

SOUTH FLORIDA WORKFORCE INVESTMENT BOARD
SERVICE PROVIDER APPEAL RULES

1. Scope of Rules

These Rules shall apply to appeals by Service Providers including, but not limited to, One-Stop (Career Center) operators and other Service Providers, which have been awarded, or have applied for an award of grant funds from the South Florida Workforce Investment Board (SFWIB) pursuant to any federal or state funded program or activity. These Rules shall apply to all actions or decisions of the SFWIB by which the interests of such a Service Provider are affected by the denial, de-obligation, termination, or determination of eligibility or ineligibility for grant funding or of grant funding with respect to WIA, TANF, Wagner-Peyser, Refugee Employment and Training Services Program or other federal or state funded program or activity.

2. Definitions

- (a) “Appeal” shall mean an appeal filed by a Service Provider pursuant to these Rules.
- (b) “SFWIB” shall mean the South Florida Workforce Investment Board.
- (c) “Informal Resolution Panel” shall mean a panel consisting of the Executive Director of the SFWIB, or a member of the staff of the SFWIB designated by the Executive Director, and not less than two non-Service Provider voting members of the SFWIB.
- (d) “Appeal Panel” shall mean a panel consisting of three non-Service Provider voting members of the SFWIB. Members of the panel shall be from a rolling alphabetized list (first letter of last name, starting with the letter “a”) of voting non-Service Provider members of the SFWIB. In the event that a member is not available for a public meeting of the Appeal Panel for an appeal hearing then the next member on the rolling alphabetized list of names shall serve on the Appeal Panel. Each appeal hearing shall be conducted by a particular Appeal Panel and, upon the conclusion of the one appeal hearing by the particular Appeal Panel, the names of the members who served on the Appeal Panel shall be re-entered alphabetically again on the rolling alphabetized list of non-Service Provider voting members. Each appeal hearing shall be heard by an Appeal Panel designated for that particular appeal hearing.
- (e) “One-Stop (Career Center) Operator” shall mean the public or private entity or entities which operate one or more One-Stop (Career) Centers.
- (f) “Refugee Employment and Training Services Program” shall mean the Refugee Employment and Training Program as set forth in the Immigration and Nationality Act, 8 U.S.C. § 1101 et. seq.
- (g) “Service Provider” shall mean a One-Stop (Career Center) operator or other person or entity which has been awarded grant funds or which has applied for an award of

grant funds from the South Florida Workforce Investment Board for the provision of workforce services in Region 23 pursuant to any federal or state funded program or activity.

- (h) “TANF” shall mean the Temporary Assistance for Needy Families Program as set forth in the Social Security Act, 42 U.S.C. § 1305 et. seq.
- (i) “Wagner- Peyser” shall mean the Wagner-Peyser Act of 1933 (National Employment Services Act), 29 U.S.C. § 49 et. seq.
- (j) “Workforce Investment Act” or “WIA” shall mean the Workforce Investment Act of 1998, 29 U.S.C. § 2801, et. seq.

3. Issues Subject to Appeal

Service Providers affected by the denial, de-obligation, termination, determination of eligibility or ineligibility for grant funding, or of grant funding, by the SFWIB with respect to any federal or state funded program or activity may appeal pursuant to these Rules as to the following issues:

- (a) The action or decision of the SFWIB is alleged by the Service Provider to be in violation of applicable federal or state law; or
- (b) The action or decision of the SFWIB is alleged by the Service Provider to be based upon an error of material and relevant fact(s); or
- (c) The action or decision of the SFWIB is alleged by the Service Provider to be invalid because of an alleged denial of procedural due process.

4. Issues Not Subject To Appeal

No appeal shall be permitted pursuant to these Rules if:

- (a) The Service Provider agrees that the procurement process followed was fair and the Service Provider’s score was acceptable for funding but budget limitations or program allocations or the availability of funds to the SFWIB prevented the Service Provider from being funded, in whole or in part, or from being eligible for funding; or
- (b) The Service Provider agrees that the procurement process followed was fair and no error of material and relevant fact occurred, but the Service Provider does not agree with the score, ranking or evaluation of the Service Provider; or
- (c) The Service Provider agrees that the procurement process followed was fair and no error of material and relevant fact occurred, but the Service Provider does not agree

that the Service Provider failed to satisfy the technical requirements of the particular competitive procurement process; or

- (d) The Service Provider was awarded funding, but the Service Provider does not agree with the amount awarded or the service delivery area applicable to the award.

