

## **INSTRUCTION LETTER**

**INSTRUCTION NUMBER:** WIOA Local Instruction 19-05

**TO:** All Upstate Workforce Area Contactors

**SUBJECT:** WIOA Title I Sanctions Policy

| <b>DATE</b>                           | <b>DATE</b>                          | <b>DATE</b>                         |
|---------------------------------------|--------------------------------------|-------------------------------------|
| <b>ISSUED:</b> <u>January 7, 2020</u> | <b>EFFECTIVE:</b> <u>Immediately</u> | <b>EXPIRES:</b> <u>Indefinitely</u> |

**PURPOSE:** To inform contactors that the State Workforce Development Board has issued a Sanctions Policy, which reads as follows:

### **REFERENCES:**

- Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, §§ 107, 116, 181, 183-184, 186
- 2 CFR §§ 200.207, 200.330, 200.331, 200.338, 200.339, 200.341, 200.501, 200.521
- 20 CFR Parts 677 and 683
- Training and Employment Guidance Letters 2-12, 23-15
- State Instructions 11-15; 15-16; 15-17, Ch. 2; 16-09, Ch. 1; 16-14; 16-15; 16-16; 16-17; 17-01, Ch. 1; 17-04, Ch. 1

**BACKGROUND:** The goals of WIOA include increasing access to employment; improving the quality of efforts to provide workers with necessary skills and credentials; promoting improvement in the structure of and delivery of services; increasing the employment, retention, and earnings of participants; and addressing the skill needs of employers. In an effort to meet these goals, the Governor, or his/her designated entity, is responsible for overseeing the SC Works System to ensure that all subrecipients of federal grant awards and state grants, where applicable, are satisfactorily meeting the needs of workers, job seekers, and employers.

The U.S. Department of Labor (DOL), as the federal oversight agency for WIOA and the national workforce system, ensures that the requirements of WIDA are met and has the authority to impose sanctions on states for failure to perform and operate in compliance with the programs.

The Department of Employment and Workforce (DEW), as the Governor's designated administrative entity, in conjunction with the Local Workforce Development Board (LWDB), has the responsibility of ensuring accountability of subrecipients; ensuring and/or improving performance in achieving outcomes; ensuring compliance with applicable federal and state laws, regulations, policies, guidance, and terms and conditions of applicable awards, contracts, etc.;

ensuring adequate returns on workforce Investments; and supporting the state in achieving its goals. State policies are issued as State Instructions (SI), and can be found at [https:// www.scworks.org/workforce-system/ policies-and-guidance](https://www.scworks.org/workforce-system/policies-and-guidance) .

**POLICY:** It is the expectation of DEW, as the Governor's designated administrative entity, that all subrecipients will meet the established federal and state standards of performance and compliance with federal, state, and local laws, regulations, policies, and guidance. If subrecipients do not meet these standards, it is the responsibility of DEW, as the Governor's designated administrative entity, to act in a timely manner and initiate the steps to address the sanctionable act. Following the terms of this policy, DEW, as the Governor's designated administrative entity, may impose conditions, remedial actions, and/or penalties to remedy a sanctionable act if it is determined that a sanctionable act has occurred. For sanctions related to violations of nondiscrimination and equal opportunity provisions of WIOA, see SI 16-17.

### Informal Resolution



The Governor's designated administrative entity, DEW, works with subrecipients to resolve issues informally before violations warrant this formal sanctions policy. Informal resolution is a joint undertaking by DEW and the subrecipient to resolve any potential sanctionable acts without resorting to formal sanctions. Informal resolution efforts may include:

- Technical assistance
- Additional oversight
- Desktop monitoring
- Mitigating efforts implemented by the subrecipient

During the informal resolution process, knowledgeable program staff and subrecipients can cater the appropriate informal resolution efforts to the special circumstances of the subrecipient's situation and the nature of the issue being addressed. Informal resolution is flexible and customizable with the goal of avoiding the sanctions determination process.

