



**STATE OF NEW JERSEY
DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT**

In the Matter of

Corrective Action, pursuant to N.J.A.C. 12:42-3.8

**Hudson County Local Workforce Development Area
and
Hudson County Local Workforce Development Board**

**DECISION OF THE
COMMISSIONER UNDER
N.J.A.C. 12:42-3.11(d)**

Issued: September 27, 2022

By letter dated July 28, 2022, Hugh Bailey, Assistant Commissioner with the New Jersey Department of Labor and Workforce Development (Department), issued a determination requiring corrective action by the Hudson County Local Workforce Development Area (HCLWDA) and the Hudson County Workforce Development Board (HCWDB) pursuant to N.J.A.C. 12:42-3.8. Within the July 28, 2022, determination, AC Bailey, as required by N.J.A.C. 12:42-3.10, included descriptions of both the cause for the corrective action and the corrective action itself, including the timeline for completing the corrective action, as well as an explanation of appeal rights. Much, if not all, of the cause for the corrective action stems from the Department's efforts to oversee and monitor the activities of the HCWDB and the HCLWDA in response to a report issued by the United States Department of Labor, Employment and Training Administration (USDOL ETA). That USDOL ETA report is in pertinent part attached to and incorporated within the July 28, 2022 determination of AC Bailey. According to the July 28, 2022 determination of AC Bailey, the corrective action includes the immediate assumption of operational control over the HCWDB and the funds allocated to it by the Department, including

the assumption of operational responsibility over the following areas: (1) writing and releasing competitive solicitations for required workforce services and managing the review process to ensure integrity, (2) releasing funding to approved vendors, (3) coordinating with the HCLWDA to build the appropriate staffing infrastructure necessary to perform the required duties of a local Workforce Development Board, and (4) ensuring the appropriate firewalls are in place to protect the HCLWDA, HCWDB and maintaining the separation of duties as outlined in the Workforce Innovation and Opportunity Act (WIOA). The determination indicates that the corrective action will run into the new fiscal year (beginning July 1, 2022) with the installation of an Administrator, who will continue the Department's work over the course of the year. The determination concludes that provided all objectives have been met, the HCWDB will be free to operate independent of the Department effective July 1, 2023. As also required under N.J.A.C. 12:42-3.10, prior to issuing the July 28, 2022 determination, AC Bailey transmitted a written proposed corrective action to the State Employment and Training Commissioner (SETC), which, within 60 days of receipt of the proposed corrective action, returned to AC Bailey a written recommendation with regard to the proposed corrective action in which the SETC "agreed that the action recommended by the [Department] is responsive to the findings of the federal compliance review."

The HCWDB, through its counsel, Maria P. Vallejo, filed an appeal of AC Bailey's July 28, 2022, determination requiring corrective action. The appeal was filed with the Commissioner under N.J.A.C. 12:42-3.11(a), which states that if a local area or local board disagrees with the corrective action and/or penalty determination of the Assistant Commissioner under N.J.A.C. 12:42-3.10, the local area and/or the local board may submit an appeal to the Commissioner in writing no later than 30 days after having received notice of the corrective action and/or penalty determination. Under N.J.A.C. 12:42-3.11(c) and (d), the Commissioner is required to review the documentary evidence presented by the local area and/or local board and within 30 days of receipt of the appeal must render a decision based on the written record.

On appeal to the Commissioner, the HCWDB argues that AC Bailey's determination requiring corrective action is "greatly unbalanced when weighed against the purported basis for the corrective action," which according to the HCWDB was, "the failure to timely produce documentation." Ms. Vallejo, on behalf of the HCWDB, blames the "prior administration" for "errors" that gave rise to the USDOL ETA's Comprehensive Compliance Report. The HCWDB asserts that "demands" for documents and information made by the Department, USDOL ETA, and the USDOL's Office of the Inspector General following issuance of the USDOL ETA's Comprehensive Compliance Report were "made under impractical time constraints," adding, again, that "[t]he majority of these requests were related to review of actions or inactions taken by the prior administration."

In addition, the HCWDB asserts that under N.J.A.C. 12:42-3.4 and 3.5, which address the imposition of sanctions by the Department against a local area for "failure to meet local performance measures," the Department is foreclosed from issuing any corrective action against the HCWDB until two years have passed from the date that the USDOL ETA Comprehensive Compliance Report was received by the Executive Director of the HCWDB. According to the HCWDB, that means, "the NJDOL should have afforded the HCWDB until October 29, 2023...to reach full compliance before issuing any corrective action."