5. Appeal

- (a) The Service Provider shall file a written appeal in the Office of the Executive Director of the SFWIB not later than five (5) calendar days after receipt by the Service Provider of written notice of the decision or action of the SFWIB to be appealed from. The failure of the Service Provider to file a timely appeal in accordance with these Rules shall be deemed a waiver of the Service Provider's right to appeal or otherwise challenge any such decision or action of the SFWIB and the action or decision of the SFWIB shall be deemed final in all respects.
- (b) All appeals shall be timely filed and contain the following information:
 - (1) A statement of the decision or action of the SFWIB appealed from and the date of the decision or action of the SFWIB;
 - (2) A statement of when and how the Service Provider received notice of the decision or action of the SFWIB;
 - (3) A statement of how the Service Provider's interests will be affected by the decision or action of the SFWIB;
 - (4) A statement of all disputed issues of material and relevant fact, or, if there are none, a statement that there are no disputed issues of material and relevant fact;
 - (5) A statement of the reasons why the decision or action of the SFWIB is incorrect;
 - (6) A copy of any document upon which the Service Provider relies to support the Service Provider's contention that the decision or action of the SFWIB should be reversed or modified;
 - (7) A request for a formal hearing;
 - (8) A statement of the relief sought by the Service Provider which sets forth the action or decision of the SFWIB which the Service Provider seeks in the appeal; and
- (c) An appeal shall be dismissed by the SFWIB if the appeal is not in substantial compliance with subsection (b) of this Rule or has been untimely filed.

- (d) Prior to an appeal hearing occurring, the Service Provider shall attend and participate in an Informal Resolution Conference conducted by an Informal Resolution Panel at a time and place determined by the Executive Director or by the Executive Director's designee. The Informal Resolution Conference shall be held in accordance with the Florida Public Meetings Law. The SFWIB staff and the Service Provider shall seek in good faith to resolve any or all of the issues in the pending appeal. Failure of the Service Provider to attend or participate in good faith in the Informal Resolution Conference shall be deemed a waiver of both the Service Provider's right to an Informal Resolution Conference and right to an appeal hearing and the action or decision of the SFWIB appealed from shall be deemed final in all respects. Any resolution resulting from the Informal Resolution Conference shall be in writing and signed by the SFWIB Executive Director or by the Executive Director's designee, and the Service Provider. No such resolution shall be effective unless and until approved by the SFWIB and upon such approval shall be deemed to be the final action or decision by the SFWIB. In the event there is no resolution as a result of the Informal Resolution Conference or the SFWIB does not approve the proposed informal resolution, then the appeal shall be heard by the Appeal Panel.

6. Filing

- (a) In construing these Rules, filing shall mean received by the Office of the Executive Director of the SFWIB during normal business hours.
- (b) All appeals and all other papers filed with the SFWIB shall contain the following:
 - (1) The name of the Service Provider which is filing the appeal; and
 - (2) The name, address, telephone number, and facsimile number of the Service Provider filing the appeal or other paper and the name, address, telephone number, and facsimile number of the Service Provider's Florida-licensed legal counsel or of the president or a corporate vice-president (president or corporate vice president is only applicable to for-profit corporations and not-for-profit corporations) (LLCs, other business entities, and governmental entities shall be required to provide the information with respect to Florida-licensed legal counsel); and
 - (3) The original signature of the person filing the appeal or paper on behalf of the Service Provider.
- (c) Any appeal or paper received by the Executive Director of the SFWIB after 5:00 P.M. shall be deemed filed on the next business day.
- (d) An original and three (3) copies of each appeal and of each paper shall be filed by the Service Provider in the Office of the Executive Director of the SFWIB.

- (e) All appeals and papers filed shall be styled to indicate clearly the subject matter of the document and the name of the Service Provider requesting relief.
- (f) No Service Provider or other person or entity shall be permitted to file any appeal or paper by electronic transmission

