



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

December 3, 2009

Jearld Hafen
Director
Office of Criminal Justice Assistance
Nevada Department of Public Safety
555 Wright Way
Carson City, Nevada 89711

RE: Office of Criminal Justice Assistance, Nevada Department of Public Safety
Compliance Review (09-OCR-0088)

Dear Director Hafen:

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 Office of Criminal Justice Assistance, Nevada Department of Public Safety (OCJA), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the OCJA's compliance with applicable federal civil rights laws along with the OCJA's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the OCJA'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 OCJA 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. The OCR also made an onsite visit to The Ridge House, a faith-based subrecipient of the OCJA. The OCR would like to thank the OCJA staff, especially Michelle Hamilton and Carla Wilson for assisting OCR attorneys George Mazza and Debra Murphy during their onsite visit.

Based on the OCJA's responses to our data request and the information that the OCR gathered during our onsite visit, the OCR sent the OCJA a draft Compliance Review Report on July 24, 2009 and provided you with 30 days in which to notify the OCR of any factual corrections to the draft report. Having received no comments from the OCJA, the OCR issues this as our final Compliance Review Report.

The OCR concludes that the OCJA has taken measures to comply with the civil rights laws that the OCR enforces. However, the OCR has reservations about the adequacy of several aspects of the OCJA's monitoring of subrecipients. These include: (1) guidance and monitoring of faith-based subrecipients about their legal obligations regarding the Equal Treatment Regulations; (2) procedures for processing complaints of discrimination from employees and beneficiaries of subrecipients; (3) onsite monitoring of subrecipients for civil rights compliance; and (4) training for subrecipients. This Compliance Review Report first examines the OCJA's procedures for monitoring whether subrecipients are meeting their obligations to comply with the federal civil rights laws that are conditions for receiving federal financial assistance. This Report then focuses on the OCJA's implementation of the DOJ's Equal Treatment Regulations and provides recommendations for improving the OCJA's methods for monitoring the civil rights compliance of subrecipients. The OCR will issue a report regarding the Ridge House program under separate cover at a later date.

I. Overview

The Office of Criminal Justice Assistance is one of nine divisions of the Nevada Department of Public Safety. This Compliance Review only examined the OCJA, which functions as a State Administering Agency for the Edward Byrne Memorial Justice Assistance Grant Program (Byrne/JAG). The OCJA also administers funding authorized under the Residential Substance Abuse Treatment for State Prisoners Program (RSAT), Forensic Science Improvement Program, National Crime History Improvement Program (NCHIP) and Project Safe Neighborhood (PSN). Additionally, OCJA currently receives and administers funding from the Office of Community Oriented Policing Service (COPS),

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 OCJA's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the OCJA used the following four tools: (1) Standard Assurances; (2) onsite visits and other monitoring methods; (3) training programs and technical assistance; and (4) procedures for receiving, investigating, and resolving complaints alleging discrimination in the delivery of services.

1. Standard Assurances

As part of the application process, the OCJA's subrecipients of DOJ funds must sign several assurance forms, three of which have to do with civil rights. First, applicants sign a form titled "Assurances," which provides that they will comply with "all Federal statutes, regulations, policies, guidelines and requirements," including several that are specifically enumerated. This

includes complying with the non-discrimination provisions of applicable statutes;¹ forwarding to the OCR any finding of discrimination on the basis of race, color, religion, national origin, sex, or disability against a subrecipient; and submitting an Equal Employment Opportunity Plan (EEO), if required to maintain one, where the application is for \$500,000 or more.²

Second, applicants for JAG, COPS or PSN funding sign a form titled "Part IX. Certified Assurances," which governs the awards of funds made available under the Anti-Drug Abuse Act of 1988. This form similarly assures that applicants will comply with the non-discrimination provisions of applicable statutes and regulations, and forward to the OCR any finding of discrimination on the basis of race, color, age, religion, national origin, or sex against a subrecipient.³ This form does not mention EEOs. Neither assurance document refers to the DOJ's Equal Treatment Regulations at 28 C.F.R. pt. 38.

