



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

February 3, 2010

Pauline Salla
Juvenile Justice Programs Chief
Juvenile Justice Programs Office
Nevada Division of Child and Family Services
4126 Technology Way
Third Floor
Carson City, Nevada 89706

RE: Nevada Juvenile Justice Programs Office Compliance Review (09-OCR-0088)

Dear Ms. Salla:

On June 18, 2007, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), US Department of Justice (DOJ) initiated a compliance review of all State Administering Agencies, including the Nevada Juvenile Justice Programs Office (JJPO), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the JJPO's compliance with applicable federal civil rights laws along with the JJPO's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the JJPO's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations].

During the week of March 24, 2009, the OCR conducted an onsite visit to the JJPO offices in Carson City, Nevada, to interview grant administrators and to conduct a training program for staff on the federal civil rights laws that the OCR enforces. I would like to thank you for assisting attorneys George Mazza and Debra Murphy during their onsite visit.

On December 8, 2009, the OCR issued a draft Compliance Review Report, and offered the JJPO 30 days in which to provide the OCR with any factual correction to the content. The JJPO offered one factual correction, which has been incorporated herein. Therefore, this serves as the OCR's final Compliance Review Report.

Based on the JJPO's responses to our data request and the information that the OCR gathered during our onsite visit, the OCR concludes, in regard to the limited scope of our review, that the JJPO has taken steps to comply substantially with the federal civil rights laws that the OCR

enforces. However, the OCR has reservations about the adequacy of several aspects of the JJPO's monitoring of subrecipients. These include: (1) procedures for processing complaints of discrimination from employees and beneficiaries of subrecipients, (2) onsite monitoring of subrecipients for civil rights compliance, and (3) training for subrecipients. Additionally, although the JJPO currently has no faith-based subrecipients, the OCR is concerned that the JJPO is not prepared to adequately advise and monitor faith-based subrecipients about their legal obligations regarding the Equal Treatment Regulations.

I. Overview

The JJPO is part of the Division of Child and Family Services of the Nevada Department of Health and Human Services. The JJPO administers the following grant programs from OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP): (1) Juvenile Accountability Block Grants Program (JABG), (2) Title V Community Prevention Grants Program (Title V), (3) Title II Formula Grants Program (Title II), and (4) Enforcing Underage Drinking Law Program (EUDL). This Compliance Review Report first examines the JJPO's procedures for monitoring whether subrecipients are meeting their obligations to comply with the federal civil rights laws that are a condition for receiving federal financial assistance, including the Equal Treatment Regulations. This Compliance Review Report then provides recommendations for improving several aspects of civil rights compliance.

A. General Monitoring Procedures

Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the JJPO's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the JJPO uses the following four tools: (1) standard assurances; (2) onsite visits and other monitoring methods; (3) training and technical assistance; and (4) procedures for receiving, investigating and resolving complaints alleging discrimination in employment or the delivery of services.

1. Application Process and Standard Assurances

The JJPO administers OJP funding under the oversight of the Nevada Juvenile Justice Commission (Commission). The Commission is a state advisory group appointed by the governor that allocates funds in accordance with the goals of the Juvenile Justice and Delinquency Prevention Act (JJJPA), advises the governor, state administrators, and local governments on juvenile justice matters, and advocates the deinstitutionalization of status offenders. The Commission is made up of individuals from a variety of professional disciplines, with one slot reserved for a Native American tribal representative.¹ The Commission hosts an annual retreat that is open to the public, where it establishes upcoming funding priorities consistent with the JJJPA. In addition, the Commission's five-person Grant Review Committee (Committee) works with the JJPO staff to review grant applicants and make award selections in accordance with the Commission's funding priorities.

¹ This representative is usually from the Nevada Inter-Tribal Council, an association of the seventeen registered tribes in Nevada.

