The address and fax number to which a request for informal resolution or
33 appeal may be sent.~~or fax number to send the appeal~~ fax number to which a
34 request for informal resolution or appeal may be sent.
- 35

36
37 (c) Boards shall allow training service providers ~~of training services~~ the opportunity to
38 appeal a determination related to the:

- 39
40
- 41 (1) denial of eligibility as a training provider under WIOA, §122(b),~~§122 (c), or~~
42 §122(d)~~WIA §122(b), §122(c), or §122(e)~~;
- 43
44
45
46

- 1 (2) termination of eligibility as a training provider or other action under [WIOA, §122\(f\)](#)~~WIA-§122(f)~~; or
- 2
- 3
- 4 (3) denial of eligibility as a training provider of on-the-job or customized training
- 5 by the operator of a [Texas Workforce Solutions Office](#) ~~Texas Workforce~~
- 6 ~~Center~~ under [WIOA, §122\(h\)](#)~~WIA-§122(h)~~.
- 7
- 8 (d) [An individual who](#)~~A person who that~~ receives a determination from a Board or a
- 9 Board's designee may file an appeal with the Board requesting a review of the
- 10 determination. The appeal must be submitted in writing, [be](#) filed within 14 calendar
- 11 days of the mailing date of the determination, and include the party's proper mailing
- 12 address.
- 13

14 **§823.12. Board Informal Resolution Procedure.**

15

- 16 (a) [Each Board](#) ~~Boards~~ shall provide an opportunity for informal resolution of a
- 17 complaint or appeal.
- 18
- 19 (b) Informal resolution may include, but is not limited to:
- 20
- 21 (1) informal meetings with case managers or their supervisors;
- 22
- 23 (2) second reviews of the case file;
- 24
- 25 (3) telephone calls or conference calls to the affected parties;
- 26
- 27 (4) in-person interviews with all affected parties; or
- 28
- 29 (5) written explanations or summaries of the laws or regulations involved in the
- 30 complaint.
- 31

32 **§823.13. Board [Reviews](#)~~Hearings~~.**

33

- 34 (a) If the informal resolution procedure results in a final agreement between the parties,
- 35 no hearing shall be held.
- 36
- 37 (b) If no ~~final~~ informal resolution is reached, Boards shall provide an opportunity for a
- 38 [formal review](#) ~~hearing~~ to resolve an appeal or complaint.
- 39
- 40 (c) Either a final agreement resulting from [an](#) informal resolution or a hearing and Board
- 41 decision shall be completed within 60 calendar days of the original filing of the
- 42 appeal or complaint.
- 43
- 44 (d) Boards shall provide a process that allows an individual alleging a labor standards
- 45 violation to submit a complaint to a binding arbitration procedure, if a collective
- 46 bargaining agreement covering the parties to the complaint so provides.

- 1
- 2 (e) Within 60 calendar days of the filing of the appeal or complaint, the Board shall send
- 3 the parties a decision setting forth the results of the hearing. The decision shall be
- 4 issued by a Board adjudicator, ~~hearing officer, shall~~ include findings of fact and
- 5 conclusions of law, and ~~shall~~ provide information about appeal rights to the parties.
- 6
- 7 (f) If no Board decision is mailed within the 60 calendar-day time frame described in
- 8 subsection (e) of this section, or if any party disagrees with a timely Board decision,
- 9 a party may file an appeal with the Agency.
- 10
- 11 (g) An appeal to the Agency shall be filed in writing by mail, fax, or hand delivery with
- 12 the TWC Commission Appeals Department at its state office, 101 E. 15th Street., CA
- 13 Hearings Unit, Room 678, Austin, Texas, 78778, or faxed to the number provided
- 14 in the determination or decision Appeals, Texas Workforce Commission 101 East
- 15 15th St., Room 410, Austin, Texas 78778-0001, within 14 calendar days after the
- 16 mailing date of the Board's decision. If the Board does not issue a decision within 60
- 17 calendar days of the date of the filing of the original appeal or complaint, an appeal
- 18 to the Agency must be filed no later than 90 calendar days after the filing date of the
- 19 original appeal or complaint.
- 20