Third, the OCJA provides applicants with a form titled "What is an EEO?" This form defines recipients that may need to maintain an EEO as state or local units of government or private entities, institutions or organizations which receive OJP funding directly or through such a government or private entity. It further states that these recipients must maintain an EEO if they (1) have fifty or more employees; and (2) receive a total of \$25,000 or more; and (3) have three percent or more minorities in their service population. Further, this form states that grantees that meet the first and third criteria and who receive over \$500,000 or \$1 million during an eighteen-month period, are required to submit the EEO with their application to the OCR. This form also includes a section to be completed and signed by the subrecipient that certifies that the subrecipient is or is not required to maintain an EEO.

The OCJA verifies that each applicant has signed the above assurances during the application review process. The OCJA uses two layers of review during its application process. First, a three-member peer review committee evaluates each application; second, the OCJA staff evaluates each application. Both sets of reviewers score applications in ten areas using an application review form and award points based upon descriptive criteria. Applicants can receive two points out of a possible one hundred points for including all signed assurances with their application. There is no other part of the application process or scoring sheet that addresses civil rights compliance issues.

2. Onsite Visits and Other Monitoring Methods

¹ The Assurance states that the applicant 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 n (sic) of the Americans 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 on disability discrimination, 28 CFR Part 35 and Part 39."

² This form does not specify to whom the applicant will submit the EEO.

³ "Assurances" requires subrecipients to forward to the OCR findings of discrimination on the basis of disability, and "Part IX. Certified Assurances" does not. The applicable regulation at 28 C.F.R. § 42.204(c) does not include disability in the list of bases that trigger the requirement to forward discrimination findings to the OCR.

In the OCJA's response to the OCR's Data Request, the OCJA stated that it monitors each subrecipient through yearly onsite monitoring visits, and it provided the OCR with a copy of a monitoring form used during these visits entitled "Sub-Grantee Audit/Monitoring Report Form." This form contains the following questions about civil rights:

4. Are Certified Assurances/Grant Conditions being met? YES NO
(a) Is the agency required to have an EEOP? YES NO
If yes, was it available for review by the OCJA Program Manager?
If no, explain.
(b) Has the agency had any complaint filed? YES NO
If yes, explain.
5. Are changes in the project required/recommended? YES NO
Explain.

During the OCR's onsite visit, the OCJA verified that no additional civil rights questions are asked during the monitoring visits, and that the general focus of the monitoring visits is on the subrecipient's accounting system, financial claims, and equipment purchases.

As discussed in Section I.A.1. of this Report, the OCJA's assurances require subrecipients to forward to the OCR any findings of discrimination against the subrecipient issued by a federal or state court or federal or state administrative agency. However, it does not appear that subrecipients are also required to submit a copy of any findings of discrimination to the OCJA so that the OCJA can monitor its subrecipients' compliance with these civil rights requirements.

3. Training and Technical Assistance:

In its Data Response and during the onsite visit, the OCJA stated that it provides training to subrecipients semi-annually. During this training, OCJA reviews the assurances, and the EEOP requirements. The OCJA also provides subrecipients with a manual entitled "General Guidelines for Project Directors and Fiscal Managers," which covers the financial management and grant administration requirements for Byrne/JAG grants. This manual, however, contains no mention of civil rights obligations.

4. Complaint Procedures

In its Data Response and during the onsite visit, the OCJA stated that it does not have procedures to address complaints from its beneficiaries or the beneficiaries or employees of subrecipients who allege discrimination. Further, the OCJA stated that it has not received any complaints from beneficiaries, prospective beneficiaries, applicants, subrecipients, or employees of subrecipients during the relevant time period.

The OCJA directed the OCR to the State of Nevada Department of Personnel for policies and procedures on discrimination complaints from employees of the OCJA. 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.

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 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 that is related to sex.

The Governor's Policy Against Sexual Harassment and 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 Faith Based 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 OCJA’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

In its Data Response, the OCJA wrote that as with any applicant, all faith-based agencies are eligible to apply for DOJ subawards and that the OCJA approves or denies funding based on the merits of the application. During the OCR’s onsite visit, the OCJA explained that it solicits grant submissions by posting them on its website and sending postcards and electronic mailings to schools, police departments, sheriff’s departments, courts, city and county grant administrators, and prior recipients. The OCJA also participates in the Offender Re-Entry Coalition, which the OCJA describes as a partnership of prisons, faith-based organizations, treatment centers, and government entities trying to increase substance abuse treatment services for ex-offenders. The OCJA publicizes its funding availability to Coalition members, and sends grant solicitations to faith-based organizations that provide treatment services or are past applicants or recipients. Further, the OCJA’s current grant application encourages eligible faith-based organizations to apply.

