



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

March 31, 2009

Washington, D.C. 20531

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Director Tony Lewis
Wyoming Department of Family Services
2300 Capitol Avenue
Hathaway Building
Cheyenne, WY 82001

Re: Compliance Review of the Wyoming Dep't of Family Services
(09-OCR-0069)

Dear Director Lewis:

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

On February 3, 2009, the OCR conducted an onsite visit to DFS' offices in Cheyenne, Wyoming to interview DFS administrators and to conduct a training program for DFS administrators and program staff about the federal civil rights laws that the OCR enforces. The OCR would like to thank DFS administrators and staff, especially Juvenile Services Administrator Debra Dugan-Doty, for assisting OCR Attorney Advisor Christopher Zubowicz during his onsite visit.

In regard to the limited scope of this compliance review, the OCR concludes that the DFS appears to be taking measures to comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about the adequacy of the Department's (1) guidance to subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) onsite monitoring of subrecipients, (3) training and technical assistance for subrecipients, and (4) complaint procedures for responding to certain discrimination allegations. The following Compliance Review Report includes recommendations for improving DFS' methods for monitoring the civil rights compliance of subrecipients.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines DFS' 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. The Report then focuses on DFS' implementation of DOJ's Equal Treatment Regulations.

A. General Monitoring Procedures to Ensure Subrecipient Compliance with Applicable Federal Civil Rights Laws

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 DFS' general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the DFS 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 employment and services discrimination.

1. Standard Assurances

At this juncture, the DFS only administers DOJ subawards through the Juvenile Accountability Block Grant (JABG) program, which is managed by DFS' Division of Juvenile Services and seeks to aid Wyoming in coming into compliance with the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (JJDP). Under the terms of the JABG program, Wyoming awards funds to predetermined units of local government, such as specific counties and municipalities, based on certain allocation formulas. Because there is no discretionary funding component, the DFS does not issue any request for proposal.¹

In preparing the contract provisions that detail the specific obligations of subrecipients, including those receiving JABG funds, DFS administrators propose programmatic language to the Wyoming Office of the Attorney General (OAG), which then reviews the suggested language and includes pertinent legal assurances. However, an attorney from the OAG's Contracts Unit stated that he often relies on the Department to provide him with information about pertinent legal requirements that should be included in the contract.

Under the terms of each JABG grant contract, which purports to represent the entire agreement between the DFS and a subrecipient receiving JABG funds, the subrecipient agrees to the following nondiscrimination provision:

¹ During OCR's site visit, DFS administrators explained that the terms and conditions of specific subawards often are outlined in pertinent requests for proposal, which are drafted by the DFS and the Wyoming Administration & Information Department.

The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), the Americans With Disabilities Act (ADA), 42 U.S.C. [§] 12101, *et seq.*, and the Age Discrimination in Employment Act of 1975. The Contractor shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin or disability in connection with the performance of this Contract. The Contractor shall include the provisions of this section in every subcontract awarded over Ten Thousand Dollars (\$10,000.00) so that such provisions are binding on each subcontractor.

(Juvenile Accountability Block Grant Contract Between State of Wyoming, Department of Family Services, Division of Juvenile Services and Laramie County at ¶ 7.E; *see also id.* at ¶ 8.L (Entirety of Contract clause).) In addition, each subrecipient agrees that it “shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. [§] 12101, *et seq.*, and/or properly promulgated rules and regulations related thereto.” (*Id.* ¶ 8.B.) The contract also includes a general requirement that the subrecipient “shall keep informed of and comply with all applicable federal . . . laws and regulations in the performance of the Contract.” (*Id.* ¶ 8.I.)

In several instances, the contract is notable for what it does not cover. First, subrecipients are not required to submit a copy of the Equal Employment Opportunity Plan (EEO Plan) or an EEO Plan certification to the DFS so that the Department can monitor its subrecipients' compliance with DOJ's EEO Plan regulations at 28 C.F.R. § 42.301-.308. *See* 28 C.F.R. § 31.202(b)(1). Second, the contract does not notify subrecipients that they must submit to the OCR either an EEO Plan or the OJP's Certification Form stating that they are eligible for a full or partial exemption from the EEO Plan requirement. *See id.* § 31.202(b)(2); *id.* § 42.305. Third, the agreement fails to inform subgrantees of affected persons' rights to file a complaint of discrimination with the OCR for investigation. *See id.* § 31.202(b)(3). Fourth, the contract does not note that subrecipients should forward to the OCR any finding of discrimination against the subrecipient by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, sex, or disability. *See id.* § 31.202(b)(5); *id.* § 42.204. Fifth, the agreement does not require subrecipients to notify the DFS of any discrimination findings, which reduces the Department's ability to monitor subrecipient compliance with federal civil rights laws. Sixth, the contract does not require subrecipients to certify that they will provide meaningful access to their services to persons with limited English proficiency (LEP).

