



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

May 4, 2009

Martin Magnusson, Commissioner
Maine Department of Corrections
111 State House Station
Augusta, Maine 04333-0111

Re: Maine Department of Corrections (08-OCR-0391)

Dear Commissioner Magnusson:

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 Maine Department of Corrections (DOC), in accordance with federal regulation 28 C.F.R. ' 42.206. The focus of the review was on the DOC's compliance with applicable federal civil rights laws along with the DOC's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the DOC'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].

On October 9, 2008, the OCR conducted an onsite visit to the DOC's offices in Augusta, Maine, to interview DOC administrators and to conduct a training program for DOC administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank DOC staff, especially Juvenile Justice Specialist Kathryn McGloin, for assisting OCR attorney Shelley Langguth during her onsite visit.

Based on the DOC's responses to our data request and the information that the OCR gathered during our onsite visit, the OCR sent the DOC a draft Compliance Review Report on March 17, 2009. In an e-mail dated April 27, 2009, Ms. McGloin told the OCR that the DOC does not have any factual corrections to the draft Compliance Review Report.

In regard to the limited scope of our review, the OCR concludes that the DOC has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about whether the DOC has adequate complaint procedures in place to respond to discrimination complaints from DOC beneficiaries and employees and from beneficiaries and employees of subrecipients, and whether it is sufficiently training and educating its subrecipients

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on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the DOC's methods for monitoring the civil rights compliance of subrecipients.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the DOC'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. The Report then focuses on the DOC's implementation of the 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 the DOC's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the DOC 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

The majority of the DOJ subawards that the DOC administers involve funding from the OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP); however, the DOC also administers several grants from the OJP's Bureau of Justice Assistance (BJA), and Bureau of Justice Statistics (BJS). Before the DOC releases DOJ funds, subrecipients must sign the State of Maine's standard Agreement to Purchase Services (Agreement), contract BP54. During the onsite visit, a DOC grant administrator explained that all State of Maine agencies utilize this Agreement when making subawards and that agencies have the discretion to insert the agency's own particular terms and conditions in Rider D of this Agreement.

The standard Rider B of this Agreement contains a section (section 10) entitled "Equal Employment Opportunity." This section states in part that the subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation. The section requires the subrecipient to include a nondiscrimination statement in all solicitations or advertisements for employment, in any contract or subcontract, in labor or collective bargaining

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agreements, and in a public posting conspicuous to employees and applicants for employment. This section further states that the subrecipient shall comply with the Americans with Disabilities Act (ADA) in employment and the provision of services and shall notify the DOC's Equal Employment Opportunity Coordinator of any lawsuit or of any complaint brought to an external regulatory body such as the Maine Human Rights Commission, the Equal Employment Opportunity Commission, or the Office of Civil Rights,¹ alleging discrimination by the subrecipient. No other sections of the Agreement reference civil rights requirements.

During the OCR's onsite visit, the DOC provided the OCR with the June 2006 Request for Proposals (RFP) for OJJDP delinquency prevention programs; this RFP contained a statement that "[a]ll recipients of federal grant funds are required to comply with the nondiscrimination requirements contained in various federal laws." The RFP also contained a section entitled "Services to Limited English Proficient (LEP) Persons" which discussed the requirement for subrecipients to take reasonable steps to ensure that LEP persons have meaningful access to their programs and activities. The RFP referenced the DOJ guidance document on this issue posted at www.lep.gov and provided the contact information for the OCR.

The DOC does not require DOJ subrecipients to submit an Equal Employment Opportunity Plan (EEO) or EEO Certification Form, as required, to the OCR or to the DOC.

2. Onsite Visits and Other Monitoring Methods

Based on information gathered during and subsequent to the OCR's onsite visit, the OCR understands that there are four DOC grant administrators² who administer DOJ grant programs. The grant administrator responsible for the majority of the OJJDP grant programs works with a DOC compliance monitor to monitor OJJDP subrecipients. The grant administrator and compliance monitor conduct three onsite visits of each subrecipient during a grant award period. The grant administrator provided the OCR with the monitoring checklist that they utilize; this checklist does not address civil rights requirements.

