

	New Jersey Workforce Innovation Notice		WD-PY24-1
	Issued By:	Workforce Development Division of Career Services	
	Approved By:	Dr. Yolanda Allen, Assistant Commissioner Workforce Development	
	Issued Date:	July 16, 2024	

SUBJECT: Sanctions Procedures – Corrective Actions, Penalties, and Appeals

EFFECTIVE DATE: This New Jersey Workforce Innovation Notice (NJWIN) is effective **Immediately**.

POLICY RESCISSIONS: None

FOR MORE INFORMATION: Questions about this policy may be directed to WIOAPOLICY@dol.nj.gov.

PURPOSE:

This policy provides specific guidance to Local Workforce Development Areas (LWDAs) and Local Workforce Development Boards (LWDBs) regarding New Jersey Department of Labor (NJDOLE) procedures for enforcing compliance with applicable federal and state laws, regulations, policies, guidance, and terms and conditions, specifically with regards to the Workforce Innovation and Opportunity Act (WIOA) and Work First New Jersey (WFNJ).

Background

NJDOLE and the State Employment and Training Commission (SETC) share responsibilities in ensuring the accountability of our state workforce system and among individual LWDAs in meeting performance expectations – including around formal performance measures, service delivery, and expenditures of grants and allocations. This policy includes details regarding sanctions procedures, corrective actions, penalties, and appeals processes applicable to New Jersey’s LWDAs, drawing specifically on provisions in New Jersey’s Administrative Code ([N.J.A.C 12:42-3](#)), as well as WIOA regulations.

New Jersey’s Administrative Code includes sections related to performance, failure to meet performance measures, causes for corrective actions and penalties, specific corrective actions and penalties, procedures for determining corrective actions and penalties, and appeals procedures. The specific language and citations included in the N.J.A.C are included in Appendix A. This policy seeks to clarify and expand this information to support clear guidance regarding procedures for enforcing persistent issues of non-compliance.

The Governor of New Jersey, ultimately, has responsibility for ensuring that sanctions are imposed on local areas when the responsible state agencies, in this case NJDOLE and SETC, make determinations that a local area has not fulfilled its requirements. Several areas of the federal regulations refer to these sanctioning responsibilities, including: [20 CFR 683.650-683.750](#) and [20 CFR 677 sections](#).

About New Jersey's Administrative Code

New Jersey State regulations, also called rules, implement the statutes that are the legal basis for operating State programs and services.

The New Jersey Administrative Code, an official publication of the State of New Jersey, compiles all effective rules adopted by State agencies and filed with the Office of Administrative Law. The New Jersey Administrative Code is regularly updated in a loose-leaf format organized by State agency content.

The New Jersey Administrative Code is available from LexisNexis, the publisher licensed by the NJ Office of Administrative Law. A searchable online version of the Code is available at LexisNexis. The NJ Administrative Code may also be found in public libraries; contact your library directly for availability.

Please note, all links to the New Jersey Administrative Code in this guidance document take you to the [LexisNexis Public Access page](#). Users must agree to LexisNexis terms in order to gain access to the full code and can then navigate to the specific sections highlighted in this guidance.

This guidance provides operational guidance to support the implementation of these rules. Though every effort is made to ensure that the clarification of these rules aligns with official, legally effective versions of the rules, if any discrepancies exist between this guidance and the official version of the rules, the official version will govern.

Performance

NJDOL and the SETC recognize a broad array of Local Workforce Development Board activities and requirements as areas of performance applicable to this policy. This includes meeting or exceeding formal performance measures related to individual workforce investments and programs, usually related to educational attainment and employment placement.

Other areas of performance include, but are not limited to:

- **Local governance requirements:** Local Workforce Development Boards (LWDBs) are required to perform specific functions in the development and oversight of their local workforce systems that are separate from service delivery functions. These local governance functions are highlighted in New Jersey's Workforce Innovation Notice (NJWIN) [WD-PY21-6](#).
- **Service integration and delivery requirements:** LWDBs are responsible for ensuring the delivery of coordinated and high-quality career, training, and employment services through their local One Stop Career Centers, as outlined in a variety of NJDOL policies, including NJWIN [WD-PY22-4.2](#) highlighting expectations around the development of Memorandum of Understanding (MOU) and Infrastructure Funding Agreements (IFAs) with One Stop Career Center partners, as well as NJWIN [WD-PY22-5.1](#) highlighting the requirement to competitively procure Title I career and youth service providers.
- **Allocation and grant management requirement:** LWDBs and fiscal agents are required to ensure the timely and consistent submission of expenditure reports and drawdown of funds as highlighted in NJWIN WD-PY23-9, sub-recipient grant agreements, and other terms and conditions.