In its Data Response, the OCJA wrote that in FY2007, two out of twenty-six applicants for the JAG funds were faith-based organizations, and both faith-based organizations received funding. In FY2008, two out of seventeen applicants were faith-based organizations, and neither was funded from the FY2008 budget because of funding limitations. During the onsite visit, however, the OCJA indicated that it actually did fund both FBO applicants in FY2008 with surplus funds from previous years. The same two faith-based organizations applied in FY2007 and FY2008: Step 1, Inc. and The Ridge House, Inc. Neither Step 1 nor The Ridge House made subawards in FY2007 or FY2008.

Step 1 is a transitional living facility for male ex-offenders recently released from prison. The OCJA awarded Step 1 \$32,504 in FY2007 from its JAG funding, and although the OCJA experienced substantial budget cuts during FY2008, it was able to award Step 1 \$35,000 that was leftover from the FY2005 JAG funding. According to the OCJA’s Data Response, Step 1 “provides transitional living services to male criminal justice clients re-entering society as self-sufficient responsible citizens. The program provides clients with weekly outpatient substance abuse counseling, training in basic life skills, employment search techniques, and money

management skills.” According to the Division of Parole and Probation, which maintains a list of licensed treatment, transitional living, and halfway house facilities that will accept ex-offenders, Step 1 has twenty-nine total beds, and reserves six of those beds for homeless men. During the onsite visit, the OCR learned that although Step 1 operates a transitional housing facility, its residents actually use the substance abuse treatment services of The Ridge House. It is unclear to what extent Step 1 is actually a faith-based organization. Step 1 describes its Christian origins on its web-site, and its name is taken from the first step of Alcoholics Anonymous, a program widely recognized by the federal courts as having a religious component. However when the OCR sought to arrange onsite visits to faith-based organizations, the OCJA stated that Step 1 is not, in fact, faith-based. Therefore, the OCR did not visit Step 1.

The Ridge House is a residential substance abuse treatment facility for men and women being released from prison and who are on parole. The OCJA granted The Ridge House \$57,462 in FY2007 in JAG funding and \$55,000 that was leftover from the FY2006 JAG funding. In its Data Response, the OCJA describes The Ridge House as follows:

This program provides comprehensive case re-entry management to both male and female client's [sic] from the criminal justice system. This program is working to reduce the recidivism rate for chemically dependent offenders by increasing their services to include therapy for family or [sic] origin and abuse issues so that the client can more readily re-enter society. Their clients must participate in a mental health assessment and mental health counseling as a component of their substance abuse treatment plan.

The OCR selected The Ridge House for an onsite visit for its compliance with the Equal Treatment Regulations.⁴

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

As discussed in Sections I.A.1. and I.A.2. of this Report, the OCJA monitors civil rights compliance of sub-recipients through the use of pre-award signed assurances and post-award monitoring visits. However, neither of the assurances mention the Equal Treatment Regulations. Further, the “Sub-Grantee Audit/Monitoring Report Form” that the OCJA uses during

⁴ While the review did not focus on compliance with Section 504 of the Rehabilitation Act, the OCR has concerns about The Ridge House's compliance with this statute. During the onsite visit, the Executive Director of The Ridge House represented to the OCR that its staff screen applicants for mental illness, and applicants with a history of mental illness would generally be referred to a halfway house with the individual's parole officer providing case management. While The Ridge House does not have a blanket policy on rejecting mentally ill applicants, its screening procedures have the effect of weeding out potentially qualified handicapped individuals. If The Ridge House has concerns about specific patterns of behavior that are threats to the stability of its cooperative living environment, it should tailor its screening process to identify those problematic behaviors. However, by screening applicants for a history of mental illness and then referring mentally ill applicants to other services in the community, The Ridge House is employing methods of administration that have the effect of discriminating against a class of handicapped persons. This is in violation of Section 504.

monitoring visits contains no questions about the Equal Treatment Regulations, and the OCJA confirmed during the onsite visit that its staff does not ask subrecipients about compliance with the Equal Treatment Regulations. It does not appear that the OCJA specifically monitors faith-based organizations' compliance with the Equal Treatment Regulations.