21 **§823.14. Board Policies for Resolving Complaints and Appeals of Determinations.**

22

- 23 (a) ~~Each A~~ Board shall establish written policies to handle complaints and appeals of
- 24 determinations, provide the opportunity for informal resolution, and conduct reviews
- 25 ~~hearings~~ in compliance with this subchapter for individuals, eligible training
- 26 providers, and other individuals~~persons~~ affected by the One-Stop Service Delivery
- 27 System, Network, including subrecipients.
- 28
- 29 (b) A Board shall maintain written copies of these policies, and make them available to
- 30 the Agency, Texas Workforce Solutions Office ~~Texas Workforce Center~~ customers,
- 31 and other interested individuals~~persons~~ upon request. A Board shall require that its
- 32 subrecipients provide these policies to Texas Workforce Solutions Office ~~Texas~~
- 33 ~~Workforce Center~~ customers and other interested individuals~~persons~~ upon request.
- 34
- 35 (c) At a minimum, a Board shall ~~develop and approve policies to:~~
- 36
- 37 (1) develop and approve policies to ensure that determinations are provided as
- 38 specified in §823.11 of this subchapter (relating to Determinations);
- 39
- 40 (2) develop and approve policies to ensure that information about complaint
- 41 procedures is available as described in §823.10(d) of this subchapter (Board-
- 42 Level Complaints);
- 43
- 44 (3) notify individuals~~persons~~ that complaints must be submitted in writing and set
- 45 forth the facts on which the complaint is based, and notify them of the time
- 46 limit in which to file a complaint;

- 1
2 (4) maintain a complaint log and all complaint-related materials in a secure file for
3 a period of three years after final resolution;
4
5 (5) designate an individual to be responsible for investigating, documenting,
6 ~~investigation, documentation,~~ monitoring, and following up on complaints;
7
8 (6) inform individuals~~persons~~ of the:
9
10 (A) right to file a complaint;
11
12 (B) right to appeal a determination;
13
14 (C) opportunity for informal resolution and a Board review~~hearing~~;
15
16 (D) time frame in which to either reach informal resolution or to issue a
17 Board decision; and
18
19 (E) right to file an appeal to the Agency, including providing information on
20 where to file the appeal;
21
22 (7) designate adjudicators ~~hearing officers~~ to conduct Board hearings, document
23 actions taken, and render decisions; and
24
25 (8) ensure that complaints remanded from the Agency to the Board for resolution
26 are handled in a timely fashion and follow established Board policies and time
27 frames.
28
29 (d) Complaints filed directly with the Agency may be remanded to the appropriate Board
30 to be processed in accordance with the Board's policies for resolving complaints.
31

32 SUBCHAPTER C. AGENCY COMPLAINT AND APPEAL PROCEDURES

33

34 §823.20. State-Level Complaints.

35

- 36 (a) A Texas-Workforce Solutions Office ~~Texas-Workforce Center~~ customer or other
37 interested individual~~person~~ affected by the statewide One-Stop Service Delivery
38 System~~Network~~, including service providers that allege a noncriminal violation of
39 the requirements of any federal- or state-funded workforce services, may file a
40 complaint with the Agency.
41
42 (b) Complaints shall be in writing and filed within 180 calendar days of the alleged
43 violation. The complaint shall include the party's name, current mailing address, and
44 a brief statement of the alleged violation identifying the facts on which the complaint
45 is based.
46

- 1 (c) The complaint shall be filed with [the TWC Commission Appeals Department at its](#)
2 [state office, 101 E. 15th Street, CA Hearings Unit, Room 678, Austin, Texas](#)~~X,~~
3 [78778](#)~~.TWC Appeals, Texas Workforce Commission, 101 East 15th St., Room 410,~~
4 [Austin, Texas 78778-0001](#).
5
6 (d) The Agency shall provide an opportunity for informal resolution.
7
8 (e) If the informal resolution procedure results in a final agreement between the parties,
9 no hearing shall be held.
10
11 (f) If no final informal resolution is reached, the complaint shall be promptly set for a
12 hearing and a decision shall be issued in accordance with the procedures for appeals
13 under this subchapter.
14
15 (g) Complaints filed directly with the Agency may be remanded to the appropriate
16 Board to be processed in accordance with the Board's hearing policies.
17