A full overview of the types of information that are required as part of state WIOA performance reports is included at [20 CFR 677.160](#).

Issues of non-compliance, corrective actions, and penalties may be issued for performance in any of these areas, as well as around other federal or state requirements, even if not specifically enumerated in this policy, as long as they follow the sanctions and notification procedures highlighted in this policy and provide specific references to federal and/or state policies that are out-of-compliance.

While failure to meet local performance expectations may result in technical assistance, corrective action, and/or penalties, a local area's achievement of high levels of performance in any of the following areas may result in NJDOL providing additional funding to support an expansion of activities and services aligned with areas of high performance.

Sanctions Procedures

NJDOL and the SETC are committed to providing clear notification and support for LWDA's when issues of non-compliance arise. Our goal is to resolve as many issues of non-compliance as possible through technical assistance. By establishing clear sanctions procedures, we will provide clear expectations for LWDA's on the steps that we will take to resolve issues of non-compliance and ensure that all local stakeholders are aware of any issues and concerns that remain unresolved.

Sanctions procedures will follow the sequence of actions highlighted below.

- 1. Initial Notification and Technical Assistance:** As a first step, LWDB Directors and staff will receive notifications of non-compliance through technical assistance and/or monitoring activities. These notifications will include information about relevant guidance, clear deadlines for resolving issues, and opportunities for receiving further support from NJDOL. Initial notification mechanisms include monitoring reports that offer findings and required actions that must take place to resolve any issues of non-compliance. In the case of formal monitoring reports, these communications will include LWDB Chairs and/or Chief Elected Officials.
- 2. Follow-Up Notification:** If the LWDB misses specific deadlines and/or is non-communicative in resolving these issues, NJDOL will issue a formal letter in writing that provides a follow-up notification that the LWDA is out-of-compliance and that NJDOL will be initiating formal corrective action and penalty procedures if the issue of non-compliance is not resolved by the specified date. This formal notification will be directed to the Chief Elected Official in the local area and will include the LWDB Director and LWDB Chair.
- 3. Formal Initiation of Corrective Actions and Penalties:** If the issue(s) of non-compliance is/are not resolved by the stated date in NJDOL's Follow-Up Notification and/or the LWDA is non-communicative in resolving these issues, NJDOL will immediately initiate corrective actions and penalties by sending a detailed plan to the SETC for review of its governance committee. The SETC governance committee will provide formal written feedback within 60 days of NJDOL's request. NJDOL will finalize plans for corrective actions and penalties based on feedback from the SETC.
- 4. Formal Board-Level Corrective Actions and Penalties:** If the issue(s) is/are still unresolved upon finalization of this plan, NJDOL will send a formal notification in writing to the Chief Elected Official of the plans for corrective action and penalties. This may include multiple levels of corrective actions and penalties that will be phased in over time or a set of actions that will take place immediately, depending on the severity of the issue and the communicativeness of the LWDA in helping to resolve the issue. This notification must offer specific details regarding the cause for any

corrective actions or penalties, timelines for completing corrective actions and for the effective date of penalties, as well as the appeal rights of the LWDA offered under [N.J.A.C. 12:42-3.11](#).

Communication between parties is a key component of this sanctions process. Our goal is to support resolution and to minimize the levels of sanctions by supporting clear communication with our LWDA regarding issues of non-compliance through these formal processes.

Corrective Actions

Corrective actions are identified as part of a corrective action plan in which NJDOL directs an LWDA to take specific actions within a specific timeframe to address specific instances of non-compliance. For most issues of non-compliance, opportunities for engaging in corrective action precedes the imposition of specific penalties. Specific corrective actions are highlighted in [N.J.A.C. 12:42-3.8](#).

Corrective actions may include requirements from NJDOL for Chief Elected Officials, LWDBs, Fiscal Agents, and/or service providers to engage in any of the following within a particular timeline:

- Participate in technical assistance and/or training activities
- Submit specific documentation and reports and/or provide specific presentations
- Participate in specific meetings set by NJDOL
- Permit NJDOL to assist with specific daily operations of the board.

Corrective actions are not limited to this list of actions. NJDOL may identify, propose, and determine other appropriate corrective actions.

Penalties

Penalties include specific actions for penalizing an LWDA when issues of noncompliance persist. In some cases, where evidence of fraud, malfeasance, misapplication of funds, or other serious violations as defined in [TEGL 15-23](#) exist, penalties may be imposed sooner in the sanctions process, if adequate documentation is in place. Specific penalties are highlighted in [N.J.A.C. 12:42-3.9](#).

