

## **SUBCHAPTER 20C - ADJUDICATIVE PROVISIONS/GENERAL PROVISIONS FOR ADMINISTRATIVE ADJUDICATIONS**

### **04 NCAC 20C .0101 ADMINISTRATIVE PROCEDURES GENERALLY**

- (a) The administrative procedures of the Division are governed by G.S. 150B, except to the extent modified in this Chapter in accordance with federal law.
- (b) Procedures for administrative review shall be governed by the provisions of Rule .0002 of this Subchapter.
- (c) Procedures for division review shall be governed by the provisions of Rule .0003 of this Subchapter.
- (d) Procedures for grievances shall be governed by Rule .0004 of this Subchapter.
- (e) Nothing in this Chapter 20 shall be construed to allow an individual to join or sue the Governor with respect to the Governor's responsibilities under JTPA or these Regulations, or the Secretary or Director, with respect to their responsibilities as delegate of the Governor for JTPA purposes, or the State Job Training Coordinating Council or any member thereof, with respect to their responsibilities under JTPA or these Regulations, without first exhausting the administrative remedies described in this Chapter.
- (f) The burden of proof in a hearing rests with the complainant.
- (g) Nothing in this Subchapter shall be construed to preclude the dismissal of complaints that would be subject to dismissal under the Rules of Civil Procedure. Summary disposition of cases, when warranted, shall be permitted.
- (h) The address of the Office of Administrative Hearings is Post Office Drawer 27447, Raleigh, North Carolina, 27611-7447 and the address of the Division is 111 Seaboard Avenue, Raleigh, North Carolina 27604.

*History Note:* Authority G.S. 143B-430(b); 150B; 20 C.F.R. 629.52; Eff. July 1, 1980; Amended Eff. May 1, 1992; August 1, 1988; February 1, 1986; October 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

### **04 NCAC 20C .0102 PROCEDURES FOR ADMINISTRATIVE REVIEW**

Administrative review shall be governed by G.S. 150B, except that:

- (1) Complaints shall be made within one year of the alleged occurrence;
- (2) Hearings on any complaint shall be conducted within 30 days of filing of a complaint and final decisions shall be made not later than 60 days after the filing of a complaint;
- (3) Where the complainant provides the Secretary of USDOL reason to believe that the recipient is failing to comply with the requirements of the JTPA or the terms of the job training plan, the JTPA requires the Secretary of USDOL to investigate the allegation or belief and determine within 120 days after receiving the complaint whether such allegation or complaint is true; and,
- (4) Regarding actions pursuant to Subchapter 20C .0006(d), opportunity for a hearing must be provided within 30 days of such actions.

*History Note:* Authority G.S. 143B-430(b); 150B; JTPA S 144; 20 C.F.R. 629.58; Eff. July 1, 1980; Amended Eff. August 1, 1988; October 1, 1986; February 1, 1986; October 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

### **04 NCAC 20C .0103 PROCEDURES FOR DIVISION REVIEW**

- (a) If, regarding a complaint against a subrecipient, agent of a subrecipient or private industry council, a complainant does not receive the respondent's decision within 60 days of the complainant's filing or receives a decision unsatisfactory to the complainant, the complainant may request division review. Such requests for division review may be made to the Division only upon a showing of exhaustion of administrative remedies provided by the respondent.
- (b) Requests must be filed within ten days of receipt of the unsatisfactory decision or ten days from the date on which the complainant should have received a decision.
- (c) A request for division review must be specific and shall raise all issues of fact and law upon which the appeal is based. Review will not be available as to matters not raised in the proceeding review of which is requested, nor as to matters not raised in the request for review. The request must be in writing signed by the petitioner. If the petitioner is an entity, the request must be signed by the authorized signatory for the petitioner. The Director may require a

resolution of the governing board of the petitioner authorizing the request. A copy of the request must be mailed certified, return receipt requested to the respondent.

(d) Review shall be by the Director, who may provide for oral hearing in his discretion. The Director shall determine if the respondent's procedures provided due process, if the respondent correctly followed its procedures and if the determination is clearly erroneous or is not based on fact. A written decision shall be rendered by the Director within 30 days of receipt of the request for division review. The Director's decision is final and shall so state.

(e) If the Director fails to render a decision as required in Paragraph (d), the complainant may they request from the Secretary of USDOL a determination whether reasonable cause exists to believe that the Act or its regulations have been violated.