In addition, local areas are monitored annually by DEW for compliance with federal, state, and local laws, regulations, policies, and guidance. Based on these annual monitoring reports, local areas develop a Corrective Action Plan (CAP) to respond to and address any issues discovered. Repeated failure and/or refusal to address issues discovered through annual monitoring may result in a sanctionable act that triggers the sanction determination process described in this policy. However, by developing a CAP and abiding by the terms of this action plan, local areas may respond to and resolve issues before they rise to the level of the sanction determination process described below.

**The sanction determination process is triggered if informal resolution efforts to resolve the issue have not succeeded.**

## **Sanction Determination Process**

### Step 1: Notice of Sanctionable Act

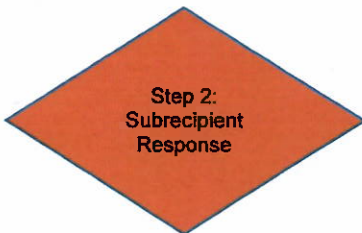
If informal resolution fails to resolve the issue(s), DEW, as the Governor's designated administrative entity, will issue a written notice identifying any sanctionable act(s). The written notice will include requirements for a CAP and any sanction(s) to be imposed. The notice



will be sent by registered mail to the subrecipient (if a state grantee), the signatory official, the Chief Elected Official (CEO), the Local Workforce Development Board (LWDB) Chairperson, and the Local Workforce Development Area (LWDA) Administrator. The UWDB Chairperson will also receive the Notice of Sanctionable Act.

If deemed necessary or prudent (e.g., incidents of fraud, malfeasance, misapplication of funds, potential or suspected criminal activity, or other serious violations), sanctions may be imposed at any time and without prior notice.

### Step 2: Subrecipient Response



The subrecipient must respond to the identified requirements in the letter, and must create a CAP, within the required timeframe specified in the Notice of Sanctionable Act. In the response, the subrecipient may note justifications for the violation(s), mitigating efforts already made by the subrecipient to lessen any effects of the violation(s), and other information, as appropriate. Subrecipients may also request technical assistance activities related to sanctions.

If the subrecipient resolves the sanctionable act, then DEW will proceed to Step 4 and send a Notice of Resolution of Sanctionable Act.

### Step 3: Notice of Sanction



Upon determining that the subrecipient has not corrected the sanctionable act, DEW will issue a written Notice of Sanction by registered mail to the subrecipient (if a state grantee), the signatory official, the CEO, the LWDB

Chairperson, and the LWDA Administrator. The SWDB Chairperson will also receive the Notice of Sanctionable Act. The Notice of Sanction must include the following information in accordance with 2 CFR § 200.207:

- Nature of the sanction
- Reason the sanction is being imposed
- The remedial action(s) and/or condition(s) needed to remove the sanction, if applicable
- Time allowed for completing the remedial action(s) or meeting the condition(s), if applicable
- Method for appealing the sanction imposed

Sanctions will be imposed based on the following criteria:

- Totality of the circumstances surrounding the sanctionable act(s):
  - o Nature of the sanctionable act(s)
  - o Severity of the sanctionable act(s)
  - o Frequency of the sanctionable act(s)
  - o Cause of the sanctionable act(s) (e.g., neglect, intent)
  - o History of the subrecipient regarding its ability to administer a program (e.g., occurrences of sanctionable acts, resolution of sanctions and sanctionable acts, efforts to prevent the occurrence of the sanctionable acts, and oversight results)
- Other criteria not listed that may be deemed appropriate (e.g., justification for subrecipient's failure to provide necessary information or take required action, or demonstrations of willingness by the subrecipient to cooperate in the sanction process)