Penalties for non-compliance may include requirements from NJDOL that LWDA:

- Make modifications to budget allocations, including increasing, reducing, or deobligating funds
- Delay or suspend contracted provider payments
- Prohibit the use of particular service providers with poor programmatic and/or fiscal performance
- Restructure the LWDB, including decertification of an existing board and certification of a new local board
- Rescind or suspend funding to the LWDA
- Merge the LWDA with another LWDA or LWDA

Penalties are not limited to this list of penalties. NJDOL may identify, propose, and determine other appropriate penalties.

Appeals Process

Under [N.J.A.C. 12:42-3.10](#), an LWDA or LWDB may submit an appeal to the NJDOL Commissioner in writing no later than 30 days after having received notice of the corrective action and/or penalty determination. The appeal must be submitted by the Chief Elected Official (CEO) or a designee, acting on behalf of the CEO.

Appeals must include the basis for the appeal, as well as any documentary evidence that the LWDA or LWDB would like the Commissioner to include in their review, including supporting documents, and citations of any policy or guidance on which the appeal is based.

All appeals documentation must be submitted and requested to the Commissioner by certified mail with a return receipt, to the:

Commissioner
New Jersey Department of Labor
1 John Fitch Plaza, 13th Floor
PO Box 055
Trenton, New Jersey 08625-0055

The Commissioner will review the documentary evidence presented by the LWDA or LWDB and may request additional information and/or conduct further investigation before rendering a decision. All additional actions and reviews must take place within 30 days of the receipt of the appeal, including rendering and sharing a decision in writing with the LWDA.

If an LWDA or LWDB disagrees with the decision of the Commissioner, it may appeal that decision to the Secretary of the United States Department of Labor under 20 CFR 667.650(b) not later than 30 days after the local area receives the decision of the Commissioner. All appeal must be submitted by certified mail with a return receipt, to the:

Secretary of Labor
United States Department of Labor
200 Constitution Avenue
Washington, DC 20210

All determinations that are made through the appeals process must be shared with any office involved in initial correction action and penalty issuances.

Appendix A: New Jersey Administrative Code References

The following information provides direct citations from the New Jersey Administrative Code that form the basis of the Sanctions Procedures outlined in the preceding guidance document.

Performance (N.J.A.C. 12:42-3.3)

- (a) A local area shall meet or exceed local performance measures.
- (b) When setting local performance measures for a particular local area, local conditions may be taken into consideration including, but not limited to, specific economic conditions and demographic characteristics of the local area.
- (c) A local area's achievement of high levels of performance may result in the Department providing incentives for the local area.
- (d) A local area's failure to meet local performance measures may result in technical assistance under N.J.A.C. 12:42-3.4, corrective actions under N.J.A.C. 12:42-3.8 and/or penalties under N.J.A.C. 12:42-3.9.

Year one--failure to meet local performance measures (N.J.A.C. 12:42-3.4)

- (a) If in a program year, a local area fails to meet local performance measures, the Department shall offer a series of interventions including basic technical assistance and development of a performance improvement plan.
- (b) A performance improvement plan is a plan that is jointly developed between the Department and the local area to assist the local area with improving compliance or performance through specific technical assistance or training, which may include the following:
 - 1. Identification of one or more specific performance improvement issues;
 - 2. Assessment of specific technical assistance or training needs;
 - 3. Selection of one or more specific technical assistance or training activities to be implemented;
 - 4. Identification of the appropriate entities to provide the technical assistance or training, including the Department, the Commission, other local areas or other entities;
 - 5. Identification of a timeline for completion of the technical assistance or training; and
 - 6. Specific dates for reassessment of technical assistance or training needs and completion of the specific technical assistance or training.

Year two--failure to meet local performance measures (N.J.A.C. 12:42-3.5)

If for two consecutive program years, a local area fails to meet the same local performance measure, the Department may assess corrective actions under N.J.A.C. 12:42-3.8 and/or penalties under N.J.A.C. 12:42-3.9 against a local area and/or a local board.

Other causes for corrective actions and penalties (N.J.A.C. 12:42-3.6)

- (a) The Department may assess corrective actions under N.J.A.C. 12:42-3.8 and/or penalties under N.J.A.C. 12:42-3.9 against a local area and/or a local board for any of the following:
 - 1. Failure to cooperate or comply with the Department's performance review and technical assistance activities and services, including the performance improvement plan;
 - 2. Failure to cooperate or comply with a corrective action plan;
 - 3. Willfully hindering the Commissioner or any Department representative in the performance of his or her duties in the enforcement of this subchapter;
 - 4. Failure to comply with Federal law or regulations;
 - 5. Failure to comply with State statutes or rules; or
 - 6. Failure to comply with one or more contract provisions.