CONCLUSION

I have reviewed the written record in this matter, which includes the July 28, 2022 determination letter of AC Bailey, with attached exhibits: (1) the July 16, 2021 USDOL ETA report of its Comprehensive Compliance Review, (2) the Program Year 2020 Workforce Development Area Contract, which states at paragraph #10 of the general provisions that the grantee (Hudson County) agrees to cooperate with any monitoring, evaluation and/or audit conducted by the Department, to provide full access to their books and records, and to submit to any audit or review of financial and compliance requirements of the Department, and (3) the March 1, 2022 letter from AC Bailey to Hudson County Executive, Thomas A. DeGise, stating that despite the Department having sought to work with the HCLWDA and the HCWDB to resolve findings of the USDOL ETA in its July 16, 2021 report, the Department had experienced “significant challenges ranging from [HCWDB] staff lacking the knowledge and experience to resolve findings to [HCWDB] staff being non-responsive to emails or phone calls.” The written record also includes the letter brief submitted by the HCWDB (summarized above), with supporting certifications from Roger Jones, Chair of the HCWDB, Maria P. Vallejo, Counsel to the HCWDB, and Michelle De Filippo, Executive Director of the HCWDB. Nothing in the written record has persuaded me that the July 28, 2022 determination of AC Bailey requiring corrective action by the HCLWDA and the HCWDB should be disturbed. I find particularly unpersuasive both the HCWDB’s characterization of the Department’s corrective action as “greatly unbalanced” when weighed against the stated cause for that action and the HCWDB’s characterization of the Department’s requests for production of information and records as having been made “under impractical time constraints.” Neither of these statements is accurate. Specifically, regarding the appropriateness of the corrective action when weighed against the stated cause, AC Bailey’s determination letter speaks for itself; which is to say, it illustrates clearly and unequivocally the actions and inactions of the HCWDB, which constitute “other causes for corrective action and penalties” under N.J.A.C. 12:42-3.6(a)4 (“failure to comply with federal law or regulations”), N.J.A.C. 12:42-3.6(a)5 (“failure to comply with State statute or rules”), and N.J.A.C. 12:42-3.6(a)6 (“failure to comply with one or more contract provisions”). In fact, under the circumstances, where the HCWDB refused to cooperate with the Department in any meaningful way over the course of many months to address the grave deficiencies in the operations of the HCWDB identified in the July 16, 2021 USDOL ETA Comprehensive Compliance Review report, it appears to me that the HCWDB left the Department no choice but to assume operational control over the HCWDB and the funds allocated to it by the Department for the period specified in AC Bailey’s letter, before handing operational control back to the HCWDB. As to the alleged, “impractical time constraints” imposed upon them by the Department to produce information and documentation, the chronology of events included in AC Bailey’s July 28, 2022 determination letter belies the HCWDB’s unsupported assertion. Rather, what the letter illustrates is a consistent failure of the HCWDB to cooperate with the efforts of the Department to perform its legitimate statutory, regulatory and contractual oversight and monitoring functions, as well as to provide technical assistance.

As to the HCWDB’s assertion that under N.J.A.C. 12:42-3.4 and 3.5, the Department is foreclosed from issuing any corrective action against the HCWDB until two years have passed from the date that the USDOL ETA Comprehensive Compliance Review report was received by the Executive Director of the HCWDB, this is a misreading of the Departmental rules regarding the imposition of corrective action and/or penalties on a local board or local area. The two

sections of Chapter 42 cited by the HCWDB apply *exclusively* to failure of the local area to meet “local performance measures.” Pursuant to federal regulations, these “local performance measures” are metrics such as the percentage of adult and dislocated worker program participants in unsubsidized employment at various points in time after having exited the program, or the percentage of program participants who obtain a recognized postsecondary credential or a secondary school diploma or equivalent. As is readily apparent from the AC Bailey’s determination letter, the corrective action at issue is not based on failure of the local area to meet “local performance measures” under either N.J.A.C. 12:42-3.4 or 3.5, but rather is for “violations of federal law and regulations, State law and rule, and contract provisions” summarized within the body of and attachments to the July 28, 2022 letter. These are among the “other causes for corrective action or penalties” listed at N.J.A.C. 12:42-3.6, which are not subject to the “Year One” and “Year Two” limitations contained within N.J.A.C. 12:42-3.4 and 3.5.

ORDER

Therefore, I hereby order that the HCWDB’s appeal of AC Bailey’s July 28, 2022 determination requiring corrective action by the HCLWDA and the HCWDB is denied.

Pursuant to N.J.A.C. 12:42-3.11(e), if the local area or the local board disagree with this decision of the Commissioner, it may within 30 days of receipt of the decision file an appeal with the Secretary of the United States Department of Labor.

DECISION RENDERED BY
THE COMMISSIONER, DEPARTMENT
OF LABOR AND WORKFORCE DEVELOPMENT



Robert Asaro-Angelo, Commissioner
Department of Labor and Workforce Development

Inquiries & Correspondence:

David Fish, Executive Director
Legal and Regulatory Services
Department of Labor and Workforce Development
PO Box 110 – 13th Floor
Trenton, New Jersey 08625-0110