The grant administrator who administers an OJJDP mentoring grant conducts onsite visits of these subrecipients at least quarterly during the grant award period. The grant administrator also monitors the subrecipients by requiring periodic progress reports and by conducting several team meetings each year with representatives of the subrecipients. These onsite monitoring visits and progress reports do not reference civil rights requirements. The grant administrator for several BJA grants and an OJJDP grant conducts monthly onsite visits of subrecipients and also requires quarterly progress reports; these onsite visits and progress reports also do not address compliance with civil rights requirements. The grant administrator for a BJS grant for statistical analysis

¹ The OCR is presuming that the "Office of Civil Rights" is referring to the OCR.

² One of these grant administrators is an employee of another state agency who is a "loaned executive" to the DOC.

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does not conduct onsite visits of the subrecipient and monitors solely through the submission of progress reports, which do not address civil rights issues.

3. Training and Technical Assistance

In its data response, the DOC said that it has not developed any training programs for its subrecipients at this time. During the OCR's onsite visit, a DOC grant administrator confirmed that the DOC does not provide any training for its DOJ subrecipients on grant requirements, including civil rights requirements.

4. Complaint Procedures

During the OCR's onsite visit, the DOC provided the OCR with the following written policies or procedures addressing various forms of employment discrimination: DOC Policy Number 3.8, Policy Prohibiting Employee Harassment; DOC Policy Number 3.9, Equal Employment Opportunity; DOC Policy Number 3.10, Reasonable Accommodation and Reassignment; and Maine Department of Labor Policy Number 12-168, Chapter 50, Non-Discrimination Policy and Grievance Procedure (addressing disability discrimination). These policies prohibit discrimination or harassment on the basis of race, color, religion, sex, national origin, ancestry, age, disability, sexual orientation, marital status, or whistleblower status. However, the general Equal Employment Opportunity policy, Policy Number 3.9, does not set forth the complaint procedures for an employee wishing to file a complaint of discrimination.

The DOC also provided a copy of DOC Policy Number 29.1, Client Grievance Rights, which establishes a process for reviewing and resolving grievances of clients (persons in the custody of or under the supervision of the DOC). While the policy does not specifically reference grievances relating to allegations of discrimination, it appears that DOC clients may be able to file discrimination complaints under this grievance policy.

The DOC does not have any written procedures in place for processing discrimination complaints by employees or beneficiaries of subrecipients. As discussed in Section I.A.1 of this Compliance Review Report, Rider B of the Agreement governing subawards requires subrecipients to notify the DOC's Equal Employment Opportunity Coordinator of any discrimination lawsuit or complaint against the subrecipient brought to an external regulatory body such as the Maine Human Rights Commission (MHRC), the Equal Employment Opportunity Commission, or the Office of Civil Rights³. Based on the OCR's research, it appears that the MHRC has jurisdiction over complaints alleging discrimination in employment, housing, or access to public accommodations on the basis of race, color, sex, sexual orientation, disability, religion, or national origin, along with complaints alleging employment discrimination on the basis of age.

³ Again, the OCR is presuming that the "Office of Civil Rights" is referring to our office.

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Accordingly, it appears that employees of DOC subrecipients (along with employees of the DOC) may file discrimination complaints with the MHRC. It further appears that beneficiaries of subrecipients may be able to file discrimination complaints with the MHRC as well, depending on whether the program or activity of the subrecipient qualifies as a place of public accommodation.

B. Monitoring Compliance with Equal Treatment Regulations

The purpose of the Equal Treatment Regulations is to ensure that A[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 DOC's equitable treatment of faith-based organizations, the Compliance Review focuses on two issues: (1) the review process for making awards to applicant faith-based organizations and (2) 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

During and subsequent to the OCR's onsite visit, DOC grant administrators explained that the DOC administers various OJJDP grant awards, several BJA grant awards, and a BJS grant award. The DOC posts RFPs for competitive grant programs on the State of Maine Division of Purchases website. For all but one of the competitive OJJDP grant awards, the DOC uses a Juvenile Justice Advisory Group to review applications and make funding decisions; the members of this external advisory group are appointed by the Governor and include representatives of state and local agencies along with community members, including juveniles. For an OJJDP Juvenile Sex Offender Treatment Program Development and Capacity Building Grant and several BJA awards, the DOC utilizes a committee consisting of DOC employees to review applications and recommend awards. The DOC grant administrators explained that the OJJDP Juvenile Mentoring Grant and the BJS State Justice Statistics Program for Statistical Analysis Centers grant are targeted to particular recipients. The OCR understands that the State of Maine Division of Purchases must approve all funding decisions.