As mentioned previously, the OCR will issue a report regarding the Ridge House's compliance with the Equal Treatment Regulations under separate cover at a later date.

II. Recommendations

The OCJA already has some procedures in place for monitoring the civil rights compliance of its subrecipients, such as referring the laws that the OCR enforces in its assurances. To strengthen the OCJA's monitoring efforts, the OCR offers the following recommendations: (1) add the Equal Treatment Regulations to the assurances that subrecipients sign; (2) provide correct information about the EEOP requirements; (3) convey to the State of Nevada Department of Personnel the OCR's comments about the employee nondiscrimination policies and procedures; (4) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints; (5) monitor subrecipients' compliance with civil rights requirements during onsite monitoring visits; and (6) provide training to DOJ subrecipients on the civil rights laws that the OCR enforces.

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

The OCJA should include a reference to the DOJ's Equal Treatment Regulations, 28 C.F.R. pt. 38, in its assurances 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.

B. Provide Correct Information about the EEOP Requirements

The OCJA's form titled "What is an EEOP?" incorrectly states the criteria for maintaining and submitting an EEOP. The correct criteria for those recipients that must maintain an EEOP are as follows: (1) the recipient is a state or local government agency or any business; and (2) the recipient has 50 or more employees; and (3) the recipient receives a *single award* of \$25,000 or more (rather than a total of \$25,000 as stated by the OCJA).⁵ Further, the OCJA states that grantees must submit the EEOP if they receive over \$500,000 or \$1 million during an 18-month period. The correct standard is that a recipient that is required to maintain an EEOP must submit it to the OCR if it receives a *single award* of \$500,000 or more; agencies that do not meet this

⁵ On the OCJA's form "What is an EEOP?", it lists having "3% or more minorities in service population" as an element in determining a recipient's obligation to maintain an EEOP. This is a mischaracterization of the requirements for maintaining an EEOP. Rather, when a recipient must maintain an EEOP and the total number of minorities in the recipient's service population is less than 3%, then the recipient only needs to report on gender in its EEOP.

requirement but receive \$1 million or more in funding are no longer required to submit an EEOP to the OCR. Lastly, the OCJA states that subrecipients who must submit an EEOP must include it with their grant applications. The OCR has relaxed that requirement and it generally provides a recipient sixty days from the date of the award to submit an EEOP.

Further, once a subrecipient completes and signs the section of the OCJA's form that certifies whether or not the recipient must maintain an EEOP, it is unclear to whom a subrecipient should submit this certification. The OCR recommends that the OCJA requires subrecipients to use the OCR's certification forms when certifying their exemption from the requirement to complete an EEOP or their exception from the requirement to submit an EEOP.⁶ We further recommend that the OCJA make clear that these certification forms are to be submitted to the OCR, although the OCJA may wish to receive a copy for monitoring purposes.

C. Develop Comprehensive Complaint Procedures

While the State of Nevada has written policies in place for receiving and investigating discrimination complaints from employees, the OCJA does not have any procedures for addressing discrimination complaints from beneficiaries of the OCJA⁷ or from employees or beneficiaries of OCJA subrecipients. Accordingly, the OCJA should adopt a policy for addressing discrimination complaints that 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 OCJA's policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from the OCJA's beneficiaries and from subrecipient employees and beneficiaries;
- 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 OCJA to resolve the complaint;
- notifying the OCR in writing when the OCJA refers a discrimination complaint to another agency or when the OCJA investigates the complaint internally; and
- training OCJA program staff members on the responsibility to refer discrimination complaints, or potential discrimination issues, to the OCJA's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

⁶ This form can be found at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

⁷ It is not clear to the OCR whether the OCJA conducts any programs or activities on its own that have direct beneficiaries. If it does have direct beneficiaries, it should be sure to include complaints from beneficiaries into any complaint procedures that it develops.

Information about the applicable laws, complaint forms, and the investigative process is available at the OCR's website at www.ojp.usdoj.gov/ocr/erc. Additionally, the OCR has drafted the enclosed template complaint procedures that the OCJA 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 OCJA.

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

Section I.A.4. of this 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 that is related to sex. We recommend that the OCJA raise this concern with the State of Nevada Department of Personnel. The OCR recognizes that the OCJA does not determine the policies that govern state employment. The OCJA, however, should convey these concerns to the appropriate state department so that the nondiscrimination policies that cover Nevada state employees can be clarified.