2. Onsite Visits and Other Monitoring Methods

During OCR's site visit, the DFS noted that it conducts routine site visits of JABG subrecipients, although it does not regularly summarize these monitoring activities. Based on information provided to the OCR during its interviews with Department staff, during calendar year 2008, the DFS conducted site visits of six of its eight JABG subrecipients. As of early February 2009, however, the Department had not scheduled or conducted any onsite visits of subrecipients for

calendar year 2009. During site visits of subrecipients, the DFS uses a written instrument that covers general categories such as “problems or concerns” and “strengths and areas for development.” However, the instrument does not specifically address federal civil rights compliance issues. Moreover, the Department does not use other methods, such as desk reviews, to monitor subrecipient compliance with applicable civil rights protections.

3. Training and Technical Assistance

In its response to OCR’s data request, the DFS noted that it conducts annual training for subrecipients regarding their civil rights obligations. However, during OCR’s site visit, administrators explained that the Department provides neither civil rights training nor technical assistance to subrecipients.²

4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluated the processes in place for individuals to pursue complaints of employment and services discrimination against the DFS and its subrecipients.

a. Complaints of Employment Discrimination

The DFS has an internal complaint procedure that is available for Department employees and which provides the following: (a) individuals who express a desire to file a discrimination complaint must be advised of their right to do so and of their right to a fair hearing; (b) complaints may be written or oral and may be accepted from an anonymous source; (c) if requested, staff will assist an individual in completing a complaint; (d) appropriate managers will be notified immediately of complaints; and (f) complaints will be logged and forwarded to the DFS State Office.

In addition, the State of Wyoming, through the Wyoming Department of Employment, Labor Standards office, has procedures in place to respond to complaints of discrimination from DFS and subrecipient employees. The Labor Standards office is responsible for enforcing the state’s Fair Employment Practices Act, which prohibits employment discrimination on the basis of age, sex, race, creed, color, national origin, ancestry, or pregnancy. Wyo. Stat. Ann. § 27-9-105 (2008). A DFS or subrecipient employee also can file a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC). While the Department automatically is apprised of any employment discrimination complaints that are filed against it, it has no mechanism in place to receive notice of employment discrimination complaints that a subrecipient employee files with the Labor Standards office or the EEOC. A DFS administrator explained that an employee of a subrecipient also can file a complaint directly with the

² The Department’s response to OCR’s data request was prepared by Andy Aldrich, a former DFS employee who was Assistant Deputy for Faith Based and Community Initiatives. Because Mr. Aldrich no longer works at the Department, the OCR did not communicate with him regarding apparent discrepancies between his response on behalf of the DFS and the information provided to the OCR by current Department administrators.

Department, which would trigger a review and investigation by the OAG; however, it is not clear how employees of a subrecipient learn about this avenue for filing an employment discrimination complaint.

The Department maintains a log of discrimination complaints filed by DFS and subrecipient employees and applicants. The Department reported that it did not receive notice of any such complaints in DOJ-funded programs or activities from October 1, 2007, to February 3, 2009, which was the time frame evaluated by the OCR.

b. Complaints of Services Discrimination

In terms of allegations of services discrimination, the DFS has procedures that cover applicants and beneficiaries of Department services. Specifically, the DFS advises applicants and beneficiaries that they can file a services discrimination complaint with the appropriate DFS Field Office, the Central Office DFS, or the federal agency responsible for overseeing the affected program. The DFS also informs individuals that they can file complaints verbally, anonymously, or in writing within 180 days of the adverse action at issue. If requested, the Department also will assist an individual in completing a complaint. While the DFS accepts incomplete complaints, it endeavors to secure sufficient information to conduct an investigation, including the following: (a) the name, address, and telephone number or other means of contacting the complainant; (b) the location and name of the organization, office, or person accused of discriminatory practices; (c) the nature of the incident or the aspect of the program leading to the alleged discrimination; (d) the protected class at issue; (e) the names, titles, relationships, and addresses of persons who may have knowledge of the alleged discriminatory act; (f) the dates on which the alleged discriminatory act occurred; and (g) the date the complaint was filed. When a DFS Field Office receives a services discrimination complaint, it refers the complaint to the Department's Economic & Child Support Division for review and investigation.