Of the OJP funds that the JJPO administers, only Title II is open to community organizations; Title V and JABG are only available to units of local government; and EUDL is only available to law enforcement agencies. The JJPO sends notices of Title II funding availability to a mailing list of past applicants, past subrecipients, community coalitions, and all registered Indian tribes. The JJPO sends JABG and Title V notices of funding to all units of local government, and sends notices of EUDL funding to local law enforcement agencies.

The JJPO staff first reviews all applications and then drafts a summary of the application, including a review of past performance, if applicable. Each member of the Commission's Grant Review Committee receives a copy of each grant application along with the staff summary. The Committee then reviews all applications during a two-day meeting each spring that is open to all applicants. Applicants who attend this meeting have the opportunity to hear discussion about their own application and the applications of other organizations, and to answer questions from the Committee. The Committee uses a score sheet to evaluate the application against the Commission's funding priorities and makes funding recommendations to the full Commission. The Commission votes to approve the funding recommendations at a subsequent meeting that is also open to all applicants.

Applicants that are awarded funding must sign a standard Assurance when they accept the award. By signing the Assurance, the subrecipient certifies that it will comply "with all Federal statutes, regulations, policies, guidelines and requirements." The requirements include complying with the non-discrimination provisions of applicable statutes;² forwarding to the OCR any adverse finding of discrimination on the basis of race color, religion, national origin, sex or disability; and submitting an Equal Employment Opportunity Plan (EEO), if required to maintain one, where the grant is for \$500,000 or more.³ The Assurance does not mention the Equal Treatment Regulations.

2. Onsite Visits and Other Monitoring Methods

Subrecipients must submit a quarterly report to the JJPO that details their financial expenditures, their programmatic accomplishments, the demographic breakdown of their beneficiaries, and a description of any outstanding issues or concerns. This report does not specifically include anything about civil rights, although a subrecipient that had experienced a civil rights related issue could describe that in the quarterly report. Additionally, subrecipients must submit a Disproportionate Minority Contact report each year in accordance with the JJDP.

The JJPO conducts an onsite monitoring visit of every subrecipient every year. The monitor uses a "programmatic compliance monitoring checklist," which currently does not refer to subrecipients' civil rights obligations. While on-site with the subrecipient, the monitor reviews the attendance records of the youth in the program, ensures that the program curriculum is evidence-based, evaluates the program's fiscal soundness, and analyzes the program evaluations.

² The Assurance states that the subrecipient and all its contractors will comply with "the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; as amended; Subtitle A, Title II of the American with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C,D, E, and G; and Department of Justice regulations and disability discrimination, 28 CFR Part 35 and Part 39."

³ This form does not specify to whom the applicant will submit the EEO.

The JJPO uses a “Monitor Report” form during the onsite visits, which serves as a template for the final evaluation reports for subrecipients. The JJPO monitor does not evaluate civil rights during the on-site visits.

3. Training and Technical Assistance

The JJPO will begin offering a two-hour post-award training program for subrecipients in March, 2010. The training entails how to complete a quarterly report, how to develop cost-effective evaluation tools, and how to apply performance measures. The training does not address civil rights requirements. The JJPO reports that it offers technical assistance to subrecipients throughout the year, and encourages subrecipients at the post-award training to avail themselves of this assistance.

4. Complaint Procedures

In its response to the OCR’s Data Request, the JJPO wrote that it does not have procedures to address complaints alleging discrimination from a subrecipient’s beneficiaries or a subrecipient’s employees.⁴ Further, the JJPO wrote that it has not received any complaints from beneficiaries, prospective beneficiaries, applicant organizations, subrecipients, or beneficiaries or employees of subrecipients.