The DOC stated in its data response that one faith-based organization applied for a DOJ subaward in Fiscal Year 2006, Lots to Garden/Sisters of Charity Health System, but that the faith-based organization did not receive OJJDP funding because it could not provide any proof of nonprofit status. In its data response and during the onsite visit, the DOC said that no faith-based organizations have applied for DOJ funding since Fiscal Year 2006.

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According to the DOC grant administrators, the DOC does not require any of its nonprofit applicants, including faith-based organizations, to have federal tax exempt status under 26 U.S.C. § 501(c)(3). The 2006 RFP for delinquency prevention programs authorized by the Juvenile Justice and Delinquency Prevention Act (JJDP) states that proof of nonprofit status could include a copy of a State of Maine Articles of Incorporation document, a State of Maine sales tax exemption certificate, or a document demonstrating tax exempt status under 26 U.S.C. § 501(c)(3).⁴

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

The DOC said in its data response that it does not have a procedure to ensure that faith-based organizations are in compliance with the Equal Treatment Regulations but grant administrators would see evidence of compliance or noncompliance during an onsite visit. The DOC does not currently reference the Equal Treatment Regulations in its subgrant Agreement, and it did not reference these regulations in the 2006 RFP for OJJDP delinquency prevention grants that the DOC provided to the OCR. In its data response, the DOC said that it does not provide any training to DOC employees or peer reviewers on the Equal Treatment Regulations.

I. Recommendations

The DOC has a few procedures in place for monitoring the civil rights compliance of its subrecipients. To strengthen the DOC's monitoring efforts, the OCR offers the following recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints; (2) add a citation referring to DOJ's Equal Treatment Regulations to all subgrant Agreements; (3) include information on all of the applicable federal civil rights laws in its subgrant Agreements; (4) monitor for compliance with civil rights requirements during onsite monitoring visits; (5) provide training to DOJ subrecipients on the civil rights laws that the OCR enforces; and (6) provide subrecipients with an EEOP Certification Form to complete and require subrecipients to submit an EEOP Certification Form or an EEOP (as required) to the OCR.

A. Develop Comprehensive Complaint Procedures

While the DOC has written policies in place prohibiting discrimination in the workplace, its Equal Employment Opportunity policy, Policy Number 3.9, does not set forth procedures for

⁴ Please be aware that the JJDP, Pub. L. 93-415, 42 U.S.C. § 5601 *et seq.*, requires nonprofit organizations funded under that statute to obtain tax exempt status under 26 U.S.C. § 501(c)(3). The OCR understands that many of the DOC's DOJ grants are authorized under the JJDP. The OCR recommends that the DOC contact its relevant grant advisor at OJP to discuss this requirement.

receiving and investigating discrimination complaints from employees. Additionally, the DOC Policy Number 29.1, Client Grievance Rights, does not explicitly cover complaints of discrimination from DOC beneficiaries, and the DOC does not have any procedures in place for addressing discrimination complaints from employees or beneficiaries of DOC subrecipients. Accordingly, the DOC should adopt a policy for addressing discrimination complaints that includes at a minimum the following elements:

- 1) designating a coordinator who is responsible for overseeing the complaint process;⁵
- 2) notifying employees, beneficiaries, and subrecipients of prohibited discrimination in funded programs and activities and the DOC's policy and procedures for handling discrimination complaints;⁶
- 3) establishing written procedures for receiving discrimination complaints from the DOC's employees and beneficiaries and from subrecipient employees and beneficiaries;
- 4) referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the Maine Human Rights Commission or referring the complaint to the OCR, which will review the complaint and work with the DOC to resolve the complaint;
- 5) notifying the OCR in writing when the DOC refers a discrimination complaint to another agency or when the DOC investigates the complaint internally; and
- 6) training DOC program staff on their responsibility to refer discrimination complaints, or potential discrimination issues, to the DOC'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. Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the DOC.