*History Note:* Authority G.S. 143B-430(b); 150B; 20 C.F.R. 629.52; 20 C.F.R. 629.58;  
Eff. July 1, 1980;  
Amended Eff. August 1, 1988; February 1, 1986; October 1, 1984; August 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

#### **04 NCAC 20C .0104 PROCEDURES FOR GRIEVANCES**

(a) All grievances other than those alleging discrimination on the basis of handicap pursuant to Section 504 of the Rehabilitation Act, shall be filed directly with the Director of Civil Rights, U.S. Department of Labor, within 180 days of the alleged discrimination.

(b) All grievances alleging violations of Section 504 of the Rehabilitation Act must be filed within 180 days pursuant to procedures established by the subrecipient complained against.

*History Note:* Authority G.S. 143B-20; 150B; 20 C.F.R. 626.2(b); 29 C.F.R. 31.7; 29 C.F.R. 32.45(b); Section 504, Rehabilitation Act; Ex. O. 93, June 8, 1983;  
Eff. July 1, 1980;  
Amended Eff. August 1, 1988; February 1, 1986; October 1, 1984; March 1, 1983;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

#### **04 NCAC 20C .0105 DIRECT APPEALS TO THE SECRETARY**

*History Note:* Authority G.S. 143B-430(b); 150B; Ex. O. 93, June 8, 1983; 20 C.F.R. 620.51;  
20 C.F.R. 629.58;  
Eff. March 1, 1983;  
Amended Eff. February 1, 1986; October 1, 1984;  
Repealed Eff. August 1, 1988.

#### **04 NCAC 20C .0106 SANCTIONS**

(a) The Division, through the Director, and the Department, through the Secretary, shall be authorized to impose any sanction permitted by the JTPA, applicable federal regulations, the subgrant agreement or the contract document or state law. The Director and the Secretary are the delegates of the Governor and may exercise the sanction authority reserved for the Governor in the JTPA.

(b) Upon a determination that a subrecipient has violated a specific term of the JTPA, the applicable federal regulations, or state law, or that a violation has occurred in a subrecipient's programs or projects or other funded activity, the Director or the Secretary may condition funding to the extent necessary to assure the violations will not continue. If conditional funding does not effect compliance, the Governor may issue a notice of intent to revoke all or part of a subrecipient's funding from the Division. The revocation shall be effective when the time for appeal has expired or the Secretary of Labor has issued a decision on an appeal. The appeal procedure shall correspond to the procedure set forth in Rule .0201 of Chapter 20B.

(c) In the event funds are misspent and identified as misspent during the same grant year, the subrecipient may be permitted to conduct (without federal funds) additional eligible employment and training activities during that same grant year to offset the disallowed costs. The Division shall not be required to provide this opportunity, and it may only be available after the grant year with permission of USDOL. This alternative of in-kind services recoupment of

disallowed costs is made available for the purpose of maximizing the activities available to eligible participants in the service delivery areas and to encourage in-house monitoring during a grant year.

(d) In the event that USDOL will revoke funds to the state under the emergency provisions of Section 164(f) of the JTPA and in the event that the activities of one or more subrecipients has caused the funding to be jeopardized, the Governor may immediately suspend or terminate funding to those subrecipients in order to preserve funding to the remaining subrecipients; provided that in such an event an opportunity for a hearing must be provided within 30 days.

(e) All subrecipients shall be responsible for funds received through the Division. The subgrantees and the Division's contractors shall be liable for the disallowed expenditure of any funds received from the Division or for liabilities arising in connection with the operation of the funded activities. The Division may recoup the amount of disallowed expenditures and, if interest is charged by USDOL against the state or if the unauthorized expenditure was willful, may recover appropriate interest from the subgrantee or division contractor. The Division may also go directly against any subrecipient receiving funds, whether or not that subrecipient had received funds directly from the Division, but the Division shall not be required to proceed against those subrecipients.

(f) Any person or entity, including participants or supplier, who makes or causes to be made a willful misrepresentation shall be liable for the costs incurred on account of or received by such person or entity as a result of having made the misrepresentation. This sanction shall be available to any subrecipient who is injured by the misrepresentation, but this sanction shall not require a subrecipient or the Division to endeavor to enforce this liability. This sanction may be enforced through the administrative process as to all parties who receive JTPA funds, who thereby consent to resolution of disputes through this administrative process.

(g) The remedies under this Chapter 20 shall not be construed to be exclusive remedies. The Division shall have all common law remedies available to it with regard to its subrecipients and shall have all remedies provided in executed agreements with subrecipients.

*History Note: Authority G.S. 143B-430(b); 150B; Articles 3 and 4; Ex. O. 93, June 8, 1983; JTPA S 164; 20 C.F.R. 629.44; Eff. October 1, 1984; Amended Eff. August 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*