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

The OCJA is taking steps to ensure that OCJA 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 OCJA's responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the OCJA should add a civil rights component to its onsite monitoring visits. The OCJA 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 EEOC 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 OCJA 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 OCJA may wish to adapt the checklist in creating its own monitoring tools.

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

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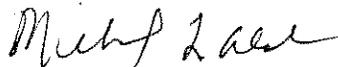
Other than a general discussion of the information contained in the assurances, the OCJA does not currently provide any training for its subrecipients about their civil rights obligations. To ensure that subrecipients fully understand their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations, to provide services to LEP individuals, 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 OCJA should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The OCJA should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the OCJA provides the training in person, during a teleconference, or through other means. The OCR is available to provide the OCJA with technical assistance in developing civil rights training programs.

Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the OCJA has taken steps in substantially complying with the federal civil rights laws that the OCR enforces. The OCR is available to provide technical assistance to the OCJA in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, please have a responsible OCJA 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 [REDACTED]

Sincerely,



Michael L. Alston
Director

Enclosure

Subject: 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

Policy Number:

Effective Date:

I. Purpose

[The State Administering Agency (SAA) should explain the purpose of this document, i.e., to establish written procedures for SAA employees to follow when they receive a complaint alleging discrimination from clients, customers, program participants, or consumers of the SAA or of a SAA subrecipient implementing funding from the U.S. Department of Justice (DOJ).]

II. Policy

[The SAA should explain its policy regarding discrimination against clients, customers, program participants, or consumers of the SAA or the SAA's subrecipients, such as a statement that all individuals have the right to participate in programs and activities operated by the SAA and SAA subrecipients regardless of race, color, national origin, sex, religion, disability, and age. The SAA may wish to state that it will ensure that the SAA and its subrecipients are in compliance with the following statutes and regulations:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in the delivery of services (42 U.S.C. § 2000d), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart C;
- The Omnibus Crime Control and Safe Streets Act of 1968, which prohibits discrimination on the basis of race, color, national origin, religion, or sex in the delivery of services and employment practices (42 U.S.C. § 3789d(c)(1)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (29 U.S.C. § 794), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart G;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (42 U.S.C. § 12132), and the DOJ implementing regulations at 28 C.F.R. Part 35;

- Title IX of the Education Amendments of 1972, which prohibit discrimination on the basis of sex in educational programs (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54; and
- The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services (42 U.S.C. § 6102), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart I.
- The DOJ regulations on the Equal Treatment for Faith-Based Organizations, which prohibit discrimination on the basis of religion in the delivery of services and prohibit organizations from using DOJ funding on inherently religious activities (28 C.F.R. Part 38).

The SAA may also wish to include a statement that these laws prohibit agencies from retaliating against an individual for taking action or participating in action to secure rights protected by these laws.]

III. Definitions

[The SAA may wish to include definitions of relevant terms, such as “discrimination” and “complaint coordinator.”]

IV. Complaint Procedures

[The SAA should clearly explain its procedures for accepting and responding to discrimination complaints from clients, customers, program participants, or consumers of the SAA and SAA subrecipients. These procedures should include, at a minimum: 1) a designation of the SAA employee who is responsible for coordinating the series of actions described in these procedures; 2) an explanation of how a client, customer, program participant, or consumer may file a complaint of discrimination (i.e. on a specific complaint form, in a letter, in an email, in person, or over the phone); 3) an explanation of how a SAA employee receiving a complaint of discrimination should forward the complaint to the employee who is responsible for coordinating the series of actions described in these procedures; 4) an explanation of whether the SAA will provide the client, customer, program participant, or consumer with any written acknowledgement of the complaint, and how the SAA will correspond with the complainant throughout the investigation; and 5) an explanation of how the SAA will investigate and resolve the complaint, such as whether the SAA will conduct an internal investigation of the complaint, or whether it will refer the complaint to an appropriate external agency for investigation, such as a local or state human rights commission, or the Office for Civil Rights (OCR), Office of Justice Programs, DOJ.