Standard for appropriateness of corrective actions and/or penalties (N.J.A.C. 12:42-3.7)

(a) In determining the appropriate corrective actions and/or penalties to assess against a local area and/or a local board under N.J.A.C. 12:42-3.8 and 3.9, respectively, the Department may consider the following factors:

1. The nature of the act(s) giving rise to the imposition of corrective actions and/or penalties by the Department; that is the severity, duration or extent of that act(s); and
2. The history of corrective actions and/or penalties imposed by the Department on the local area and/or the local board.

Corrective action (N.J.A.C. 12:42-3.8)

(a) Where cause exists under N.J.A.C. 12:42-3.5 or 3.6, the Department may require the local area and/or the local board to engage in any or all of the following corrective actions:

1. Participation in technical and quality assurance activities;
2. Participation in training;
3. On-site visits by the Department to monitor and assist with daily operations of the local area and/or the local board;
4. Cooperation with the Department in the Department's development of a corrective action plan for the local area;
5. Timely implementation of a corrective action plan;
6. Submission to the Department of additional and/or more detailed financial and/or performance reports;
7. Department-directed meetings between Department officials, the local board chair, local board members, the local board's Executive Director and/or the local area's elected officials;
8. Formal Department presentation to the local area's elected officials and/or local board members; or
9. Any other corrective action deemed appropriate by the Department.

Penalties (N.J.A.C. 12:42-3.9)

(a) Where cause exists under N.J.A.C. 12:42-3.5 or 3.6, the Department may impose any or all of the following penalties on the local area and/or the local board:

1. Require payment by reimbursement only, with required supporting documentation;
2. Delay, suspend or deny contract payments;
3. Reduce or deobligate local area funds;
4. Find local area ineligible for additional discretionary funds;
5. Terminate a contract between the Department and the local area and/or the local board;
6. Restructure the local board, including decertification of the current local board and appointment and certification of a new local board;
7. Merge the local area into one or more other local areas;
8. Prohibit the use of particular service providers or One-Stop partners that have been identified as achieving poor levels of performance; or
9. Any other penalty deemed appropriate by the Department.

Corrective action and penalty determinations (N.J.A.C. 12:42-3.10)

(a) In each instance where the Assistant Commissioner intends to issue a corrective action and/or penalty determination, he or she shall first transmit to the Commission a written proposed corrective action and/or penalty determination.

(b) The Commission shall, within 60 days of its receipt of a proposed corrective action and/or penalty determination from the Assistant Commissioner under (a) above, return to the Assistant Commissioner a written recommendation with regard to the proposed corrective action and/or penalty.

(c) The Assistant Commissioner shall, within 30 days of receipt of the Commission's recommendation under (b) above with regard to a particular proposed corrective action and/or penalty, issue a written corrective action and/or penalty determination.

(d) The Assistant Commissioner may, when issuing a written corrective action and/or penalty determination under (c) above, accept or reject any portion of the Commission's recommendation or may accept or reject the Commission's recommendation in its entirety.

(e) All corrective action and penalty determinations under (c) above shall be issued in writing to the local board's Executive Director or administrative officer, to the local board's chair, to the chief elected official of the local area, to the fiscal agent of the local area and to the Commission.

(f) All corrective action determinations issued under (c) above shall contain the following information:

1. The cause for corrective action;
2. The corrective action required, including the timeline for completing the corrective action; and
3. Appeal rights under N.J.A.C. 12:42-3.11.

(g) All penalty determinations issued under (c) above shall contain the following information:

1. The cause for penalty;
2. The penalty and the effective date of the penalty; and
3. Appeal rights under N.J.A.C. 12:42-3.11.

Appeals (N.J.A.C. 12:42-3.11)

(a) If a local area and/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 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 being appealed.

(b) All appeals submitted to the Commissioner in writing under (a) above shall state the basis for the appeal and shall include any documentary evidence that the local area and/or local board would like the Commissioner to review prior to rendering his or her decision.

(c) The Commissioner shall review the documentary evidence presented by the local area and/or local board and shall request any additional information or conduct any investigation necessary to render a decision.

(d) The Commissioner's decision shall be based on the written record and shall be rendered within 30 days after receipt of the appeal.

(e) If a local area and/or local board disagrees with the decision of the Commissioner under (d) above, it may appeal that decision to the Secretary of the United States Department of Labor under 20 CFR 667.650(b) not later than 30 days after the local area receives the decision of the Commissioner.