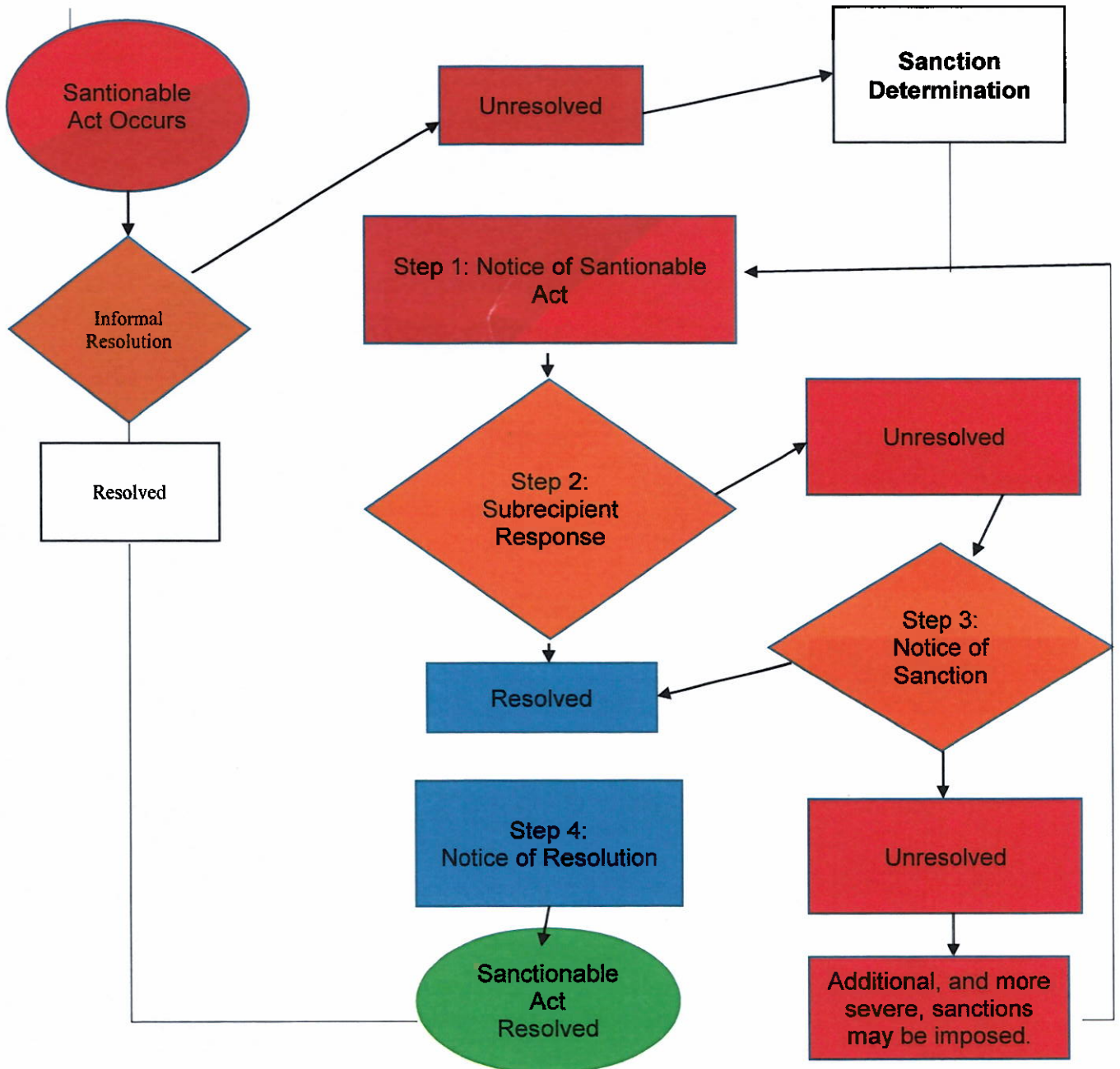
Failure to comply with the terms of the Notice of Sanction can result in additional sanctions. If a subrecipient chooses to appeal a Notice of Sanction, the subrecipient may do so according to the appeals procedure described in the Appeals section below.