If the SAA’s procedures involve referring the complaint to another agency or agencies for investigation and resolution, the SAA should clearly explain the necessary steps for making this referral. If the SAA’s procedures involve investigating the complaint internally or referring the complaint to an external agency other than the OCR, such as a

local or state human rights commission, the SAA should list the procedures for notifying the OCR in writing of the referral and for notifying the beneficiary that he or she may also file a complaint with the OCR. If the SAA chooses to investigate these complaints internally, the SAA should explain what office or division of the SAA will have responsibility for investigating the complaint and how the SAA will conduct the investigation.

In this section, the SAA should also explain how it will notify clients, customers, program participants, or consumers of the SAA and SAA subrecipients of prohibited discrimination, along with the procedures for filing a discrimination complaint with the SAA and the OCR. Notification may include placing posters in SAA facilities, including reference in program materials, or providing clients, customers, program participants, or consumers with a copy of these complaint procedures. The SAA should also explain how it will ensure that subrecipients have procedures in place for responding to discrimination complaints that clients, customers, program participants, or consumers of a subrecipient file directly with the subrecipient. At a minimum, these procedures should include forwarding the complaint to the SAA, the OCR, or another appropriate external agency, such as a local or state human rights commission; notifying the SAA of any discrimination complaints that the subrecipient does not refer to the SAA; and notifying the complainant that he or she may file a complaint of discrimination directly with the SAA or with the OCR.]

V. Training

[The SAA should describe its procedures for providing periodic training for agency employees on these complaint procedures, including an employee's responsibility to refer discrimination complaints from clients, customers, program participants, or consumers to the employee responsible for coordinating the series of actions described in these procedures. The SAA shall also describe in this section how it will disseminate these procedures to agency employees, such as by posting the procedures on the agency intranet website, providing a copy of the procedures to employees during the training sessions, distributing the procedures to all new employees during orientation, etc.]

Subject: Procedures for Responding to Discrimination Complaints from Employees of the [State Administering Agency's] Subrecipients under U.S. Department of Justice Grant Programs

Policy Number:

Effective Date:

I. Purpose

[Note: Most often, a State Administering Agency (SAA) will already have procedures in place to address discrimination complaints from its own employees and applicants. Therefore, these template complaint procedures are limited to discrimination complaints from employees of the SAA's subrecipients. If the SAA does not already have procedures in place for addressing discrimination complaints from its own employees, it should ensure that these procedures cover complaints from SAA employees as well.]

In this section, the SAA should explain the purpose of this document, such as to establish written procedures for SAA employees to follow when they receive a complaint alleging employment discrimination from an employee of a SAA subrecipient implementing funding from the U.S. Department of Justice (DOJ).]

II. Policy

[The SAA should explain its policy regarding employment discrimination by subrecipients, such as a statement that all employees and applicants of the SAA's subrecipients shall be treated equally regardless of race, color, national origin, sex, religion, and disability. The SAA may wish to state that it will ensure that subrecipients comply with all applicable federal laws regarding employment discrimination.]

III. Definitions

[The SAA may wish to include definitions of relevant terms, such as "discrimination," "complaint coordinator," and "retaliation."]

IV. Complaint Procedures

[The SAA should explain its procedures for responding to employment discrimination complaints against SAA subrecipients. These procedures should include, at a minimum: 1) a designation of the SAA employee who is responsible for coordinating the series of actions described in these procedures; 2) an explanation of how a SAA employee receiving a discrimination complaint from an employee or applicant of a SAA subrecipient should forward the complaint to the employee responsible for coordinating the series of actions described in these procedures; 3) an explanation that the employee responsible for coordinating the series of actions described in these procedures should

refer employment discrimination complaints against SAA subrecipients to the U.S. Equal Employment Opportunity Commission (EEOC) or the appropriate state or local fair employment practices agency or human rights commission; and 4) a requirement that the employee responsible for coordinating the series of actions described in these procedures notify the Office for Civil Rights (OCR), Office of Justice Programs, DOJ, in writing when the employee refers a complaint to the EEOC or a state or local fair employment practices agency or human rights commission. Other options for responding to employment discrimination complaints against SAA subrecipients include the SAA investigating these complaints and notifying the OCR of the investigation and outcome, or referring the complaints to the OCR.

In this section, the SAA should also explain how it will ensure that subrecipients have procedures in place for responding to discrimination complaints that employees or applicants file directly with the subrecipient. At a minimum, these procedures should include forwarding the complaint to the EEOC or a state or local fair employment practices agency or human rights commission and notifying the SAA of this referral.]