In contrast to its procedures for handling complaints involving its own services, the DFS adopts a less systematic approach regarding services complaints filed against subrecipients. During OCR's site visit, DFS administrators explained that an applicant or beneficiary of subrecipient services could pursue a services discrimination complaint against that entity with either the DFS or the subrecipient. If the individual files such a complaint with the Department, then the DFS refers the complaint to the OAG, which in turn notifies any federal agency that provides financial assistance to the subrecipient named in the complaint. However, it is not clear how beneficiaries are apprised of their ability to pursue services complaints with the DFS or with the subrecipient itself. A DFS administrator asserted that, in exchange for federal funding, a subrecipient assures during the request for proposal (RFP) and contract processes that it has complaint procedures in place. However, a sample contract that the OCR reviewed for the JABG program, which does not include an RFP component, contains no such provision. In fact, subrecipients are not required to adopt any uniform complaint procedure, and may independently determine how to handle specific services complaints they receive. Given this ad hoc approach to subrecipient complaint procedures, there also appears to be no uniform mechanism for notifying applicants or beneficiaries of subrecipient services that they can file a complaint with the OCR. Moreover, the

DFS routinely does not seek to confirm that subrecipients in fact have developed complaint procedures and has no process in place to receive notice of any services discrimination complaints that applicants or beneficiaries file with subrecipients.

The DFS maintains a log of services complaints filed against it and subrecipients. However, the Department reported that it did not receive notice of any such complaints in DOJ-funded programs or activities from October 1, 2007, to February 3, 2009, which was the time frame evaluated by the OCR.

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.*

As previously discussed, the DFS currently subawards DOJ funds through the JABG program. During OCR’s site visit, administrators suggested that faith-based organizations are not eligible to apply for or receive any of these federal funds because they are not local units of government. As a result, given its understanding of these funding restrictions, the DFS does not provide DOJ funds to any faith-based organizations.³ While the Department appropriately recognizes that faith-based organizations are statutorily ineligible to apply directly to OJJDP or the DFS for funding under the JABG program, Section 1806 of the Omnibus Crime Control and Safe Streets Act of 1968 permits units of local government to contract with such groups to implement appropriate JABG purpose areas. *OJJDP FY 09 Juvenile Accountability Block Grants Program*, Office of Juvenile Justice and Delinquency Prevention, at <http://ojjdp.ncjrs.gov/grants/solicitations/FY2009/JABG.pdf> (last visited Feb. 11, 2009).

The DFS also participates in OJJDP’s Title V Community Prevention Grants Program (Title V), which focuses on assisting units of local government to reduce risks and to enhance protective factors to prevent youth at risk from becoming delinquent and entering the juvenile justice system. As with the restrictions for the JABG program, faith-based organizations are statutorily ineligible to apply directly to OJJDP or the DFS for Title V funds. However, OJJDP encourages faith-based organizations to access such funds by partnering with units of local government in developing the required local delinquency prevention plan and implementing the proposed

³ In its generic RFP, which does not apply to JABG program funds, the DFS emphasizes that faith-based organizations can submit proposals for evaluation, which will be evaluated using the same criteria as those applied to applications from other, non-faith-based groups. In addition, the DFS has encouraged faith-based organizations to participate in programs funded by other federal agencies, such as the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. Specifically, the Department communicated with faith-based groups through its Faith Based Community Initiatives and Advocacy office (FBCIA) and included faith-based organizations on various distribution lists that the DFS used to disseminate information about federal funding opportunities. Last year, the DFS eliminated the FBCIA and transferred its responsibilities to the Economic Assistance Division.

prevention activities. *OJJDP FY 09 Title V Community Prevention Grants Program*, Office of Juvenile Justice and Delinquency Prevention, at <http://ojjdp.ncjrs.gov/grants/solicitations/FY2009/Title%20V.pdf> (last visited Feb. 11, 2009). In prior grant cycles, the Department was prohibited from distributing Title V funds it received because no Wyoming county was compliant with the program's requirements. Given the recent progress of several counties, however, the DFS anticipates that it will be able to release funds at some point during the summer of 2009.

II. Recommendations

The DFS already has in place a number of procedures for monitoring the civil rights compliance of its subrecipients. To strengthen the Department's monitoring efforts and its inclusion of faith-based organizations in the grant funding process, the OCR offers the following four recommendations: (1) modify the civil rights/nondiscrimination provisions in its standard grant contract; (2) conduct onsite monitoring of all subrecipients and use a federal civil rights laws compliance checklist; (3) provide training and technical assistance to subrecipients regarding their obligations to comply with federal civil rights laws; and (4) develop comprehensive complaint procedures.

A. Modify the Civil Rights/Nondiscrimination Provisions In Its Standard Grant Contract

The OCR recommends that the DFS ensure that all DOJ subrecipients agree to grant contracts that accurately reflect their federal civil rights obligations. To that end, the DFS should incorporate, at a minimum, the following language in all DOJ subrecipient contracts, regardless of the amount of federal financial assistance at issue:

It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Equal Treatment for Faith-Based Organizations).