- B. Ensure that a Reference to the Equal Treatment Regulations is in the DOC's Standard Agreement

The DOC should ensure that its standard subgrant Agreement contains a reference to the DOJ's Equal Treatment Regulations, 28 C.F.R. pt. 38, perhaps by referencing the regulations in Rider D

⁵ See 28 C.F.R. § 31.202(a)(1)

⁶ See *id.* § 31.202(b)(3)

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to the Agreement.⁷ The DOC may also wish to include a discussion of the Equal Treatment Regulations in its RFPs. Subrecipients that receive funding from DOJ components need to be aware of the obligation to comply with these regulations.

C. Include Reference to Civil Rights/Nondiscrimination Provisions in the DOC's Standard Subgrant Agreement

The DOC should include reference to all of the federal civil rights laws that the OCR enforces and that subrecipients are required to comply with in its standard subgrant Agreement. For your review, we are enclosing a copy of the OJP's Standard Assurances that the OJP requires subrecipients to sign and agree to abide by; paragraph 6 of this document lists the civil rights laws that subrecipients are required to follow. Additionally, the DOC should include reference to the DOJ's Equal Treatment Regulations at 28 C.F.R. pt. 38, as discussed above. The DOC may also 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.

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

The DOC is taking steps to ensure that DOC subrecipients are complying with grant requirements by conducting periodic onsite monitoring visits.⁸ However, these onsite monitoring visits do not currently address federal civil rights laws. Pursuant to the DOC's responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the DOC should add a civil rights component to its onsite monitoring visits. The DOC may wish to develop a Federal Civil Rights Laws Compliance Checklist for this purpose. The DOC 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 DOC should ask questions on whether the subrecipient is complying with DOJ's Equal Treatment Regulations,

⁷ As the OCR discussed in Section I.A.1 of this Compliance Review Report, the OCR understands that the DOC has the discretion to incorporate terms and conditions specific to DOC grant programs in Rider D of the standard Agreement.

⁸ The only DOJ subrecipient that the DOC does not appear to subject to onsite monitoring is a subrecipient of a BJS grant for statistical analysis.

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including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion.

E. Provide Comprehensive Training on Federal Civil Rights Laws

The DOC does not currently provide any training for its subrecipients about their civil rights obligations. To ensure that subrecipients are aware of 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, sex, or disability, the DOC should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The DOC should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the DOC provides the training in person, during a teleconference, or through other means. The OCR is available to provide the DOC with technical assistance in developing civil rights training programs.

F. Provide Subrecipients with an EEOP Certification Form and Require Subrecipients to Submit the EEOP Certification Form or an EEOP to the OCR

The DOJ's EEOP regulations found at 28 C.F.R. §§ 42.301-.308 require some funding recipients (both direct recipients and subrecipients) to submit an EEOP to the OCR, depending on the nature of the subrecipient and the amount of funding. Pursuant to these regulations, certain recipients are exempt from the EEOP requirements; other recipients must prepare, maintain and implement an EEOP, but they do not need to submit the EEOP to the OCR. Recipients that are claiming a partial or complete exemption from the EEOP requirements must complete an EEOP Certification Form and submit it to the OCR for review.

Currently, the DOC does not provide its subrecipients with an EEOP Certification Form to complete and submit to the OCR if they are claiming a partial or complete exemption from the EEOP requirements, and it does not appear that the DOC is monitoring whether covered subrecipients are submitting an EEOP to the OCR. The OCR is enclosing a copy of the OCR's EEOP Certification Form that we require recipients to complete; this form contains detailed information on which recipients are required to prepare and keep on file an EEOP, which recipients are required to submit an EEOP to the OCR, and which recipients are completely exempt from the EEOP requirements. The DOC should provide this Certification Form to all subrecipients or should prepare a similar form containing all of the relevant information that subrecipients must complete and submit to the OCR if they are not submitting an EEOP to the OCR. The DOC may wish to require subrecipients to submit a copy of their EEOP or EEOP Certification Form to the DOC as well so that the DOC can ensure that subrecipients are complying with the EEOP requirements.

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Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the DOC has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the DOC in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible DOC official contact Attorney Advisor Shelley Langguth 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. Langguth at (202) 305-2353.

Sincerely,
/s/

Michael L. Alston
Director

Enclosures

cc: Kathryn McGloin
Juvenile Justice Specialist