7. Notice of Appeal Hearing

- (a) Notice of the appeal hearing shall be provided to the Service Provider not less than five (5) calendar days prior to the date of the scheduled hearing.
- (b) The Notice of Hearing shall advise the Service Provider of the following:
 - (1) The date, time, and location of the appeal hearing;
 - (2) That the Service Provider shall be represented at the appeal hearing by Florida-licensed legal counsel or the president or a corporate vice-president of the corporation if the Service Provider is a for-profit corporation or not-for-profit corporation (not applicable to LLCs, other business entities, or governmental entities, all of which must be represented by Florida-licensed legal counsel) and that the Service Provider will provide, at the Service Provider's own expense, a court reporter to report the appeal hearing and to administer oaths or affirmations to witnesses who testify at the appeal hearing;
 - (3) That the Service Provider shall present at the hearing any relevant and material documents, sworn testimony, other evidence and other information in support of the Service Provider's appeal;
 - (4) That the Service Provider's failure to be present at the hearing or to participate in the appeal hearing shall be deemed to be a waiver of the Service Provider's right to an appeal under these Rules; and
 - (5) That, except for an emergency, as determined by the Executive Director of the SFWIB or by the Executive Director's designee, a continuance of the appeal hearing may be granted only upon written request filed with Office of the Executive Director of the SFWIB not less than three (3) calendar days prior to the scheduled date for the appeal hearing and which request shall specifically set forth the grounds for the request for continuance. Emergency requests for continuances may be filed by facsimile transmission to the Office of the Executive Director at any time. The Executive Director is hereby authorized to grant emergency continuances and non-emergency continuances if the Executive Director determines that the granting of such a continuance is in the best interests of the SFWIB and a continuance will not unduly burden any interested person. Notice of the granting or denial of a

continuance, emergency or non-emergency, shall be posted on the website of the SFWIB.

8. Hearing

All appeal hearings shall be conducted in accordance with the following:

- (a) The Appeal Panel may issue any rulings at the appeal hearing necessary to prevent delay, to afford the Service Provider a fair and reasonable opportunity to present evidence and legal argument, and to promote a just, speedy and inexpensive determination of the issues in the appeal;
- (b) Each party shall have the right to present witnesses and other evidence and to impeach any witness regardless of which party called the witness to testify;
- (c) Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient by itself to support a finding;
- (d) Any documents or records submitted by any party at the hearing shall be marked as an exhibit and shall be retained by the SFWIB staff as part of the record of the proceedings;
- (e) The appeal hearing shall be recorded by an electronic recording instrument by the SFWIB staff. As noted in the Notice of Hearing, the Service Provider shall provide a court reporter to report the appeal hearing, at the expense of the Service Provider, and to administer oaths and affirmations to all witnesses testifying at the appeal hearing. Any party may, at its own expense, provide an additional court reporter to report the appeal hearing. Any party who orders a transcript of the appeal hearing shall order the same at the party's own expense. The transcript of the court reporter provided at the expense of the Service Provider, as required by these Rules, shall be the official transcript. The Service Provider shall pay for the expenses of the court reporter's appearance, transcription, and the provision of the original transcript of the entire appeal hearing to the SFWIB for inclusion in the official appeal file of the SFWIB for the particular appeal. If a court reporter does not report the appeal hearing, a transcript of the appeal hearing which has been prepared from the electronic recording instrument operated by SFWIB staff shall be the official transcript of the appeal hearing and said transcript shall be transcribed and prepared by a court reporter selected by the Executive Director of the SFWIB, at the expense of the Service Provider, and the original of such transcript of the entire appeal hearing shall be provided to the SFWIB, at the expense of the Service Provider, for inclusion in the official appeal file of the SFWIB for the particular appeal;
- (f) The appeal hearing shall be held in accordance with the Florida Public Meetings Law.

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- (g) The court reporter or other person authorized by Florida law to administer oaths and affirmations to witnesses shall administer such oath or affirmation to all witnesses who testify at the appeal hearing.
- (h) In the event that a translator is needed for any testimony by any witness then the translator shall be provided by the Service Provider at the expense of the Service Provider.
- (i) The SFWIB, although not a party to the appeal, may, in the discretion of the Appeal Panel, provide testimony and other evidence during the appeal hearing.
- (j) At the conclusion of the presentation of evidence and legal argument at the appeal hearing, the Appeal Panel shall confer in public at the appeal hearing and issue a recommendation to the SFWIB as to the disposition of the appeal. No such recommendation to the SFWIB shall be effective until and unless not less than two of the three members of the Appeal Panel vote for the recommendation as to the disposition of the appeal.
- (k) Upon receipt of the recommendation as to disposition of the appeal from the Appeal Panel, the SFWIB shall accept or reject or modify the recommendation or take such other action necessary and appropriate to dispose of the appeal. The action of the SFWIB with respect to the appeal shall constitute final action by the SFWIB as to the issues raised by the appeal.