



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail Return Receipt Requested

February 27, 2014

Ms. Kathleen Howard
Executive Director
California Board of State and Community Corrections
600 Bercut Drive
Sacramento, CA 95811

Re: Compliance Review of Cal. Bd. of State & Cmty. Corr. (13 OCR 13)
Compliance Review Report

Dear Ms. Howard:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ or Department) is responsible for ensuring that DOJ-assisted programs comply with the applicable federal civil rights laws.¹ As the California Board of State and Community Corrections (BSCC) is a recipient of the Department's financial assistance subject to the OCR's authority,² the OCR initiated a civil rights compliance review on May 7, 2013, to determine not only whether the BSCC is itself in compliance with the applicable federal civil rights laws but also whether it has monitoring procedures for ensuring the compliance of its subrecipients with the same laws. *See* 28 C.F.R. § 42.206(c) (2013).

The OCR is mindful that the BSCC only relatively recently (i.e., in FY 2012) took over from the California Emergency Management Agency (Cal EMA), which has recently become the California Office of Emergency Services (Cal OES), the administration of the JAG and RSAT grant programs. The OCR is also aware that the BSCC does not have the same resources as Cal OES and that it is in the process of developing internal procedures for grant administration. In the wake of this transition, the OCR has viewed this Compliance Review as an opportunity to provide technical assistance to the BSCC in developing internal systems that will promote compliance with federal civil rights laws. Based on a review of the documents that the BSCC submitted to the OCR in response to the May 7, 2013, Data

1 The OCR has enforcement authority for recipients of DOJ financial assistance from the Office of Community Oriented Policing Services, the Office on Violence Against Women, the OJP, and OJP's components (i.e., the Bureau of Justice Assistance (BJA); the Bureau of Justice Statistics; the National Institute of Justice; the Office for Victims of Crime; the Office of Juvenile Justice and Delinquency Prevention (OJJDP); and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking).

2 The BSCC serves as the State Administering Agency (SAA) in California for two BJA grant programs: (1) the Edward Byrne Memorial Justice Assistance Grant (JAG) Program and (2) the Residential Substance Abuse Treatment (RSAT) for State Prisoners Program. The BSCC also serves as the California SAA for two OJJDP grant programs: (1) the Juvenile Accountability Block Grant (JABG) and (2) the Title II Formula Grant. *See* Resp. (BSCC CPP Division Federal Grant Award Summary FY 2012-13).

Request, the OCR finds that the BSCC should take steps to come into full compliance with its civil rights obligations as a recipient of DOJ financial assistance. On December 11, 2013, OCR sent a draft Compliance Review Report to the BSCC for review and comment. As the BSCC provided no corrections to the draft, the OCR issues this final Compliance Review Report, which summarizes the OCR's findings and includes administrative recommendations.

Compliance Review Report

The OCR's Compliance Review of the BSCC involved evaluating the following elements in BSCC's operations: (1) notification of subrecipients of the applicable federal civil rights laws, (2) monitoring procedures to ensure subrecipients' compliance with federal civil rights requirements, (3) procedures for responding to discrimination complaints, (4) training for staff and subrecipients on federal civil rights obligations, and (5) grant-making and administrative procedures affecting faith-based organizations (FBOs).

1. Notification of Subrecipients of the Applicable Federal Civil Rights Requirements

a. BSCC's Practice

The BSCC's has weak procedures for notifying subrecipients and other affected parties of the protections and obligations under applicable federal civil rights laws. In response to the OCR's Data Request, the BSCC produced its Standard Agreement form for subrecipients, which incorporates by reference a separate document with the title of Federal Assurances. The Federal Assurances document includes the following statements related to civil rights matters:

4. Grantee agrees to comply with the financial and administration requirements set forth in the current edition of the *OJP Financial Guide*.
5. Grantee will maintain an Equal Employment Opportunity Plan (EEOP) if the grant award is more than \$25,000.
6. If the grant award is \$500,000 or more, and the Grantee has 50 or more employees, Grantee must submit its EEOP within 60 days from the date of this award to the Federal Office for Civil Rights (OCR) (www.ojp.usdoj.gov/ocr). A copy of the federal approval letter must be submitted to the BSCC. If Grantee has a current EEOP approval letter, it shall be submitted to the BSCC.
7. Grantee acknowledges that failure to submit the required EEOP that is approved by the Office for Civil Rights (OCR) is a violation of its Certified Assurances and may result in suspension or termination of funding, until such time as the Grantee is in compliance.