The non-discrimination policies and complaint procedures that apply to all employees of the State of Nevada cover the employees of JJPO. The Nevada Department of Personnel publishes the *State of Nevada Employee Handbook* (Employee Handbook), which instructs employees about prohibited discrimination and reporting/complaint procedures. The Employee Handbook includes the following non-discrimination policy covering all employees of the state of Nevada:

It is the policy of the State of Nevada that employee recruitment, appointment, assignment, training, compensation and promotion shall occur on the basis of merit and without regard to race, gender, sexual orientation, religion, color, national origin, age, pregnancy, political affiliation, or disability. Ensuring equal employment opportunity is the responsibility of all State officials, managers, supervisors, and employees.

All references to the procedures for filing a discrimination complaint, both on the Department of Personnel’s website and in the Employee Handbook, appear under a heading that includes sexual harassment. For example, under the heading “Sexual Harassment and Discrimination Policy,” the Employee Handbook describes the following procedures for filing a sexual harassment complaint:

If you experience sexual harassment or witness it, you may report it to your agency coordinator, or you may call the Sexual Harassment/Discrimination Hotline at 1-800-767-7381 and report it to the Sexual Harassment/Discrimination Investigation Unit in the Department of Personnel. Employees are also entitled to file a complaint with the Equal Employment Opportunity Commission, the Nevada Equal Rights Commission or consult with an attorney or labor representative.

⁴ The JJPO currently does not have direct beneficiaries.

Further, the Nevada Department of Personnel website contains four additional documents that describe anti-discrimination policies and/or procedures, all describing sexual harassment complaints in tandem with the other types of discrimination complaints. These four documents are (1) “The Governor’s Policy Against Sexual Harassment/Discrimination;” (2) “Sexual Harassment or Discrimination Complaint Form;” (3) “Intake Report of Harassment or Discrimination;” and (4) “Notice of Employee Rights During an Internal Investigation.” Although the body of each of these documents lists the protected classes as race, gender, sexual orientation, religion, color, national origin, age, pregnancy, political affiliation and disability, these documents repeatedly refer to “sexual harassment and discrimination,” “sexual harassment or discrimination,” or “sexual harassment/discrimination.” This conflation of sexual harassment with other forms of discrimination could lead a potential complainant to believe that these policies and procedures only cover discrimination related to sex.

The Governor’s Policy Against Sexual Harassment/Discrimination provides that each employee should receive a copy of the policy, that each Department director designate an employee to act as a coordinator for reporting complaints, and that these complaint coordinators forward completed harassment/discrimination intake reports to the agency’s Deputy Attorney General and the Sexual Harassment/Discrimination Unit within the Department of Personnel.

B. Monitoring Compliance with Equal Treatment Regulations

The purpose of the Equal Treatment Regulations is to ensure that “[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any Justice Department program for which they are otherwise eligible.” 28 C.F.R. § 38.1(a). The Regulations prohibit the DOJ and DOJ funding recipients from discriminating either for or against an organization on the basis of the organization’s religious character or affiliation. *Id.* In evaluating the JJPO’s treatment of faith-based organizations, this Compliance Review Report focuses on two overarching issues: (1) the review process for making awards to applicant faith-based organizations; and (2) the procedures for ensuring that funded faith-based organizations comply with applicable federal civil rights laws.

1. The Process for Making Awards to Applicant Faith-Based Organizations

As discussed in Section I.A.1. of this Compliance Review Report, faith-based organizations are only eligible to apply directly for the Title II funding. The JABG and Title V grants are only available to units of local government, although they are encouraged to partner with faith-based and other community organizations to implement their programming. EUDL grants are only available to law enforcement agencies.

The JJPO’s Request for Proposals for the Title II Formula Grants specifically encourages faith-based organizations to apply. The solicitation states that the JJPO “will consider faith-based and community organizations for awards on the same basis as any other eligible applicants and, if they receive assistance will be treated on an equal basis with all other grantees.” The solicitation also restates the major provisions of the Equal Treatment Regulations.