**Step 4: Notice of Resolution of Sanctionable Act**

**Step 4:**  
Notice of Resolution

Upon completion of the terms of the Notice of Sanction, DEW will issue a Notice of Resolution of Sanctionable Act to the subrecipient and/or to the signatory official, the CEO, the LWDB Chairperson, the LWDA Administrator, and the SWDB Chairperson.



**Note:** Timelines for completion of each step are to be determined based on the type of sanctionable act and appropriate times necessary for resolution of the sanctionable act.

## **Sanctionable Acts**

Examples of situations which may require DEW, as the Governor's designated administrative entity, to take action include, but are not limited to, the following:

### Fiscal Violations

- Repeated failure to submit timely and accurate financial reports
- Non-compliance with administrative, contract, or grant agreement provisions
- Failure to retain required service-delivery or financial records in accordance with established record retention requirements {2 CFR § 200.333}
- Failure to observe accepted standards of administration resulting in an impermissible expenditure
- A pattern of impermissible expenditures [e.g., as described in WIOA § 184(c)(2) -(3)]
- Incidents of fraud of a non-criminal nature<sup>1</sup> malfeasance, misapplication of funds, or other serious violations (e.g., as defined in TEGL 2-12)
- Failure to submit audits as required by Uniform Guidance (2 CFR § 200.501)

### Performance Violations

- Failure to submit and/or record timely and accurate performance data
- Failure to submit and/or record timely and accurate federal and state required data (e.g., IWT require data)
- Failure to meet one or more negotiated/adjusted levels of performance for three consecutive program years:

### Failed Performance Measure(s) in One Program Year

If a LWDA fails to meet the negotiated level on a performance measure(s) in one program year, a notice will be sent to the signatory official, the CEO, the LWDB Chairperson, the LWDA Administrator, and the SWDB Chairperson. The LWDB will be required to submit a CAP within 45 days of the notice, describing how it will improve and meet performance.

The CAP must include, but is not limited to:

1. A description of the reason(s) for failure, including an analysis of the reason(s) for failure and how the cause was determined.
2. A description of immediate and long-term actions that will be taken to improve performance measures.

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<sup>1</sup> **Note:** Information and complaints involving criminal fraud, waste, abuse, or other criminal activity must be reported immediately through DOL's Incident Reporting System to DOL's Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Ave. NW, Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756. The website is <http://www.oig.dol.gov/contact.htm>.

1. A timeline for completing each action identified.
2. Identification of technical assistance needed to implement the plan.
3. A description of how the LWDB will monitor and measure the effectiveness of the corrective action activities to ensure performance improvement.
4. Signatures of the LWDB chairperson and the signatory official. A copy must be sent to the CEO(s).

DEW will review the CAP and notify the signatory official, the CEO, the LWDB Chairperson, the LWDA Administrator, and the SWDB Chairperson in writing of the plan acceptance. Appropriate parties will be notified within 15 days if additional information is required.

Upon acceptance of the CAP, the LWDB will submit progress reports to DEW on a mutually agreed upon schedule. Report submission will continue until the end of the program year.

#### **Failed Same Performance Measure(s) in Two Consecutive Program Years**

If a local area fails the same performance measure(s) for two consecutive program years, DEW will issue a written notice to the signatory official, the CEO, the LWDB Chairperson, the LWDA Administrator, and the SWDB Chairperson. In addition, DEW will present to the full LWDB the performance, sanctions, and potential consequences to the LWDB and LWDA of continued failed performance.

The LWDA will be required to commit funds for dedicated external technical assistance and will be ineligible for incentive funds earned in the second consecutive year of failing a performance measure.

DEW will work with appropriate LWDA staff to amend the CAP as needed. Timelines for further local area action, additional monitoring, reporting, and technical assistance will be determined by a joint LWDB, DEW, local service provider(s), and administrative entity Ad Hoc Committee.

#### **Failed Same Performance Measure(s) in Three Consecutive Program Years**

With the expanded awareness, actions, and technical assistance being provided to LWDA's over the previous two years, it is not expected that there will be a third year of failed performance. However, should this occur, DEW, as the Governor's designated administrative entity, and the

SWDB may impose sanctions in accordance with this policy.

#### General/Compliance

- Failure to resolve, within the time provided, remedial action(s), monitoring findings, and/or audit findings as required
- Willful disregard of, or gross negligence in fulfilling, the requirements of the following:
  - **WIOA**
  - Other federal laws, regulations, policies, and guidance, including all current and subsequent federal requirements
  - State laws, regulations, state instructions, and guidance, including all current and subsequent state policies
  - Terms and conditions of applicable awards, contracts, etc.

#### **Sanctions**

Unless deemed necessary or prudent, sanctions will not be imposed unless informal resolution efforts fail to resolve sanctionable acts. The following non-exhaustive examples of sanctions may be imposed if informal resolution efforts fail and/or may overlap with actions described in a grant agreement:

- Disallowed costs (2 CFR § 200.338)
- Withholding drawdowns and requests for payment, suspension, and termination of funds (2 CFR § 200.338)
- Termination of contract, Memorandum of Understanding (MOU), or any other agreement between the subrecipient and the State [WIOA § 184(b); 2 CFR § 200.338, 200.339]
- Recapture and reallocation of funds (20 CFR § 683.140)
- Reimbursement of funds rather than advanced payments (2 CFR § 200.207{b}(1))
- Ineligibility for discretionary funds (20 CFR § 683.120)
- Ineligibility to receive a voluntary reallocation from another local area (20 CFR § 683.140, SI 11-15)
- Submission of additional or more detailed financial or performance reports (2 CFR § 200.207{b}(3))
- Reports on activities and progress until performance is satisfactory, by the LWDB's executive director, other administrative officer, or the subrecipient (in person and/or in writing) (2 CFR § 200.207(b))
- On-site visits to provide technical assistance to the LWDB, the LWDB's contractor, or the subrecipient (2 CFR § 200.331 {d)-(e) 200.521(a))
- Reorganization plan (WIOA § 107(c)(2)(C), 20 CFR § 677.220)
  - Appointment and certification of a new LWDB, consistent with the



- criteria established under 20 CFR § 679.350
- o Prohibition of the use of eligible providers that have been identified as achieving poor levels of performance
- o Other significant actions, as appropriate
- Recommend the initiation of suspension or debarment proceedings (2 CFR § 200.338)
- Other remedies that may be legally available {2 CFR § 200.338)

The sanctions listed above supplement, but do not supplant, applicable civil and criminal actions under other pertinent federal, state, or local laws, regulations, policies, or terms and conditions of applicable awards, contracts, etc.

**Recipients of discretionary grant funding may be subject to remedial actions as outlined in the Statement of Work or Terms and Conditions of an award without entering into the Sanction Determination Process (e.g., costs may be disallowed or payment of invoices or drawdowns may be withheld until any deficiencies or instances of noncompliance are corrected).**

### **Appeals**

A subrecipient that receives a Notice of Sanction may file an appeal with the SWDB. Appeals regarding sanctions to subrecipients will be addressed by the SWDB. A subrecipient choosing to appeal must submit a written appeal to the SC Department of Employment and Workforce within 30 calendar days of the issuance of the Notice of Sanction. If the 30<sup>th</sup> day falls on a weekend or holiday, the deadline will be extended to the next business day. Appeals must be submitted by registered mail, clearly identified as "Dated Material," and addressed to:

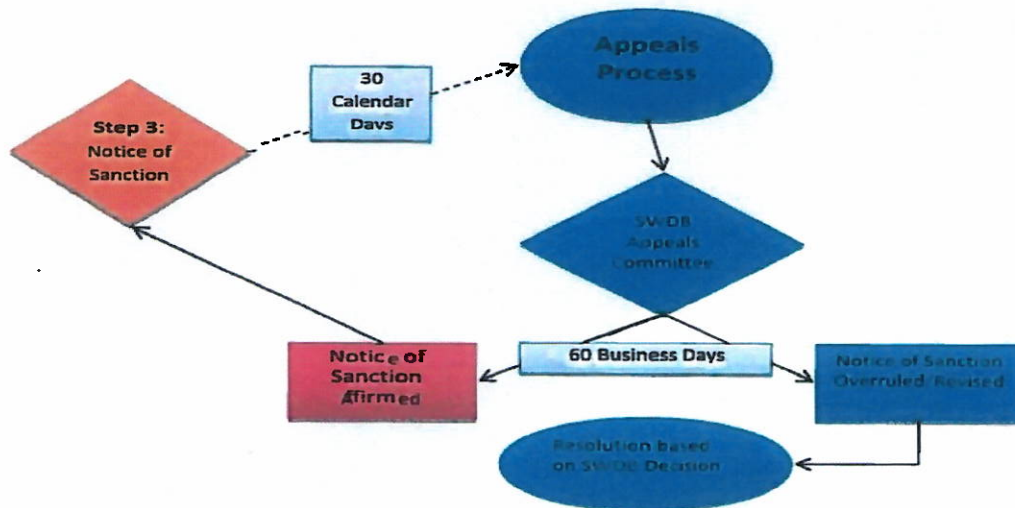
State Workforce Development Board  
C/O: SC Department of Employment and Workforce  
Attn: Workforce Support- Appeal of Sanction, Suite 515  
P.O. Box 995  
Columbia, SC 29202

The following procedures will apply:

- The Chair will designate the Executive Committee or an Ad Hoc Committee of at least three SWDB members to hear the appeal.
- The designated SWDB representatives will hear the appeal and issue a written decision within 60 business days.

Additional appeals procedures apply to certain types of sanctions:

- Reorganization Plan [WIOA § 116(g)(2)(B)]
- Revocation of Local Plan, in whole or part [WIOA § 184(b)(2), 186(b)]



### Useful Terms

**Chief Elected Official (CEO)** – As defined by WIOA § 3(9), a chief elected official is the chief elected executive officer of a unit of general local government in a LWDA, and in the case in which a LWDA includes more than one unit of local government, the individuals designated under the agreement described in WIOA § 107(c)(1)(B).

**Gross Negligence** – Gross negligence is a reckless disregard of a legal obligation or duty.

**Malfeasance** – Malfeasance is a wrongful or unlawful act, especially wrongdoing or misconduct by a public official.

**Remedial Action** – Any action required to rectify a situation created by a sanctionable act is a remedial action.

**Signatory Official** – An individual authorized to enter into and sign legally binding agreements on behalf of the LWDA.

**Standards of Administration** – Standards of administration are models accepted as correct by custom, consent, or authority for the management or performance of the executive duties of government, institution, or business.

**Subrecipient**- As defined in Uniform Guidance at 2 CFR § 200.330, a subrecipient may receive funds concurrently as a subrecipient and contractor. Whether a subrecipient is the recipient of a sub-awarded or a procurement contract is determined on a case-by-case basis. A subrecipient is a non-federal entity which:

- Determines who is eligible to receive what federal assistance;
- Has its performance measured in relation to whether objectives of a federal program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable federal program requirements specified in the federal award; and/or
- In accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

LWDA and state grantees are subrecipients. For more information regarding the difference between a subrecipient and a contractor, see the definition of contractor in Uniform Guidance at 2 CFR § 200.330.

**Willful Disregard**- Willful disregard is a voluntary or intentional act of ignoring applicable federal and state laws, regulations, policies, guidance and terms and conditions of applicable awards, contracts, etc.

**ACTION:** Become familiar with this policy. This policy does not replace Regional Instruction Letter R17-05.

**INQUIRIES:** Questions may be directed to Dana Wood [wood@upstaterworkforceboard.org](mailto:wood@upstaterworkforceboard.org).

  
Ann Angermeier, Director

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**Source: State Instruction 19-04**