8. In the event a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on grounds of race, color, religion, national origin, sex, or disability against the Grantee, the Grantee will forward a copy of the finding to OCR.

Resp. 3 (“Title of Funding” Grants Program, exh. B, pars. 4-9).

Although paragraph four of the Federal Assurances, cited above, is correct, the OCR has concerns regarding whether the general reference to the *OJP Financial Guide* sufficiently places subrecipients on notice that as a condition of receiving DOJ financial assistance, they must not discriminate either in employment or in the delivery of services or benefits based on race, color, national origin, sex, religion, or disability. Moreover, federal law also prohibits recipients of federal financial assistance from discriminating on the basis of age in the delivery of services or benefits.

Paragraph five in the Federal Assurances, cited above, is not quite correct. Recipients of financial assistance subject to the administrative provisions of the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3789d(c) (2006), must develop an EEOP if they receive an award of \$25,000 or more, have at least fifty employees, and are not otherwise exempt from the requirement (i.e., being an Indian tribe, a nonprofit organization, or a medical or educational institution). *See* 28 C.F.R. pt. 42, subpt. E.

Paragraph six in the Federal Assurances, cited above, is also not quite correct. Although it is true the recipients that must submit an EEOP to the OCR for review must receive an award of \$500,000 or more and have fifty or more employees, they must also not be otherwise exempt from the requirement (i.e., they must be either a government agency or a private business).

Paragraph eight in the Federal Assurance, cited above, also contains an inaccuracy that may be attributable to an error in the *OJP Financial Guide*. The obligation to submit to the OCR an adverse finding of discrimination is limited to the protected classes of race, color, national origin, sex, and religion. *See* 28 C.F.R. § 42.204(c). Recipients and subrecipients have no obligation to submit to the OCR an adverse finding of discrimination based on disability after a due process hearing.

The BSCC also provided the OCR with a copy of a document entitled Equal Employment Opportunity is the Law, which it distributes to its staff. Resp. 12(b). The document as a statement of applicable federal civil rights laws is incomplete. It fails to mention that BSCC employees, as well as the employees of BSCC subrecipients, have rights based on their status as employees of organizations that receive federal financial assistance. Notably, BSCC employees and the employees of BSCC subrecipients have the right to file an administrative employment discrimination complaint directly with the OCR on the basis of race, color, national origin, religion, sex, or disability. Most significantly, the document that the BSCC provided fails to mention the protections available to the beneficiaries in the federally assisted programs that the BSCC administers.

b. Comments and Recommendations

For the DOJ grant programs it administers, the BSCC should revise the materials that it distributes to grant applicants, subrecipients, its employees and beneficiaries, and its subrecipients' employees and beneficiaries to provide accurate information on the applicable federal civil rights laws.

The BSCC should include in its subaward materials a list of the laws that apply to all recipients of federal financial assistance:

- Title VI of the Civil Rights Act (Title VI) of 1964, as amended, 42 U.S.C. § 2000d (prohibiting discrimination on the basis of race, color, or national origin in the delivery of services or benefits in federally assisted programs);
- Section 504 of the Rehabilitation Act (Section 504) of 1973, as amended, 29 U.S.C. § 794 (prohibiting discrimination on the basis of disability in employment and in the delivery of services or benefits in federally assisted programs);
- Title IX of the Education Amendments (Title IX) of 1972, as amended, 20 U.S.C. § 1681 (prohibiting discrimination on the basis of sex in employment and in the delivery of services or benefits in federally assisted educational programs);
- The Age Discrimination Act (Age Act) of 1975, as amended, 42 U.S.C. § 6102 (prohibiting discrimination on the basis of age in the delivery of services or benefits in federally assisted programs); and
- Executive Order 13,559, 75 Fed. Reg. 71,319 (Nov. 17, 2010) (prohibiting discrimination on the basis of religion in the delivery of services or benefits in federally assisted programs).

Receipt of federal financial assistance is not a prerequisite for triggering the protections under Title II of the Americans with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. § 12132 (prohibiting discrimination on the basis of disability in employment and in the delivery of services or benefits in public entities); yet the statute applies to governmental organizations, many of which receive DOJ financial assistance.

BSCC subrecipients, depending on the statute authorizing the subaward, may also be subject to the nondiscrimination provisions in the following DOJ program statutes:

- The Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 42 U.S.C. § 3789d(c) (prohibiting discrimination on the basis of race, color,

national origin, sex, or religion in both employment and the delivery of services or benefits in DOJ-assisted programs subject to the statute);

- The Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974, as amended, 42 U.S.C. §5672(b) (prohibiting discrimination on the basis of race, color, national origin, sex, or religion in both employment and the delivery of services or benefits in DOJ-assisted programs receiving funding under the statute);
- The Victims of Crime Act (VOCA) of 1984, as amended (prohibiting discrimination on the basis of race, color, national origin, sex, religion, or disability in both employment and the delivery of services or benefits in DOJ-assisted programs receiving funding under the statute); and
- The Violence Against Women Act (VAWA) of 1994, as amended, 42 U.S.C. § 13925(b)(13) (prohibiting discrimination on the basis of actual or perceived race, color, national origin, religion, sex, sexual orientation, gender identity, or disability in DOJ-assisted programs subject to the statute).

The federal regulations implementing the laws cited above are the following: 28 C.F.R. pts. 31 (JJDP); 35 (ADA); 38 (Equal Treatment for Faith-Based Organizations or Equal Treatment Regulations); 42, subpts. C (Title VI), D (Safe Streets Act), E (EEO), G (Section 504), I (Age Act); 54 (Title IX). The implementing regulation for the nondiscrimination provision in VOCA is currently pending. *See* VOCA Victim Assistance Program, 78 Fed. Reg 52,877 (proposed Aug. 27, 2013) (to be codified at 28 C.F.R § 94.104(h)).

The nondiscrimination provisions in the Safe Streets Act would apply to all the grant programs that the BSCC currently administers (i.e., JAG, RSAT, JABG, and Title II Formula Grants).

As the BSCC is a SAA for OJJDP block grants, the BSCC should be mindful of its obligation to notify subrecipients and other affected parties of the applicable civil rights laws. The implementing regulations for the JJDP state that SAAs are responsible for the following: (1) designating a civil rights coordinator, (2) complying with the EEO requirements, (3) ensuring the compliance of subrecipients with the EEO requirements, (4) informing the public and affected persons of the right to file a discrimination complaint with the OCR, (5) cooperating with OCR's compliance reviews, and (6) submitting to the OCR, and ensuring that its subrecipients and contractors submit, adverse findings of discrimination based on race, color, national origin, sex, or religion that are the result of a due process hearing. 28 C.F.R. § 31.202.

The BSCC should also be aware that in accordance with the implementing regulations for Section 504, subrecipients that receive a grant award of \$25,000 or more and have fifty or more employees must (1) designate a civil rights coordinator to enforce Section 504; (2) adopt grievance procedures for

responding to complaints of disability discrimination; and (3) provide notice to employees, beneficiaries, and the public that it does not discriminate on the basis of disability. 28 C.F.R. § 42.505(d)-(f).

Although the BSCC did not provide any information suggesting that it conducts or funds educational programs, it should nonetheless note that the implementing regulations for Title IX, like Section 504, require recipients and subrecipients to (1) designate a civil rights coordinator to enforce Title IX; (2) adopt grievance procedures for responding to complaints of sex discrimination; and (3) provide notice to employees, beneficiaries, and the public that it does not discriminate on the basis of sex. 28 C.F.R. §§ 54.135, .140.

The BSCC should review all of its written materials and either revise them or develop new ones with the goal of ensuring that they state accurately the BSCC's civil rights obligations under federal law. The in-house document review should include solicitations and grant applications; subaward packets; communications with employees, beneficiaries, subrecipients, and the public; and notices that appear either in its office or on its website. The OCR requests that the BSCC send newly created or revised materials to the OCR for review.

2. Monitoring Procedures to Ensure Subrecipients' Compliance with Federal Civil Rights Requirements

a. BSCC's Practice

The BSCC states that its goal is to monitor subrecipients at least once during a twelve-month contract cycle; however, in practice, "onsite monitorings have occurred biennially due to a variety of reasons and circumstances," including budgetary constraints at both state and federal levels. Resp. 9(a). The BSCC reports that in collaboration with OJJDP, it has implemented "a pilot self-monitoring mechanism" for JABG programs. *Id.* In addition to the monitoring visits and self-reporting, the BSCC notes that subrecipients submit quarterly progress reports that include information on the demographics of youth projects and technical assistance needs. *Id.*

The self-monitoring document that the BSCC uses, the Juvenile Accountability Block Grant (JABG) Certification of Compliance Report (Certification Report), explains, "In lieu of an annual on-site monitoring visit, the CSA [Corrections Standards Authority] is conducting an Agency Certification approach for pre-selected JABG Projects that have no prior history of out-of-compliance issues and are current in meeting both fiscal and program reporting requirements." *Id.* (Certification Report at 1). The Certification Report contains a single question related to civil rights: "Does your agency have an Equal Employment Opportunity Program as required?" *Id.* (Certification Report at 2).

The BSCC acknowledges that it is still in the process of developing monitoring procedures, noting that it hopes to integrate into its existing monitoring system the sample Federal Civil Rights Compliance Checklist that the OCR has developed and posted on its website. Resp. 4; *see also* Office of Justice

Programs, Office for Civil Rights, Federal Civil Rights Checklist,
<http://www.ojp.usdoj.gov/about/ocr/pdfs/Civil%20Rights%20Compliance%20Checklist.pdf> (last visited
Nov. 25, 2013).

The current monitoring form that the BSCC uses, the Federal Grants Monitoring Report (revised July 1, 2012) (Monitoring Report), contains the following three questions related to civil rights compliance:

11. Does the grantee have an Equal Employment Opportunity Program as required?
12. If the grant is \$500,000 or more in federal funds, is an Equal Employment Opportunity Plan federal approval on file?
13. If receiving federal finds, is the grantee aware of the requirement to forward to the Office for Civil Rights a copy of any finding of discrimination by a court or administrative agency?

Resps. 4 & 5 (Monitoring Report at 2).

b. Comments and Recommendations

The procedures that the BSCC has currently in place to monitor the compliance of subrecipients with their civil rights obligations under the applicable federal civil rights laws are inadequate. Among the inquiries absent in both the Certification Report and the Monitoring Report are whether subrecipients are providing notice to employees and beneficiaries about the applicable federal civil rights laws, whether subrecipients' programs are accessible to persons with disabilities, whether subrecipients are providing adequate language-access services to limited English proficient (LEP) beneficiaries, or whether subrecipients have a civil rights coordinator or grievance procedures. The OCR encourages the BSCC to implement its stated intention to integrate the OCR's sample Federal Civil Rights Checklist into its monitoring procedures for subrecipients.

3. Procedures for Responding to Discrimination Complaints

a. BSCC's Practice

The BSCC stated that it currently does not have its own procedures for handling discrimination complaints:

[T]he BSCC has an Interagency Agreement (contract) with the State Controller's Office for all our payroll and personnel activities for this first year of operation; therefore, our agency has limited documentation specifically addressing nondiscrimination in employment or in the provision of services, and in handling employment or services

discrimination complaints from BSCC employees or beneficiaries. Our agreement for services is being reestablished for the state's 2013-2014 fiscal year and we will be requesting in-house documentation that will assist the BSCC in its obligation of providing these materials to its employees. In addition, BSCC staff are working in collaboration with the State Controller's Office to complete a comprehensive BSCC Administrative Operations Manual which will contain all applicable language for civil rights and discrimination laws including dissemination protocol.

Resp. 12(b).

As noted previously (*see supra* Part 1.a.), the BSCC states that it also distributes to employees information about applicable federal employment laws in the document entitled Equal Employment Opportunity is the Law. *Id.*

In response to the OCR's request for procedures, policies, or protocols that address handling employment or services discrimination complaints from subrecipient employees or beneficiaries, the BSCC acknowledged that it did not have these materials and welcomed technical assistance from the OCR in developing them. Resp. 13

b. Comments and Recommendations

The OCR is available to provide technical assistance to the BSCC in developing protocols for responding to complaints of discrimination from its own employees and beneficiaries as well as from the employees and beneficiaries of subrecipients. The BSCC will most likely be able to rely on the procedures that the State of California has established to deal with employment discrimination complaints. The BSCC will need to develop, however, its own procedures for handling complaints, not only from its own program beneficiaries (if it has any) but also from the program beneficiaries and employees of subrecipients. A model complaint policy is available on the OCR's website. *See* Office of Justice Programs, Office for Civil Rights, Procedures for Responding to Discrimination Complaints from Clients, Customers, Program Participants, or Consumers of the [State Administering Agency] and the [State Administering Agency's] Subrecipients, <http://www.ojp.usdoj.gov/about/ocr/pdfs/Services%20Complaint%20Procedures.pdf> (last visited Nov. 25, 2013). Once the BSCC develops its own complaint procedures, it should submit them to the OCR for review.

4. Training for Staff and Subrecipients on Federal Civil Rights Obligations

a. BSCC's Practice

The BSCC stated that it provides information to subrecipients on their federal responsibilities during New Project Directors' Orientation Meetings, offered either at the beginning of a new multi-year funding cycle or upon a subrecipient's request. Resp. 10(a). The BSCC noted that it has yet to receive a request for technical assistance on applicable civil rights laws from a subrecipient. *Id.* The BSCC noted that it provided technical assistance on federal requirements for subrecipients of the Title II Formula Grant program on January 12, 2012, and for subrecipients of the Title II Tribal Youth Grant program on January 25, 2012. Resp. 10(b). The BSCC was not able, however, to provide the OCR with any materials connected to either training program. Resp. 10(c).

The BSCC noted that it does not provide training to its staff on the Equal Treatment Regulations, but it is consulting with a contractor to explore providing training on this subject. Resp. 11(a).

b. Comments and Recommendations

As part of the Compliance Review, the OCR is available to provide technical assistance and training to the BSCC staff at a mutually agreeable time in calendar year 2014. The BSCC should also take advantage of the technical assistance materials on civil rights compliance topics that the OCR has posted on its website. *See* Office of Justice Programs, Office for Civil Rights, Online Training, <http://www.ojp.usdoj.gov/about/ocr/assistance.htm> (last visited Nov. 25, 2013).

5. Grant-making and Administrative Procedures Affecting FBOs

a. BSCC's Practice

According to the BSCC, it has multiple ways for notifying the public, including FBOs, of funding opportunities; among them are announcements on its website and broadcast emails to a range of interested constituencies. Resp. 15. The BSCC acknowledges, however, that its current "solicitations to eligible applicants for federal funding grants do not contain language referring to the civil rights laws or the Equal Treatment Regulations." Resp. 16.

The BSCC stated that under the RSAT program, it does not fund FBOs because RSAT subrecipients must be units of local government. Resp. 20(b).

The BSCC submitted to the OCR its detailed procedures for objectively evaluating the merits of grant applications. Resp. 17(a).

The BSCC is not aware that it currently funds any FBOs. Resps. 18-28. The BSCC states that its subrecipients include the California Department of Justice, sheriff's offices, district attorney's offices,

and cities. Resp. 18. The BSCC speculates that some of these subrecipients may make subawards to FBOs, but the BSCC has no information indicating that this may be the case. *Id.* The BSCC also acknowledges that it does not have procedures to ensure that subrecipients neither favor nor disfavor FBOs in making subawards. *See, e.g.,* Resp. 20(b).

b. Comments and Recommendations

According to a recent report provided to the OCR from the OJP's Grant Management Division, FBOs are eligible for subawards from SAAs under the RSAT program. Grant Management Division Report (Nov. 18, 2013) (on file with the OCR). FBOs are also eligible to receive SAA subawards under the JAG programs for state and local governments. *Id.*

In consultation with the BJA, the BSCC should review its RSAT subaward policies to ensure that qualified FBOs in California may apply for RSAT funding. The BSCC should also review its methods for notifying potential applicants of funding opportunities, noting in particular whether the information is reaching FBOs.

The BSCC should also review its solicitations, noting the programs for which FBOs are eligible for subawards. These solicitations should include information on the Equal Treatment Regulations, noting the protections and obligations under federal law that apply to funded FBOs.

The BSCC should survey its subrecipients to determine whether they currently make subawards to FBOs and whether they have procedures to ensure that they neither favor nor disfavor FBOs in making and administering subawards.

The BSCC should also review the online training segment available on the OCR's website pertaining to faith-based organizations. *See* Office of Justice Programs, Office for Civil Rights, Online Training, <http://www.ojp.usdoj.gov/about/ocr/assistance.htm> (last visited Nov. 25, 2013).

6. The Requirement to Comply with the Methods of Administration Special Condition

A special condition applicable to some DOJ grant programs requires SAAs, such as the BSCC, to provide the OCR with a written statement, known as Methods of Administration (MOA), which describes the procedures that the SAA has adopted to ensure the compliance of subrecipients with their federal civil rights obligations. The language of the special condition is as follows:

The recipient understands and agrees that it has a responsibility to monitor its subrecipients' compliance with applicable federal civil rights laws. The recipient agrees to submit written Methods of Administration (MOA) for ensuring subrecipients' compliance to the OJP's Office for Civil Rights at CivilRightsMOA@usdoj.gov within 90 days of receiving the grant award, and to make supporting documentation available for

Ms. Kathleen Howard, Executive Director
Cal. Bd. of State & Cmty. Corr.
February 27, 2014
Page 11 of 11

review upon request by OJP or any other authorized persons. The required elements of the MOA are set forth at http://www.ojp.usdoj.gov/funding/other_requirements.htm, under the heading, "Civil Rights Compliance Specific to State Administering Agencies."

By participating in this Compliance Review, and incorporating into its operations the recommendations contained in this Compliance Review Report, the BSCC should find it relatively easy to prepare the required MOA and then submit it separately to the OCR in fulfillment of its obligation under the special grant condition.

7. Findings and Next Steps

To come into full compliance with the federal civil rights laws that apply to the BSCC as a recipient of DOJ financial assistance, the BSCC should implement the recommendations contained in the Compliance Review Report. On February 24, 2014, Senior Counsel George Mazza met with the BSCC's leadership in Sacramento, California. The BSCC agreed to implement the recommendations contained in the Compliance Review Report. The BSCC plans to send a written update to the OCR by May 1, 2014, noting changes to its policies and procedures in light of the recommendations in the Compliance Review Report and submitting any revisions to the documents cited in the Report for the OCR's review. The OCR agreed to provide feedback on the proposed revisions as quickly as possible so that the BSCC could put in place changes resulting from the Compliance Review by July 1, 2014. Mr. Mazza's direct telephone line is [redacted]; his e-mail address is [redacted].

The Compliance Review Report is a public document, and the OCR will post it on its website subject to minor redactions.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston
Director

Cc: Helene Zentner, Field Representative
BSCC