18 **§823.21. [Hearings](#)~~Setting a Hearing~~.**
19

- 20 (a) A [WIOA-funded](#) ~~WIA-funded~~ training provider or other provider certified by the
21 Agency and later found to be ineligible to receive funding as a training provider may
22 file an appeal directly with the Agency.
23
24 (b) Upon receipt of an appeal from a Board decision, an appeal pursuant to subsection
25 (a) of this section, or if no informal resolution of a complaint is successfully reached
26 pursuant to §823.20 [of this subchapter \(relating to State-Level Complaints\)](#), the
27 Agency shall promptly assign a hearing officer and mail a notice of hearing to the
28 parties and/or their designated representatives. The hearing shall be set and held
29 promptly and in no case later than as provided by applicable statute or rule.
30
31 (c) The notice of hearing shall be in writing and include a:
32
33 (1) statement of the date, time, place, and nature of the hearing;
34
35 (2) statement of the legal authority under which the hearing is to be held; and
36
37 (3) short and plain statement of the issues to be considered during the hearing.
38
39 (d) The notice of hearing shall be issued at least 10 calendar days before the date of the
40 hearing unless a shorter period is permitted by statute.
41
42 (e) Hearings shall be conducted by telephonic means, unless an in-person hearing is
43 required by applicable statute or the Agency determines that an in-person hearing is
44 necessary.

- 1
2 (f) Parties may request accommodations, including interpreters, through the hearing
3 officer or Agency staff. ~~needing special accommodations, including the need for a~~
4 ~~bilingual or sign language interpreter, shall make this request before the hearing is~~
5 ~~set, if possible, or as soon as practical.~~ may request accommodations, including
6 interpreters, by request of the hearing officer or staff.
7

8 **§823.22. Postponement and Continuance.**
9

- 10 (a) The hearing officer shall use his or her best judgement to determine when to grant a
11 continuance of postponement of a hearing in order to secure all the evidence that is
12 necessary and to be fair to the parties.; ~~may grant a postponement of a hearing for~~
13 ~~good cause at a party's request. Except in emergencies or unusual circumstances~~
14 ~~confirmed by a telephone call or other means, no postponements shall be granted~~
15 ~~within two days of the scheduled hearing.~~
16
17 (b) Prior to ~~Before the hearing,~~ requests for a continuance or a postponement of a hearing
18 may be made informally, either orally or in writing, to the hearing officer.
19 (b) ~~A continuance of a hearing may be ordered at the discretion of the hearing officer if:~~
20
21 (1) ~~there is insufficient evidence upon which to make a decision;~~
22
23 (2) ~~a party needs additional time to examine evidence presented at the~~
24
25 (3) ~~the hearing officer considers it necessary to enter into evidence additional~~
26 ~~information or testimony;~~
27
28 (4) ~~an in-person hearing is necessary for proper presentation of the evidence; or~~
29
30 (5) ~~any other reason deemed appropriate by the hearing officer.~~
31
32 (c) ~~The hearing officer shall advise the parties of the reason for the continuance and of~~
33 ~~any additional information required. At the continuance, the parties shall have an~~
34 ~~opportunity to rebut any additional evidence.~~
35

36 **§823.24. Hearing Procedures.**
37

- 38 (a) General Procedure. All hearings shall be conducted de novo. The hearing shall be
39 conducted informally and in such manner as to ascertain the substantive rights of the
40 parties. The hearing officer shall develop the evidence. All issues relevant to the
41 appeal shall be considered and addressed.
42
43 (1) Presentation of Evidence. The parties to an appeal may present evidence that is
44 material and relevant, as determined by the hearing officer. In conducting a
45 hearing, the hearing officer shall actively develop the record on the relevant
46 circumstances and facts to resolve all issues. To be considered as evidence in a

1 decision, any document or physical evidence must be entered as an exhibit at
2 the hearing. A party has the right to object to evidence offered at the hearing
3 by the hearing officer or other parties.
4

5 (2) Examination of Witnesses and Parties. The hearing officer shall examine
6 parties and any witnesses under oath and shall allow cross-examination to the
7 extent the hearing officer deems necessary to afford the parties due process.
8

9 (3) Additional Evidence. The hearing officer, with or without notice to any of the
10 parties, may take additional evidence deemed necessary, provided that a party
11 shall be given an opportunity to rebut the evidence if it is to be used against the
12 party's interest.
13

14 (4) Appropriate Hearing Behavior. All parties shall conduct themselves in an
15 appropriate manner. The hearing officer may expel any individual, including a
16 party, who fails to correct behavior the hearing officer identifies as disruptive.
17 After an expulsion, the hearing officer may proceed with the hearing and
18 render a decision.
19

20 (b) Records.
21

22 (1) The hearing record shall include the audio recording of the proceeding and any
23 other relevant evidence relied on by the hearing officer, including documents
24 and other physical evidence entered as exhibits.
25

26 (2) The hearing record shall be maintained in accordance with federal or state law.
27

28 (3) Confidentiality of information contained in the hearing record shall be
29 maintained in accordance with federal and state law.
30

31 (4) Upon request, a party has the right to obtain a copy of the hearing record,
32 including recordings of the hearing and file documents at no charge. ~~However,~~
33 ~~a party requesting a transcript of the hearing record shall pay the costs of the~~
34 ~~transcription.~~
35

36 **SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS**
37

38 **§823.30. Hearing Decision.**
39

40 (a) Following the conclusion of the hearing, the hearing officer shall promptly issue a
41 written decision on behalf of the Agency.
42

43 (b) The Agency decision shall be based exclusively on the evidence of record in the
44 hearing and on matters officially noticed in the hearing. The Agency decision shall
45 include:
46

- 1 (1) a list of the individuals who appeared at the hearing, including representatives
2 and observers;
- 3
- 4 (2) the findings of fact and conclusions of law reached on the issues; and
- 5
- 6 (3) the affirmation, reversal, or modification of a determination or Board decision.
- 7
- 8 (c) Unless a party files a timely motion for rehearing, the Agency may assume
9 continuing jurisdiction ~~for the purpose of reconsidering~~ to reconsider the issues on
10 appeal, taking additional evidence, and issuing a corrected decision to
11 ~~modify or correct a hearing decision~~ until the expiration of 14 calendar days from the
12 mailing date of the hearing decision.
- 13

14 **§823.31. Petition ~~Motion~~ for Reopening.**

- 16 (a) If a party fails to appear for a hearing, the hearing officer may hear and record the
17 evidence of the party present and the witnesses, if any, and shall proceed to decide
18 the appeal on the basis of the record unless there appears to be good reason for
19 continuing the hearing. A copy of the decision shall be promptly mailed to the parties
20 with an explanation of the manner in which, and time within which, a request for
21 reopening may be submitted.
- 22 ~~(a) If a party does not appear for an Agency hearing, the party has the right to request a~~
23 ~~reopening of the hearing within 14 calendar days from the date the Agency decision~~
24 ~~is mailed.~~
- 26 (b) A party ~~who~~ that fails to appear at a hearing may, within 14 calendar days from the
27 date the decision is mailed, petition in writing for a new hearing before the hearing
28 officer. The petition should identify the party requesting the reopening and explain
29 the reason for the failure to appear. The timeliness rules in ~~Subchapter~~ §823.3 of this
30 chapter (relating to Timeliness) apply to the petition. The petition shall be granted if
31 it appears to the hearing officer that the petitioner has shown good cause for the
32 petitioner's failure to appear at the hearing. ~~The petition motion shall be in writing~~
33 ~~and detail the reason for failing to appear at the hearing.~~
- 35 (c) The hearing officer may schedule a hearing on whether to grant the reopening.
- 36
- 37 (d) The hearing officer may deny the petition if no good cause is alleged for the party's
38 nonappearance at the prior hearing.
- 39 ~~(d) The petition motion may be granted if it appears to the hearing officer that the party~~
40 ~~has shown good cause for failing to appear at the hearing.~~
- 41