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion,

national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the Department of Family Services (DFS).

It will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs and the DFS, if required to maintain one; otherwise, it will provide a certification to the Office for Civil Rights, Office of Justice Programs and the DFS that it has a current EEOP on file, if required to maintain one. For grantee agencies receiving less than \$25,000; or grantee agencies with less than 50 employees, regardless of the amount of the award, no EEOP is required.

Information about civil rights obligations of grantees can be found at <http://www.ojp.usdoj.gov/ocr/>.⁴

The Department also should include a provision requiring subrecipients to certify that they will provide meaningful access to their programs and activities to LEP persons. In June of 2002, the DOJ published guidance for its financial aid recipients and state subrecipients about taking reasonable steps to provide meaningful access to programs and activities for LEP persons in accordance with Title VI and the Safe Streets Act. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance).

Finally, the Department also may wish to add a sentence stating that in accordance with federal civil rights laws, the subrecipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

B. Conduct Onsite Monitoring of All Subrecipients and Use Federal Civil Rights Laws Compliance Checklist

As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the DFS should continue to ensure that the Juvenile Services Division conducts onsite monitoring of its subrecipients. Going forward, however, it should prepare a summary detailing its site visit efforts, including data fields for the date of each visit, information about whether the subrecipient is in compliance with pertinent grant requirements, deadlines for completing any compliance recommendations, and the next scheduled review. The DFS also may wish to conduct desk reviews to evaluate compliance areas that may not require onsite visits. In addition, the Department should develop and utilize a federal civil rights laws compliance checklist that evaluates the various civil rights requirements that apply to recipients

⁴ In addition, the OCR reminds the DFS that grantees receiving \$500,000 or more must acknowledge that failure to submit an acceptable EEOP, which the OCR must approve, is a violation of its Certified Assurances and may result in the suspension of funding obligation authority. *See* 28 C.F.R. § 31.202(b)(2).

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 DFS or the OCR; whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; and whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act). Additionally, the checklist should include questions that evaluate 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.

C. Provide Training and Technical Assistance to Subrecipients Regarding Their Obligations to Comply with Federal Civil Rights Laws

The DFS does not appear to provide any training or technical assistance to its subrecipients about their civil rights obligations. To ensure that subrecipients are aware of their obligations under applicable federal civil rights laws, such as to provide services to LEP individuals and to have procedures in place to receive and evaluate complaints alleging discrimination from employees and beneficiaries, the Department should provide periodic, mandatory training programs for subgrantees. The DFS should provide this training at least once during a grant cycle, whether it provides the training in person, during a teleconference, or through other means. The OCR is available to provide the DFS with technical assistance in developing civil rights training programs. In addition, the Department should encourage subrecipients to seek technical assistance from DFS staff regarding their statutory and contractual obligations.

D. Develop Comprehensive Complaint Procedures

As previously noted, the Wyoming Department of Employment, Labor Standards office provides a forum for resolving employment discrimination complaints filed by subrecipient employees. Nonetheless, the DFS has an obligation as a recipient of federal financial assistance to have in place a policy that addresses how it responds to employment and services discrimination complaints that it receives from the employees and beneficiaries of subrecipients. The DFS complaint policy should include the following elements as applied to subrecipient complaints: designating a coordinator who is responsible for processing discrimination complaints; a process for receiving, evaluating, and forwarding discrimination complaints to the appropriate investigative agency (e.g., the EEOC, the Wyoming Department of Employment, Labor Standards office, the OAG, or the OCR); providing written notice to DFS subrecipients about the complaint process; and training DFS program staff about their obligation to refer allegations of discrimination in subrecipient programs to DFS' complaint coordinator as soon as the alleged discrimination comes to their attention. The DFS should also inform subrecipients that beneficiaries of their programs have the right to file a discrimination complaint with the OCR. Information about the applicable laws, complaint forms, and OCR's investigative process is available at OCR's Web site, <http://www.ojp.usdoj.gov/ocr/crc>.

Tony Lewis, Director
Wyoming Dep't of Family Services
March 31, 2009
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III. Conclusion

We find that the DFS should implement OCR's recommendations to ensure substantial compliance with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the DFS in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible DFS official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing OCR's recommendations.**

Thank you for your cooperation and the assistance of your staff during the compliance review process. If you have any questions, please contact Mr. Zubowicz at 202.305.9012.

Sincerely,

/S/

Michael L. Alston
Director

cc: Debra Dugan-Doty, Juvenile Services Administrator
Wyoming Department of Family Services