In its JABG solicitation, the JJPO directs applicants to “consider faith-based and other community organizations for awards as JABG implementing agencies on the same basis as other

eligible applicants” and to “not favor nor discriminate against any eligible implementing agency based on its religious character or affiliation, religious name, or the religious composition of its board of directors or persons working in the organization.” The solicitation also restates the Equal Treatment Regulations, noting that funded faith-based organizations retain their religious identity and cannot use federal financial assistance for inherently religious activity.

Similarly, the JJPO’s Request for Proposals for the Title V grants program instructs subrecipients to consider faith-based organizations as implementing partners on the same basis as other eligible organizations and restates the Equal Treatment Regulations. The Title V solicitation also contains the following statement about a federally-funded faith-based organization’s ability to consider religion in employment decisions:

If the applicant is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled, under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, to receive federal funds and yet maintain that hiring practice, even if the law creating the funding program contains a general ban on religious discrimination in employment. For the circumstances under which this may occur, and the certifications that may be required, visit the Civil Rights Compliance link, under ‘Additional Requirements’ in this announcement.

The internet link to which this passage refers is <http://www.hhs.gov/ocr/office/news/2006/promisingpractices.html>, a page from the U.S. Department of Health and Human Services’ website, which does not contain information about permissible employment practices for faith-based organizations. The correct Internet citation appears in the Recommendation section of this Compliance Review Report.

In its response to the OCR’s Data Request, the JJPO wrote that it recently created an electronic mailing list of faith-based organizations that will receive future Title II grant solicitations. The JJPO has not directly invited faith-based organizations, however, to apply in the past. During the OCR’s onsite visit, the JJPO explained that it adapted this list of faith-based organizations from a list that it received from the Center for Faith-Based and Neighborhood Partnerships at the U.S. Department of Housing and Urban Development.

In its response to the OCR’s Data Request, the JJPO indicated that no faith-based organizations applied for funding in FY 2007 or FY 2008. Further, no JJPO subrecipients made sub-awards to faith-based organizations in FY 2007 or FY 2008.

2. Procedures for Ensuring that Faith-Based Organizations Comply with Applicable Federal Civil Rights Laws

As mentioned in Section I.A.1. of this Compliance Review Report, the JJPO monitors civil rights compliance of subrecipients through the use of signed assurances. As the JJPO did not fund any faith-based organizations during the compliance review period, the OCR could not investigate the degree to which the JJPO monitors subrecipients’ compliance with the Equal Treatment Regulations. The assurances do not mention the Equal Treatment Regulations, and the JJPO staff confirmed during the OCR’s onsite visit that its staff does not ask subrecipients about civil rights issues during monitoring visits.

II. Recommendations

The JJPO already has some procedures in place for monitoring the civil rights compliance of its subrecipients, such as referring to the laws that the OCR enforces in its standard Assurance. To strengthen the JJPO's monitoring efforts, the OCR offers the following recommendations: (1) add the Equal Treatment Regulations to the Assurance that subrecipients sign; (2) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints; (3) convey to the State of Nevada Department of Personnel the OCR's comments about the employee nondiscrimination policies and procedures; (4) monitor subrecipients' compliance with civil rights requirements during onsite monitoring visits; and (5) provide training to DOJ subrecipients on the civil rights laws that the OCR enforces.

A. Add the Equal Treatment Regulations to the Standard Assurance that Subrecipients sign

The JJPO should include a reference to the DOJ's Equal Treatment Regulations, 28 C.F.R. pt. 38, in its standard Assurance and to DOJ grant application documents that reference faith-based organizations. Subrecipients that receive funding from DOJ components need to be aware of the obligation to comply with these regulations. Additionally, if the JJPO chooses to refer to the DOJ's position on federally funded faith-based organizations considering religion in their employment practices, it should provide the accurate Internet link to the DOJ, which is http://www.ojp.usdoj.gov/about/ocr/employment_practices.htm.