V. Training

[The SAA should describe its procedures for providing periodic training for agency employees on these complaint procedures, including an employee's responsibility to refer discrimination complaints from employees or applicants of SAA subrecipients to the employee responsible for coordinating the series of actions described in these procedures. The SAA shall also describe in this section how it will disseminate these procedures to agency employees, such as by posting the procedures on the agency intranet website, providing a copy of the procedures to employees during the training sessions, distributing the procedures to all new employees during orientation, etc.]

Federal Civil Rights Compliance Checklist

1. If the subrecipient is required to prepare an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R. §§ 42.301-.308, does the subrecipient have an EEOP on file for review?

Yes No

If yes, on what date did the subrecipient prepare the EEOP?

2. Has the subrecipient submitted an EEOP Short Form to the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), if required by 28 C.F.R. §§ 42.301-.308? If the subrecipient is not required to submit an EEOP Short Form to the OCR, has it submitted a certification form to the OCR claiming a partial or complete exemption from the EEOP requirements?

Yes – submitted an EEOP Short Form Yes – submitted a certification No

If the subrecipient prepared an EEOP Short Form, on what date did the subrecipient prepare it?

3. How does the subrecipient notify program participants and beneficiaries that it does not discriminate on the basis of race, color, national origin, religion, sex, disability, and age in the delivery of services (e.g. posters, inclusion in brochures or other program materials, etc.)?

Comments:

4. How does the subrecipient notify employees that it does not discriminate on the basis of race, color, national origin, religion, sex, and disability in employment practices (e.g. posters, dissemination of relevant orders or policies, inclusion in recruitment materials, etc.)?

Comments:

5. Does the subrecipient have written policies or procedures in place for notifying program beneficiaries how to file complaints alleging discrimination by the subrecipient with the [State Administering Agency] or the OCR?

Yes No

If yes, an explanation of these policies and procedures:

6. If the subrecipient has 50 or more employees and receives DOJ funding of \$25,000 or more, has the subrecipient taken the following actions:

- a. Adopted grievance procedures that incorporate due process standards and provide for the prompt and equitable resolution of complaints alleging a violation of the DOJ regulations implementing Section 504 of the Rehabilitation Act of 1973, found at 28 C.F.R. Part 42, Subpart G, which prohibit discrimination on the basis of a disability in employment practices and the delivery of services.

Yes No

- b. Designated a person to coordinate compliance with the prohibitions against disability discrimination contained in 28 C.F.R. Part 42, Subpart G.

Yes No

- c. Notified participants, beneficiaries, employees, applicants, and others that the subrecipient does not discriminate on the basis of disability.

Yes No

Comments:

7. If the subrecipient operates an education program or activity, has the subrecipient taken the following actions:

- a. Adopted grievance procedures that provide for the prompt and equitable resolution of complaints alleging a violation of the DOJ regulations implementing Title IX of the Education Amendments of 1972, found at 28 C.F.R. Part 54, which prohibit discrimination on the basis of sex.

Yes No

b. Designated a person to coordinate compliance with the prohibitions against sex discrimination contained in 28 C.F.R. Part 54.

Yes No

c. Notified applicants for admission and employment, employees, students, parents, and others that the subrecipient does not discriminate on the basis of sex in its educational programs or activities.

Yes No

Comments:

8. Has the subrecipient complied with the requirement to submit to the OCR any findings of discrimination against the subrecipient issued by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, or sex?

Yes No

Comments:

9. What steps has the subrecipient taken to provide meaningful access to its programs and activities to persons who have limited English proficiency (LEP)?

Comments, including an indication of whether the subrecipient has developed a written policy on providing language access services to LEP persons:

10. Does the subrecipient conduct any training for its employees on the requirements under federal civil rights laws?

Yes No

Comments:

11. If the subrecipient conducts religious activities as part of its programs or services, does the subrecipient do the following:

a. Provide services to everyone regardless of religion or religious belief.

Yes No

b. Ensure that it does not use federal funds to conduct inherently religious activities, such as prayer, religious instruction, or proselytization, and that such activities are kept separate in time or place from federally-funded activities.

Yes No

c. Ensure that participation in religious activities is voluntary for beneficiaries of federally-funded programs.

Yes No

Comments: