

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

2
3 **ADOPTED 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 **ON JANUARY 5, 2021, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**
9

10 Estimated date of publication in the *Texas Register*: **January 22, 2021**

11 The rules will take effect: **January 25, 2021**

12
13 The Texas Workforce Commission (TWC) adopts amendments to the following sections of
14 Chapter 823, relating to Integrated Complaints, Hearings, and Appeals, *without* changes, as
15 published in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7566):
16

17 Subchapter A. General Provisions, §§823.1 - 823.4

18 Subchapter B. Board Complaint and Appeal Procedures, §§823.10 - 823.14

19 Subchapter C. Agency Complaint and Appeal Procedures, §§823.20 - 823.22 and §823.24

20 Subchapter D. Agency-Level Decisions, Reopenings, and Rehearings, §§823.30 - §823.32
21

22 TWC adopts the following new section of Chapter 823, relating to Integrated Complaints,
23 Hearings, and Appeals, *without* changes, as published in the October 23, 2020, issue of the *Texas*
24 *Register* (45 TexReg 7566):
25

26 Subchapter D. Agency-Level Decisions, Reopenings, and Rehearings, §823.34
27

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

29 TWC Chapter 823 rules set forth uniform procedures and time frames for complaints and appeals
30 processes for all workforce services administered by Local Workforce Development Boards
31 (Boards). The purpose of the Chapter 823 amendments is to specify the parties and programs to
32 which Chapter 823 applies and does not apply, establish a distinction between state-level hearing
33 officers and individuals who handle complaints at the Board level, align Chapter 823 with the
34 Workforce Innovation and Opportunity Act (WIOA), and implement 20 Code of Federal
35 Regulations (CFR) §683.600 relating to participants' and interested or affected parties' right to
36 appeal local-level decisions and TWC's final decisions to the US Secretary of Labor.
37

38 This rulemaking serves as a rule review in accordance with Texas Government Code, §2001.039,
39 which requires that every four years each state agency review and consider for readoption,
40 revision, or repeal each rule adopted by that agency.
41

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

43 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
44 therefore, are not discussed in the Explanation of Individual Provisions.)
45

46 **SUBCHAPTER A. GENERAL PROVISIONS**

1 TWC adopts the following amendments to Subchapter A:

2
3 **§823.1. Short Title and Purpose**

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

7
8 **§823.2. Definitions**

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

11
12 **§823.3. Timeliness**

13 Section 823.3 is amended to distinguish between Board-level complaints and reviews and
14 Agency-level appeals.

15
16 **§823.4. Representation**

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

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

21 TWC adopts the following amendments to Subchapter B:

22
23 **§823.10. Board-Level Complaints**

24 Section 823.10 is amended to clarify and update language consistent with WIOA and current
25 TWC terminology.

26
27 **§823.11. Determinations**

28 Section 823.11 is amended to reflect changes from the WIA program name to the current WIOA
29 program name with related section updates.

30
31 **§823.12. Board Informal Resolution Procedure**

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

33
34 **§823.13. Board Reviews**

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

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

42
43 **§823.14. Board Policies for Resolving Complaints and Appeals of Determinations**

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

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

2 TWC adopts the following amendments to Subchapter C:

3
4 **§823.20. State-Level Complaints**

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

7
8 **§823.21. Hearings**

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

11
12 **§823.22. Postponement and Continuance**

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

15
16 **§823.24. Hearing Procedures**

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

19
20 **SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS**

21 TWC adopts the following amendments to Subchapter D:

22
23 **§823.30. Hearing Decision**

24 Section 823.30 is amended to specify the number of days a hearing officer has to issue a written
25 decision in WIOA-related cases. Section 823.30 is amended to add language indicating that the
26 Agency may take continuing jurisdiction over an Agency decision for the purposes of
27 reconsidering issues and taking additional evidence, in addition to issuing a corrected decision.
28 The section is also amended to clarify that representatives and observers who attended a hearing
29 need to be listed in the Agency's decision.

30
31 **§823.31. Petition for Reopening**

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

36
37 **§823.32. Motion for Rehearing and Decision**

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

42
43 **§823.34. Federal Appeals**

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

1
2 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within
3 TWC's legal authority to adopt.

4
5 **PART III. PUBLIC COMMENTS**

6 The public comment period ended on November 23, 2020. No comments were received.

7
8 **PART IV. STATUTORY AUTHORITY**

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

12
13 The adopted rules implement the appeal, complaint, and grievance provisions set forth in Texas
14 Labor Code, Title 4, Subtitle B, §301.192 and Texas Human Resources Code, §44.002, as well
15 as those set forth in 29 USC §3241 and 29 USC §3152.

16

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

2
3 **SUBCHAPTER A. GENERAL PROVISIONS**

4
5 **§823.1. Short Title and Purpose.**

- 6
7 (a) This chapter provides an appeals process to the extent authorized by federal and state
8 law and by rules administered by the Texas Workforce Commission (Agency).
9
10 (b) This section applies only to complaints or determinations regarding federal- or state-
11 funded workforce services administered by the Agency or Local Workforce
12 Development Boards (Boards), as follows:
13
14 (1) Child care;
15
16 (2) Temporary Assistance for Needy Families (TANF) Choices;
17
18 (3) Supplemental Nutrition Assistance Program (SNAP) Employment and
19 Training (E&T);
20
21 (4) Workforce Innovation and Opportunity Act (WIOA) adult, dislocated worker,
22 and youth programs; and
23
24 (5) Eligible Training Providers (ETPs) receiving WIOA funds or other funds for
25 training services.
26
27 (c) Determinations or complaints relating to the following matters are not governed by
28 this chapter:
29
30 (1) Across-the-board reductions of services, benefits, or assistance to a class of
31 recipients;
32
33 (2) Matters governed by hearing procedures otherwise provided for in this title;
34
35 (3) Alleged violations of nondiscrimination and equal opportunity requirements;
36
37 (4) Denial of benefits as related to mandatory work requirements for individuals
38 receiving TANF and SNAP E&T services and is administered through the
39 Texas Health and Human Services Commission (HHSC);
40
41 (5) Matters governing job service-related complaints as referenced in 20 CFR Part
42 658, Subpart E, §§658.400, 658.410, 658.411, 658.417, and 658.418 and the
43 federal Employment Service law;
44
45 (6) Services provided by the Commission pursuant to Texas Labor Code
46 §301.023, relating to Complaints Against Commission;

- 1
2 (7) Alleged criminal violations of any services referenced in subsection (b) of this
3 section;
4
5 (8) Disputes between contractors and Boards;
6
7 (9) Contract disputes; or
8
9 (10) Any other determination or complaint not listed in subsection (b) of this section.
10

11 **§823.2. Definitions.**
12

13 The following words and terms, when used in this chapter, have the following meanings,
14 unless the context clearly indicates otherwise.
15

- 16 (1) Adverse action--Any denial or reduction in benefits or services to a party or
17 displacement of an individual from current employment by a Workforce
18 Solutions Office customer.
19
20 (2) Agency decision--The written finding issued by an Agency hearing officer
21 following a hearing before that hearing officer.
22
23 (3) Appeal--A written request for a review filed with the Board or the Agency by
24 an individual in response to a determination or decision.
25
26 (4) Board adjudicator--An impartial individual designated by the Board to
27 participate in informal dispute resolutions and to review and issue Board
28 decisions.
29
30 (5) Board decision--The written finding issued by a Board adjudicator following a
31 hearing before that adjudicator in response to an appeal or complaint.
32
33 (6) Complaint--A written statement alleging a violation of any law, regulation, or
34 rule relating to any federal- or state-funded workforce service covered by this
35 chapter.
36
37 (7) Determination--A written order issued to a Workforce Solutions Office
38 customer by a Board, its designee, or the Agency relating to an adverse action,
39 or to a provider or contractor relating to denial or termination of eligibility
40 under programs administered by the Agency or a Board listed in §823.1(b) of
41 this subchapter (relating to Short Title and Purpose).
42
43 (8) Hearing officer--An impartial individual designated by the Agency to conduct
44 hearings and issue Agency decisions.
45

1 (9) Informal resolution--Any procedure that results in an agreed final settlement
2 between all parties to a complaint.

3
4 (10) Party--An individual who files a complaint or who appeals a determination or
5 the entity against which the complaint is filed or that issued the determination.
6

7 **§823.3. Timeliness.**
8

9 (a) A properly addressed determination or decision is final for all purposes unless the
10 party to whom it is mailed files an appeal no later than 14 calendar days after the
11 mailing date.
12

13 (b) Each party to a complaint, adjudication, or appeal shall promptly notify, in writing,
14 the Board, Board's designee, or the Agency with which the complaint or appeal was
15 filed of any change of mailing address. Determinations and decisions shall be mailed
16 to the new address.
17

18 (1) A copy of the determination or decision must be mailed to a properly
19 designated party representative in order for it to become final.
20

21 (2) The Board or Agency is responsible for making an address change only if the
22 Board or Agency is specifically directed by the party to mail subsequent
23 correspondence to the new address.
24

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

32 (c) A determination or decision mailed to a party shall be presumed to have been
33 delivered if the document was mailed as specified in subsection (b) of this section.
34

35 (1) A determination or decision shall not be presumed to have been delivered:
36

37 (A) if there is tangible evidence of nondelivery, such as being returned to the
38 sender by the US Postal Service; or
39

40 (B) if credible and persuasive evidence is submitted to establish nondelivery
41 or delayed delivery to the proper address.
42

43 (2) If a party provides the Board or Agency with an incorrect mailing address, a
44 mailing to that address shall be considered a proper mailing, even if there is
45 proof that the party never received the document.
46

- 1 (d) A complaint or an appeal shall be in writing. Complaints or appeals may be filed
2 electronically only if filed in a form approved by the Agency in writing. The filing
3 date for a complaint or an appeal shall be:
4
- 5 (1) the postmark date or the postal meter date (where there is only one or the
6 other);
7
 - 8 (2) the postmark date, if there is both a postmark date and a postal meter date;
9
 - 10 (3) the date the document was delivered to a common carrier, which is equivalent
11 to the postmark date;
12
 - 13 (4) three business days before receipt by the Board or Agency, if the document
14 was received in an envelope bearing no legible postmark, postal meter date, or
15 date of delivery by a common carrier;
16
 - 17 (5) the date of the document itself, if the document date is fewer than three days
18 earlier than the date of receipt and if the document was received in an envelope
19 bearing no legible postmark, postal meter date, or date of delivery by a
20 common carrier;
21
 - 22 (6) the date of the document itself, if the mailing envelope containing the
23 complaint or appeal is lost after delivery to the Board or Agency. If the
24 document is undated, the filing date shall be deemed to be three business days
25 before receipt by the Board or Agency; or
26
 - 27 (7) the date of receipt by the Board or Agency, if the document was filed by fax.
28
- 29 (e) Credible and persuasive testimony under oath, subject to cross-examination, may
30 establish a filing date that is earlier than the dates established under subsection (d) of
31 this section. A party shall be allowed to establish a filing date earlier than a postal
32 meter date or the date of the document itself only upon a showing of extremely
33 credible and persuasive evidence. Likewise, when a party alleges that a complaint or
34 appeal has been filed that the Board or Agency has never received, the party must
35 present credible and persuasive evidence to support the allegation.
36
- 37 (f) A decision or determination shall not be deemed final if a party shows that a
38 representative of the Board, the Board's designee, or Agency has given misleading
39 information on appeal rights to the party. The party shall specifically establish:
40
- 41 (1) how the party was misled; or
42
 - 43 (2) what misleading information the party was given, and, if possible, by whom
44 the party was misled.
45
- 46 (g) There is no good cause exception to the timeliness rules.

1
2 **§823.4. Representation.**
3

4 A party may authorize a representative to assist with participating in an informal
5 resolution or in presenting a complaint or an appeal on behalf of the party under this
6 chapter. The Agency or Board may require the authorization to be in writing. On behalf
7 of the party, the representative may exercise any of the party's rights under this chapter.
8

9 **SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES**
10

11 **§823.10. Board-Level Complaints.**
12

13 (a) Individuals who may file a complaint include:
14

- 15 (1) Workforce Solutions Office customers;
16
17 (2) other interested individuals affected by the One-Stop Service Delivery System,
18 including subrecipients and eligible training providers; and
19
20 (3) previously employed individuals who believe they were displaced by a
21 Workforce Solutions Office customer participating in work-based services
22 such as subsidized employment, work experience, or workfare.
23

24 (b) Complaints shall be in writing and filed within 180 calendar days of the alleged
25 violation.
26

27 (c) The complaint shall include:
28

- 29 (1) the complainant's name and current mailing address; and
30
31 (2) a brief statement of the alleged violation stating the facts on which the
32 complaint is based.
33

34 (d) Each Board shall ensure that information about complaint procedures is provided to
35 individuals, eligible training providers, and subrecipients. The information provided
36 shall be presented in such a manner as to be understood by the affected individuals,
37 including youth, individuals with disabilities, and individuals with limited English
38 proficiency. This information shall be:
39

- 40 (1) posted in a conspicuous public location at each Workforce Solutions Office;
41
42 (2) provided in writing to any customer;
43
44 (3) made available in writing to any individual upon request; and
45

1 (4) placed in each Workforce Solutions Office customer's file.
2

3 **§823.11. Determinations.**
4

5 (a) A determination affecting the type and level of services or benefits to be provided by
6 a Board or its designee shall be promptly provided to any individual directly
7 affected.
8

9 (b) The determination shall include the following:
10

11 (1) a brief statement of the adverse action;
12

13 (2) the mailing date of the determination;
14

15 (3) an explanation of the individual's right to an appeal;
16

17 (4) the procedures for requesting informal resolution with the Board and for filing
18 an appeal to the Board, including applicable time frames as required in §823.3
19 of this chapter (Timeliness);
20

21 (5) the right to have a representative, including legal counsel; and
22

23 (6) the address and fax number to which a request for informal resolution or
24 appeal may be sent.
25

26 (c) Boards shall allow training service providers the opportunity to appeal a
27 determination related to the:
28

29 (1) denial of eligibility as a training provider under WIOA, §122(b), (c), or (d);
30

31 (2) termination of eligibility as a training provider or other action under WIOA,
32 §122(f); or
33

34 (3) denial of eligibility as a training provider of on-the-job or customized training
35 by the operator of a Workforce Solutions Office under WIOA, §122(h).
36

37 (d) An individual who receives a determination from a Board or a Board's designee may
38 file an appeal with the Board requesting a review of the determination. The appeal
39 must be submitted in writing, be filed within 14 calendar days of the mailing date of
40 the determination, and include the party's proper mailing address.
41

42 **§823.12. Board Informal Resolution Procedure.**
43

44 (a) Each Board shall provide an opportunity for informal resolution of a complaint or
45 appeal.
46

- 1 (b) Informal resolution may include, but is not limited to:
2
3 (1) informal meetings with case managers or their supervisors;
4
5 (2) second reviews of the case file;
6
7 (3) telephone calls or conference calls to the affected parties;
8
9 (4) in-person interviews with all affected parties; or
10
11 (5) written explanations or summaries of the laws or regulations involved in the
12 complaint.
13

14 **§823.13. Board Reviews.**

- 15
16 (a) If the informal resolution procedure results in a final agreement between the parties,
17 no hearing shall be held.
18
19 (b) If no informal resolution is reached, Boards shall provide an opportunity for a formal
20 review to resolve an appeal or complaint.
21
22 (c) Either a final agreement resulting from an informal resolution or a hearing and Board
23 decision shall be completed within 60 calendar days of the original filing of the
24 appeal or complaint.
25
26 (d) Boards shall provide a process that allows an individual alleging a labor standards
27 violation to submit a complaint to a binding arbitration procedure if a collective
28 bargaining agreement covering the parties to the complaint so provides.
29
30 (e) Within 60 calendar days of the filing of the appeal or complaint, the Board shall send
31 the parties a decision setting forth the results of the hearing. The decision shall be
32 issued by a Board adjudicator, include findings of fact and conclusions of law, and
33 provide information about appeal rights to the parties.
34
35 (f) If no Board decision is mailed within the 60 calendar-day time frame described in
36 subsection (e) of this section, or if any party disagrees with a timely Board decision,
37 a party may file an appeal with the Agency.
38
39 (g) An appeal to the Agency shall be filed in writing by mail, fax, or hand delivery with
40 the TWC Commission Appeals Department at its state office, 101 E. 15th Street, CA
41 Hearings Unit, Room 678, Austin, Texas, 78778, or faxed to the number provided in
42 the determination or decision within 14 calendar days after the mailing date of the
43 Board's decision. If the Board does not issue a decision within 60 calendar days of
44 the date of the filing of the original appeal or complaint, an appeal to the Agency
45 must be filed no later than 90 calendar days after the filing date of the original appeal
46 or complaint.

1
2 **§823.14. Board Policies for Resolving Complaints and Appeals of Determinations.**
3

- 4 (a) Each Board shall establish written policies to handle complaints and appeals of
5 determinations, provide the opportunity for informal resolution, and conduct reviews
6 in compliance with this subchapter for individuals, eligible training providers, and
7 other individuals affected by the One-Stop Service Delivery System, including
8 subrecipients.
9
- 10 (b) A Board shall maintain written copies of these policies and make them available to
11 the Agency, Workforce Solutions Office customers, and other interested individuals
12 upon request. A Board shall require that its subrecipients provide these policies to
13 Workforce Solutions Office customers and other interested individuals upon request.
14
- 15 (c) At a minimum, a Board shall:
- 16
- 17 (1) develop and approve policies to ensure that determinations are provided as
18 specified in §823.11 of this subchapter (relating to Determinations);
19
- 20 (2) develop and approve policies to ensure that information about complaint
21 procedures is available as described in §823.10(d) of this subchapter (Board-
22 Level Complaints);
23
- 24 (3) notify individuals that complaints must be submitted in writing and set forth
25 the facts on which the complaint is based, and notify them of the time limit in
26 which to file a complaint;
27
- 28 (4) maintain a complaint log and all complaint-related materials in a secure file for
29 a period of three years after final resolution;
30
- 31 (5) designate an individual to be responsible for investigating, documenting,
32 monitoring, and following up on complaints;
33
- 34 (6) inform individuals of the:
- 35
- 36 (A) right to file a complaint;
37
- 38 (B) right to appeal a determination;
39
- 40 (C) opportunity for informal resolution and a Board review;
41
- 42 (D) time frame in which to either reach informal resolution or to issue a
43 Board decision; and
44
- 45 (E) right to file an appeal to the Agency, including providing information on
46 where to file the appeal;

- 1
2 (7) designate adjudicators to conduct Board hearings, document actions taken, and
3 render decisions; and
4
5 (8) ensure that complaints remanded from the Agency to the Board for resolution
6 are handled in a timely fashion and follow established Board policies and time
7 frames.
8
9 (d) Complaints filed directly with the Agency may be remanded to the appropriate Board
10 to be processed in accordance with the Board's policies for resolving complaints.
11

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

13 **§823.20. State-Level Complaints.**

- 14
15
16 (a) A Workforce Solutions Office customer or other interested individual affected by the
17 statewide One-Stop Service Delivery System, including service providers that allege
18 a noncriminal violation of the requirements of any federal- or state-funded workforce
19 services, may file a complaint with the Agency.
20
21 (b) Complaints shall be in writing and filed within 180 calendar days of the alleged
22 violation. The complaint shall include the party's name, current mailing address, and
23 a brief statement of the alleged violation identifying the facts on which the complaint
24 is based.
25
26 (c) The complaint shall be filed with the TWC Commission Appeals Department at its
27 state office, 101 E. 15th Street, CA Hearings Unit, Room 678, Austin, Texas, 78778 .
28
29 (d) The Agency shall provide an opportunity for informal resolution.
30
31 (e) If the informal resolution procedure results in a final agreement between the parties,
32 no hearing shall be held.
33
34 (f) If no final informal resolution is reached, the complaint shall be promptly set for a
35 hearing and a decision shall be issued in accordance with the procedures for appeals
36 under this subchapter.
37
38 (g) Complaints filed directly with the Agency may be remanded to the appropriate
39 Board to be processed in accordance with the Board's hearing policies.
40

41 **§823.21. Hearings.**

- 42
43 (a) A WIOA-funded training provider or other provider certified by the Agency and
44 later found to be ineligible to receive funding as a training provider may file an
45 appeal directly with the Agency.
46

- 1 (b) Upon receipt of an appeal from a Board decision, an appeal pursuant to subsection
2 (a) of this section, or if no informal resolution of a complaint is successfully reached
3 pursuant to §823.20 of this subchapter (relating to State-Level Complaints), the
4 Agency shall promptly assign a hearing officer and mail a notice of hearing to the
5 parties and/or their designated representatives. The hearing shall be set and held
6 promptly and in no case later than as provided by applicable statute or rule.
7
- 8 (c) The notice of hearing shall be in writing and include a:
9
- 10 (1) statement of the date, time, place, and nature of the hearing;
11
12 (2) statement of the legal authority under which the hearing is to be held; and
13
14 (3) short and plain statement of the issues to be considered during the hearing.
15
- 16 (d) The notice of hearing shall be issued at least 10 calendar days before the date of the
17 hearing unless a shorter period is permitted by statute.
18
- 19 (e) Hearings shall be conducted by telephonic means, unless an in-person hearing is
20 required by applicable statute or the Agency determines that an in-person hearing is
21 necessary.
22
- 23 (f) Parties may request accommodations, including interpreters, through the hearing
24 officer or Agency staff.
25

26 **§823.22. Postponement and Continuance.**
27

- 28 (a) The hearing officer shall use his or her best judgment to determine when to grant a
29 continuance of postponement of a hearing in order to secure all the evidence that is
30 necessary and to be fair to the parties.
31
- 32 (b) Before the hearing, requests for a continuance or a postponement of a hearing may be
33 made informally, either orally or in writing, to the hearing officer.
34

35 **§823.24. Hearing Procedures.**
36

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

1 the hearing. A party has the right to object to evidence offered at the hearing
2 by the hearing officer or other parties.

3
4 (2) Examination of Witnesses and Parties. The hearing officer shall examine
5 parties and any witnesses under oath and shall allow cross-examination to the
6 extent the hearing officer deems necessary to afford the parties due process.
7

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

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

19 (b) Records.
20

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

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

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

30 (4) Upon request, a party has the right to obtain a copy of the hearing record,
31 including recordings of the hearing and file documents at no charge.
32

33 **SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS**
34

35 **§823.30. Hearing Decision.**
36

37 (a) Following the conclusion of the hearing, the hearing officer shall promptly issue a
38 written decision on behalf of the Agency. Decisions issued on state-level complaints
39 and grievances, or appeals of local-level complaints and grievances, made pursuant
40 to provisions of WIOA, must be issued within 60 calendar days of the filing of the
41 complaint, grievance or appeal, whichever comes later.
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 to reconsider the issues on appeal, take additional evidence,
10 and issue a corrected decision until the expiration of 14 calendar days from the
11 mailing date of the hearing decision.
12