B. Develop Comprehensive Complaint Procedures

While the State of Nevada has written policies in place for receiving and investigating discrimination complaints from employees, the JJPO does not have any procedures for addressing discrimination complaints from employees or beneficiaries of JJPO subrecipients. Accordingly, the JJPO should adopt a policy for addressing discrimination complaints that is in accordance with federal regulation 24 C.F.R. § 31.202 and includes at a minimum the following elements:

- Designating a coordinator who is responsible for overseeing the complaint process;
- Notifying employees, beneficiaries' and subrecipients of prohibited discrimination in funded programs and activities and the JJPO's policy and procedures for handling discrimination complaints;
- Establishing written procedures for receiving discrimination complaints from the beneficiaries and employees of subrecipients;
- Referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the Nevada Equal Rights Commission, or referring the complaint to the OCR, which will review the complaint and work with the JJPO to resolve the complaint;
- Notifying the OCR in writing when the JJPO refers a discrimination complaint to another agency or when the JJPO investigates the complaint internally; and
- Training JJPO program staff members on the responsibility to refer discrimination complaints, or potential discrimination issues, to the JJPO's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

Information about the applicable laws, complaint forms, and the investigative process is available at the OCR's website at www.ojp.usdoj.gov/ocr/crc. Additionally, the OCR has drafted the enclosed template complaint procedures that the JJPO may find helpful as it develops procedures for addressing discrimination complaints from employees and beneficiaries of subrecipients. Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the JJPO.

- C. Convey to the State of Nevada Department of Personnel the OCR's Comments about the Employee Nondiscrimination Policy

Section I.A.4. of this Compliance Review Report explains how the wording of the current employee nondiscrimination policy and procedures could lead a potential complainant to believe that these protections only cover discrimination related to sex. We recommend that the JJPO raise this concern with the State of Nevada Department of Personnel. The OCR recognizes that the JJPO does not determine the policies that govern state employment. The JJPO, however, should convey these concerns to the appropriate state department so that the nondiscrimination policies that cover Nevada state employees can be clarified.

- D. Monitor for Compliance with Federal Civil Rights Laws During Onsite Monitoring Visits

The JJPO is taking steps to ensure that JJPO subrecipients are complying with grant requirements by conducting periodic onsite monitoring visits. These onsite monitoring visits, however, do not currently address federal civil rights laws. Pursuant to the JJPO's responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the JJPO should add a civil rights component to its onsite monitoring visits. The JJPO should be sure to evaluate a number of civil rights requirements that are binding on recipients of federal funding (e.g., whether the subrecipient has an EEO on file or has sent one to the OCR for review, whether the subrecipient has findings of discrimination to report to the OCR, whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act, whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972, or whether the subrecipient is taking steps to ensure meaningful access to its services to individuals with limited English proficiency). Additionally, the JJPO should ask questions on whether the subrecipient is complying with DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion. The OCR has developed the enclosed Federal Civil Rights Compliance Checklist that contains relevant questions regarding civil rights compliance; the JJPO may wish to adapt this checklist as it develops its own monitoring tools.

- E. Provide Comprehensive Training on Federal Civil Rights Laws:

Other than the information contained in the assurances, the JJPO does not currently provide any training for its subrecipients about their civil rights obligations. To ensure that subrecipients fully understand their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations, to provide services to LEP individuals, to comply with the EEO requirements, and to provide the OCR with findings of discrimination issued by a

federal or state court or federal or state administrative agency on the basis of race, color, religion, national origin, or sex, the JJPO should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The JJPO should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the JJPO provides the training in person, by a teleconference, or through other means. The OCR is available to provide the JJPO with technical assistance in developing civil rights training programs.

Conclusion

We find that the JJPO has taken steps to comply substantially with the federal civil rights laws that the OCR enforces. The OCR is available to provide technical assistance to the JJPO in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, please have a responsible JJPO official contact Attorney Advisor Debra Murphy to develop a timeline and goals for implementing the OCR's recommendations.**

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Murphy at (202) 305-0667.

Sincerely,

/s/

Michael L. Alston
Director

Enclosure