42 **§823.32. Motion for Rehearing and Decision.**

- 44 (a) A party has 14 calendar days from the date the decision is mailed to file a motion for
45 rehearing. A rehearing may be granted only for the presentation of new evidence.
- 46

1 (b) Motions for rehearing shall be in writing and allege the new evidence to be
2 considered. The appellant must show a compelling reason why ~~the this~~ evidence was
3 not presented at the hearing and explain how consideration of the evidence would
4 alter the outcome of the case.

5
6 (c) If the hearing officer determines that the mMotion does not meet the criteria in
7 §823.32 subsection (b) of this section, the hearing officer may issue a decision
8 indicating that they have not been met and that no hearing will be set on the
9 mMotion.

10
11 (d)(e) If the hearing officer determines that the appellant has met the requirements of
12 §823.32 subsection (b) of this section, the hearing officer shall grant the motion and
13 schedule a hearing to consider the new evidence on the record. ~~alleged, new evidence~~
14 ~~warrants a rehearing, a rehearing shall be scheduled at a reasonable time and place.~~

15
16 (e)(d) The hearing officer shall issue a written decision following the hearing to consider
17 the evidence on the Motion for Rehearing.

18
19 (f)(e) After the hearing on the Motion for Rehearing, the hearing officer shall issue a
20 written decision granting or denying the Motion for Rehearing and may affirm,
21 reverse, leave in effect, void, or modify the prior decision. ~~The hearing officer may~~
22 ~~also issue a decision denying a motion for rehearing.~~

23 24 §823.34. Federal Appeals.

25
26 (a) Participants and interested or affected parties have a right to appeal local-level
27 decisions and final Agency decisions to the U.S. Secretary of Labor.

28
29 (b) The US Secretary of Labor will investigate appeals under the following
30 circumstances:

31
32 (1) Local-level grievances and complaints when a state-level appeal is filed and,
33 within 60 days of that state-level request, either party appeals to the US
34 Secretary of Labor.

35
36 (2) State-level complaints when no determination is made at the state level within
37 60 days of receipt of the state-level complaint.

38
39 (3) State-level complaints when a decision on a state-level grievance or complaint
40 has been reached and the party to which the decision is adverse appeals to the
41 US Secretary of Labor.

42
43 (c) Participants and interested or affected parties ~~who~~ that wish to appeal a final state-
44 level determination must adhere to the following time parameters:

- 1 (1) Appeals to the US Secretary of Labor that are based on a state-level
2 determination not being made within 60 days of receipt of a grievance or
3 complaint, must be filed within 120 days of filing the grievance or appeal with
4 the state.
5
6 (2) Appeals to the US Secretary of Labor that are based on a party's dissatisfaction
7 with the decision of the state-level appeal must be filed within 60 days of
8 receipt of the state-level decision.
9
10 (d) Appeals to the US Secretary of Labor must be submitted by certified mail with a
11 return receipt requested. In addition to sending an appeal to the US Secretary of
12 Labor, the party must also simultaneously provide a copy of the appeal to the
13 opposing party and the U.S. Department of Labor Employment and Training
14 Administration regional administrator.
15
16 (e) The US Secretary of Labor must make a final decision on an appeal no later than 120
17 days after receiving the appeal.
18
19 (f) This federal appeals process applies solely to noncriminal grievances and complaints
20 under WIOA, Title I.
21
22 (g) This process does not apply to filing appeals regarding discrimination, or denial or
23 termination of training provider eligibility, for inclusion on the Texas Eligible
24 Training Provider List.