13 **§823.31. Petition for Reopening.**
14

- 15 (a) If a party fails to appear for a hearing, the hearing officer may hear and record the
16 evidence of the party present and the witnesses, if any, and shall proceed to decide
17 the appeal on the basis of the record unless there appears to be good reason for
18 continuing the hearing. A copy of the decision shall be promptly mailed to the parties
19 with an explanation of the manner in which, and time within which, a request for
20 reopening may be submitted.
21
22
23 (b) A party that fails to appear at a hearing may, within 14 calendar days from the date
24 the decision is mailed, petition in writing for a new hearing before the hearing
25 officer. The petition should identify the party requesting the reopening and explain
26 the reason for the failure to appear. The timeliness rules in §823.3 of this chapter
27 (relating to Timeliness) apply to the petition. The petition shall be granted if it
28 appears to the hearing officer that the petitioner has shown good cause for the
29 petitioner's failure to appear at the hearing.
30
31 (c) The hearing officer may schedule a hearing on whether to grant the reopening.
32
33 (d) The hearing officer may deny the petition if no good cause is alleged for the party's
34 nonappearance at the prior hearing.
35

36 **§823.32. Motion for Rehearing and Decision.**
37

- 38 (a) A party has 14 calendar days from the date the decision is mailed to file a motion for
39 rehearing. A rehearing may be granted only for the presentation of new evidence.
40
41 (b) Motions for rehearing shall be in writing and allege the new evidence to be
42 considered. The appellant must show a compelling reason why the evidence was not
43 presented at the hearing and explain how consideration of the evidence would alter
44 the outcome of the case.
45

- 1 (c) If the hearing officer determines that the motion does not meet the criteria in
2 subsection (b) of this section, the hearing officer may issue a decision indicating that
3 they have not been met and that no hearing will be set on the motion.
4
- 5 (d) If the hearing officer determines that the appellant has met the requirements of
6 subsection (b) of this section, the hearing officer shall grant the motion and schedule
7 a hearing to consider the new evidence on the record.
8
- 9 (e) The hearing officer shall issue a written decision following the hearing to consider
10 the evidence on the Motion for Rehearing.
11
- 12 (f) After the hearing on the Motion for Rehearing, the hearing officer shall issue a
13 written decision granting or denying the Motion for Rehearing and may affirm,
14 reverse, leave in effect, void, or modify the prior decision.
15

16 **§823.34. Federal Appeals.**
17

- 18 (a) Participants and interested or affected parties have a right to appeal to the US
19 Secretary of Labor when decisions are not issued within the time prescribed or when
20 an adverse final Agency decision is issued.
21
- 22 (b) The US Secretary of Labor will investigate appeals under the following
23 circumstances:
24
- 25 (1) A decision on a grievance or complaint has not been reached:
26
- 27 (A) within 60 calendar days of receipt of the grievance or complaint; or
28 (B) within 60 calendar days of receipt of the request for appeal of a local
29 level grievance and either party appeals to the US Secretary of Labor; or
- 30 (2) A state level decision on a grievance or complaint has been reached and the
31 party to which such decision is adverse appeals to the US Secretary of Labor.
32
- 33 (c) Participants and interested or affected parties that wish to appeal to the US Secretary
34 of Labor must adhere to the following time parameters:
35
- 36 (1) Appeals that are based on subsection (b)(1) of this section must be filed within
37 120 calendar days of filing the grievance or timely appeal with the state.
38
- 39 (2) Appeals that are based upon subsection (b)(2) of this section must be filed
40 within 60 calendar days of receipt of the state-level decision.
41
- 42 (d) Appeals to the US Secretary of Labor must be submitted by certified mail with a
43 return receipt requested. In addition to sending an appeal to the US Secretary of
44 Labor, the party must also simultaneously provide a copy of the appeal to the

- 1 opposing party and the US Department of Labor Employment and Training
2 Administration regional administrator.
3
4 (e) This federal appeals process applies solely to noncriminal grievances and complaints
5 under WIOA, Title I.
6
7 (f) This process does not apply to filing appeals regarding discrimination, or denial or
8 termination of training provider eligibility, for inclusion on the Texas Eligible
9 Training Provider List.