



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

November 20, 2009

Gene Christian
Executive Director
Office of Juvenile Affairs
P.O. Box 268812
Oklahoma City, OK 73126-8812

Re: Oklahoma Office of Juvenile Affairs (Docket No. 09-OCR-0077)

Dear Director Christian:

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 Oklahoma Office of Juvenile Affairs (OJA), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the OJA's compliance with applicable federal civil rights laws along with its monitoring procedures for ensuring that subrecipients are complying with these laws. Of particular interest to the OCR was the OJA's implementation and monitoring of the DOJ's regulation, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations].

On March 18-19, 2009, the OCR visited the OJA located in Oklahoma City, Oklahoma to interview OJA administrators, and to conduct a training program for its administrators and program staff on the federal civil rights laws the OCR enforces. On September 3, 2009, the OCR sent you a draft copy of our Compliance Review Report (Report), and requested that you review the Report and notify us within thirty (30) days of any factual inaccuracies that you may have identified. Since we have not heard from you within that timeframe, we are issuing the draft Report as final as this time. The OCR would like to thank OJA staff, especially Administrator Anna Kelly, for assisting OCR Attorney [REDACTED] during her onsite visit.

Based on the OJA's response to our data request and the information the OCR gathered during the onsite visit, we conclude, in regard to the limited scope of our review, the OJA has taken some steps to comply with the federal civil rights laws the OCR enforces. Nonetheless, we have reservations about whether the OJA has adequate complaint procedures in place to respond to

discrimination complaints from beneficiaries and employees of subrecipients, whether it is sufficiently training and educating its subrecipients on applicable federal civil rights laws, and monitoring subrecipients for compliance with these laws. The following Report includes recommendations for improving the OJA's methods for training subrecipients on applicable federal civil rights laws, monitoring the civil rights compliance of subrecipients and developing complaint procedures to address discrimination complaints received from employees or beneficiaries of subrecipients.

Compliance Review Report: Overview and Recommendations

I. Overview

This Report first examines the OJA'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 OJA's implementation of the DOJ's Equal Treatment Regulations (ETR).

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 OJA's general efforts to ensure subrecipients' compliance with civil rights obligations, the OCR examined how the OJA 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

At the time of our visit, the OJA was responsible for administering seven different grant programs from the DOJ, Office of Juvenile Justice and Delinquency Prevention (OJJDP).¹

Prior to the release of DOJ funds, the OJA requires subrecipients to enter into an agreement for services with the OJA. The agreement, or Contract as it is referred to by the OJA, contains two paragraphs which require the subrecipient to certify its compliance with specific federal civil rights laws. The first paragraph addressing compliance with civil rights laws is located on page

¹ At the time of our visit, the OJA was managing the following OJJDP grant awards: 2008-JB-FX-0042, 2008-JF-FX-0056, 2008JP-FX-0054, 2007-JB-FX-0042, 2007-JF-FX-0028, 2007-JP-FX0036, and 2006-JB-FX-0021.

4, paragraph G, of the Contract, and is entitled, "Equal Opportunity and Discrimination."
Paragraph G reads as follows:

Contractor shall at all times comply with the Civil Rights Act of 1964, 42 U.S.C. §2000 *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*; the Age Discrimination in Employment Act, 42 U.S.C. § 6101 *et seq.* and all amendments to these acts, and all requirements imposed by the regulations issued pursuant to these acts, including, but not limited to, providing equal opportunity both to those seeking employment and those seeking services without regard to race, color, religion, sex, national origin, age or handicap.

The second portion of the Contract addressing civil rights compliance is located on page 8, paragraphs B and B (1) which are entitled, "Certifications by Contractor" and "Civil Rights" respectively. Paragraph B and B (1) read as follows:

B. Certifications by Contractor:

Contractor expressly agrees to be solely responsible to insure that the use of monies received under this agreement complies with all federal, state and local statutes, regulations, and other legal authority, all as modified from time to time, that affect the use of said monies. Contractor thus recognizes that it is responsible for assuring financial and programmatic compliance by its subcontractors.

Contractor specifically certifies and assures that it will comply with applicable Terms of the following statutes, regulations and executive orders:

1. Civil Rights:

- a. Title XVIII, Section 815(c) of the Justice System Improvement Act (JSIA), as amended;
- b. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*, and subsequent amendment thereto;²
- c. Section 3789d(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended;
- d. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 *et seq.*;
- e. The Age Discrimination Act of 1975, 42 U.S.C. §1601 *et seq.*, as amended, the Americans with Disabilities Act of 1990, 42 U.S.C. §12101

² Please note the correct citation is Title VI, as opposed to Title VII, of the Civil Rights Act of 1964.

- et seq.*, all amendments to, and all requirements by the regulations issued pursuant to this act, including providing equal opportunity to those seeking services without regard to race, color, religion, sex, national origin, or handicap;
- f. Title 15 U.S.C. § 631 and Executive Order 12608, as amended, requiring recipients of federal financial assistance to take appropriate affirmative action in support of women's business enterprises; and
 - g. Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*

Although the legal clauses contained within the Contract cite to several applicable civil rights laws for which subrecipients must comply, there are several instances in which applicable civil rights laws and requirements are not referenced. Specifically, neither paragraph containing legal clauses in the Contract contains a reference to DOJ's Equal Treatment Regulation. The paragraphs also do not address the applicable Equal Employment Opportunity Plan (EEOP) requirements governing subrecipients pursuant to 28 C.F.R. §§ 42.301-.308.³ The EEOP requirement states a subrecipient must either submit an EEOP to the OCR for review or maintain and EEOP on file. Furthermore, the OJA Contract does not address the requirement that subrecipients should forward 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, sex or disability pursuant to 28 C.F.R. § 31.202 (b)(5) and 28 C.F.R. § 42.204. Finally, the Contract contains incorrect citations to a few applicable civil rights laws which will be addressed in Section I. (C) of this Report.

2. Onsite Visits And Other Monitoring Methods

In response to the OCR's data request and during onsite discussions, the OJA stated it monitors subrecipients for compliance through the following four processes: (1) pre-bid training (which is not mandatory) is provided to assist prospective subrecipients in completing the grant application; (2) post-award training is provided for all new subrecipients on the programmatic and financial requirements of the award; (3) quarterly progress reports that are completed by OJA program managers. The progress report contains one question in which the program manager inquires as to whether any complaints of discrimination have been filed with the subrecipient; and (4) annual monitoring conducted by program managers of subrecipients which focuses on programmatic requirements associated with the grant award.

³ Please note that what particular action a subgrantee must take under the EEOP requirement is dependant on a number of factors to include the level of funding and what type of entity the subgrantee is considered. Please consult the DOJ regulations which address the EEOP requirement to ensure subgrantee compliance. Information about the EEOP requirement may also be found at the OCR's website which is www.ojp.usdoj.gov/ocr or by contacting Ms. Deborah Cooper, OCR's Equal Opportunity Assistant, at 202-616-3208.

With the exception of the single question contained in the Quarterly Progress Report, none of the four methods utilized by the OJA specifically monitor subrecipients for compliance with applicable civil rights laws and obligations that attach to recipients of DOJ funding.

3. Training And Technical Assistance

As previously mentioned, the OJA stated that it offers two different forms of training: pre-bid training to assist prospective subrecipients in completing the grant application, and mandatory post-award training which focuses on the administrative, programmatic and financial requirements of the grant award. During the OCR's onsite visit, the OJA confirmed that neither the pre-bid nor post-award training address the applicable federal civil rights requirements that attach to subrecipients upon receiving financial assistance from the DOJ.

4. Complaint Procedures

With the exception of a complaint filing process for juveniles which is discussed below, the OJA does not have any formal written procedures in place to address or process either employment or services discrimination complaints received from subrecipient employees or beneficiaries. In its data response, the OJA provided a copy of an internal OJA Memorandum dated July 16, 2007, prepared by Administrator Mike Heath, Office of Public Integrity, and addressed to Ms. Kelly, Federal Grants Supervisor. That memorandum states:

[T]he OJA does not investigate complaints of discrimination by employees or beneficiaries of its contractors.⁴ Contracted employees have the ability to use their own [agencies'] policies and procedures regarding discrimination complaints, as well as filing complaints with the U.S. Equal Opportunity Commission and/or the Oklahoma State Human Rights Commission. Juvenile beneficiaries may address discrimination complaints by utilizing the contractors' established grievance policies and procedures and/or filing complaints with the Oklahoma Department of Human Services', Office of Client Advocacy or with the Oklahoma Commission on Children and Youth.

As for juveniles, the OJA provided the OCR with a document entitled, "FY 2008 Affirmative Action Plan." Upon review of this document, the OCR observed a paragraph entitled, "Responsibilities of the Office of the Advocate General" which states that the Office of the Advocate General will receive and coordinate complaints of discrimination from juveniles held in the custody of the OJA. No further information is provided about the process for receiving or coordinating complaints of discrimination from juveniles.

⁴ Per the OJA, the term contractor refers to an OJA subrecipient.

At the time of our visit and in its Data Request response, the OJA staff stated they were unaware of any employee or beneficiary of a subrecipient ever filing a discrimination complaint against a subrecipient.

B. Monitoring Compliance With The 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 OJA's treatment of faith-based organizations, this 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

For those OJJDP grants that are competitively bid, the OJA solicits funding applications through requests for proposals (RFP). The Oklahoma Department of Central Services (DCS) manages the RFP process on behalf of all state agencies offering grant opportunities to include the OJA. The DCS provides public notice of the upcoming funding opportunities to prospective subgrantees in a variety of ways. Specifically, the DCS publicly announces upcoming award opportunities on its website as well as posting notice in the local newspaper. A copy of the grant announcement is also mailed to all former subgrantees on file with the OJA and prospective subgrantees that have registered with the DCS to receive notification of upcoming grant award opportunities.

Upon receipt of an application for funding from a prospective subgrantee, the DCS will forward the application to the OJA. The OJA staff then review the application to ensure it satisfies all the requirements of the award announcement. Once the OJA determines that an application is complete, it is then forwarded to the State Advisory Group (SAG) on Juvenile Justice and Delinquency Prevention for final review and selection.⁵ The SAG uses an objective rating system which was developed by the DOJ's, OJJDP, to ensure fairness to all applicant organizations including faith-based entities. Using the rating system to evaluate the application for funding, the SAG assigns each applicant a score of up to 100 points. Based on each applicant's score, the SAG compiles a final ranking of all applicants, and then makes final

⁵ Members of the SAG are appointed by the Oklahoma Office of the Governor and serve at the Governor's discretion. At the time of our visit, the SAG was comprised of sixteen members and consists of community group representatives, state agency representatives such as the head of the sheriff's association, community members and youth under the age of 24.

recommendations for funding that are presented to the Oklahoma Board of Juvenile Affairs (BJA) for final approval.

In its Data Request response, the OJA stated that the following two faith-based organizations applied for, and received, funding in Fiscal Years 2006 and 2007: Grace Cottage and the Lincoln Teen Center. The grant award period for both programs ended in June 2009. Additionally, the OJA stated that it does not require any of its nonprofit applicants, including faith-based organizations, to have federal tax-exempt status.⁶

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

The OJA also stated during the OCR's onsite visit that it does not currently have any procedures in place to ensure that prospective subrecipient faith-based organizations are complying with applicable civil rights laws.

As discussed in Section I.A.1. of this Report, while the OJA conducts annual onsite monitoring visits of selected subrecipients and inquires generally as to whether a complaint of discrimination has been filed, the OJA does not specifically address a faith-based organizations' compliance with the Equal Treatment Regulations.

I. Recommendations

The OJA currently has some procedures in place for monitoring the civil rights compliance of its subrecipients. To strengthen the monitoring efforts of the OJA, we offer the following six 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 the Contract, grant application guidelines and notice of award documents; (3) include information on all applicable federal civil rights laws in the Contract, grant award application and notice of award Documents; (4) monitor subrecipients for compliance with federal civil rights laws during annual onsite monitoring visits; and (5) provide training to subrecipients on their obligations to comply with federal civil rights laws as a recipient of DOJ funding.

A. Develop Comprehensive Policy For Addressing Discrimination Complaints

⁶ Please note that the JJDPA, 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 all of the OJA grants from the DOJ are authorized under the JJDPA. The OCR recommends the OJA contact its named grant advisor at the DOJ's, Office of Justice Programs to discuss this requirement

The OJA does not explicitly have any written procedures in place which address how to process complaints of discrimination from OJA beneficiaries or for addressing discrimination complaints from employees or beneficiaries of OJA subrecipients. Accordingly, the OJA should adopt a policy for addressing discrimination complaints that includes at a minimum the following elements:

- 1) designate a coordinator who is responsible for overseeing the complaint process;⁷
- 2) notify employees of the OJA, beneficiaries, and subrecipients of prohibited discrimination in funded programs and activities and the OJA policy and procedures for handling discrimination complaints;⁸
- 3) establish written procedures for receiving discrimination complaints from the OJA beneficiaries, and from subrecipient employees and beneficiaries;
- 4) refer each complaint to the appropriate agency for investigation and resolution, such as the EEOC; or referring the complaint to the OCR, which will review the complaint and work with the OJA to resolve the complaint;
- 5) notify the OCR in writing when the OJA refers a discrimination complaint to another agency or when the OJA investigates the complaint internally; and
- 6) train OJA program staff on their responsibility to refer discrimination complaints, or potential discrimination issues, to the OJA 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 may be found 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 OJA. To assist the OJA in this endeavor, please find enclosed a copy of sample complaint procedures prepared by the OCR for the OJA's review and reference.

B. Reference Equal Treatment Regulation In OJA Contract, Grant Award Application and Notice of Award Documents

The OJA should be sure to include a reference to the DOJ's Equal Treatment Regulations, 28 C.F.R. pt 38, in its award Contract, grant application and notice of award documents that may

⁷ See 28 C.F.R. § 31.202 (a)(1)

⁸ *Id.* at 31.202 (b)(3)

reference any prospective faith-based organizations. Subrecipients receiving funding from DOJ components need to be aware of the obligation to comply with these regulations.

C. Reference Civil Rights/Nondiscrimination Provisions In OJA Award Contract

The OJA should include a full and accurate reference to all of the federal civil rights laws the OCR enforces and that subrecipients are required to comply with the documents noted in Section I.A.1. of this Report, and which contain the assurance and condition that subgrantees must sign when applying for, and receiving federal grant awards. The OJA may also wish to include these laws in the guidelines for particular grant applications. For your review, we are enclosing a copy of the Standard Assurances that the OJP requires subrecipients to sign and agree to abide by; paragraph 6 of this document lists the full citations to civil rights laws that subrecipients are required to follow. We recommend the OJA review and where necessary, edit, all of the legal citations currently referenced to reflect the correct legal citation noted in OJP's Standard Assurances. Additionally, the OJA should include reference to the DOJ's Equal Treatment Regulations at 28 C.F.R. pt 38, as discussed above.

The OJA also should include a provision requiring subrecipients to certify that they will provide meaningful access to their programs and activities to those persons who may be limited English proficient (LEP). In June of 2002, the DOJ issued guidance for its funding recipients and state subrecipients which addressed taking reasonable steps to provide meaningful access to funded programs and activities pursuant to 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). We also encourage you to visit www.lep.gov for additional information about how to provide meaningful access to your federally funded programs to LEP persons.

Finally, the OJA 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 Subrecipients Compliance With Federal Civil Rights Laws During Onsite Monitoring Visits

The OJA is taking steps to ensure DOJ subrecipients comply with programmatic and financial requirements of their grant awards by conducting annual onsite monitoring visits. However, the monitoring visits do not currently address applicable federal civil rights laws and requirements that attach to recipients of federal funding. Pursuant to its responsibility to monitor the compliance of subrecipients with these laws, the OJA should broaden the scope of the Quarterly Progress Report utilized by program managers during the onsite monitoring visit. Specifically,

the OJA should evaluate its subrecipients for compliance with all civil rights laws and requirements that are binding on recipients of federal funding (e.g., 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). Additionally, the Quarterly Progress Report should include questions about whether the subrecipient is complying with applicable federal civil rights requirement and laws to include the DOJ's Equal Treatment Regulations and its prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion.

To assist the OJA in strengthening its onsite monitoring procedures, please find enclosed a sample monitoring checklist which was developed by the OCR and addresses the applicable federal civil rights laws and requirements that an SAA should monitor its subrecipients for compliance. The OJA can incorporate this checklist into its programmatic monitoring instrument or develop its own version of a civil rights checklist.

E. Train Subrecipients On Obligations To Comply With Federal Civil Rights Laws

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

F. Inform Subrecipients About EEOP Requirements and EEOP Certification Form

As discussed in Section I.A.1 of this Report, the OJA does not inform subrecipients about the EEOP requirements under 28 C.F.R. §§ 42.301-.308. As a result, the subrecipient does not have sufficient information to determine whether it is required to prepare and/or submit an EEOP to the OCR or simply complete the EEOP Certification Form, as required by the OCR, attesting it does not have to satisfy this requirement. Enclosed please find a copy of the OCR's EEOP Certification Form which funding recipients must complete; this form contains detailed information on which funding recipients are required to prepare and keep on file an EEOP, are required to submit an EEOP to the OCR, or are exempt from the EEOP requirement. The OJA should utilize this form or should prepare a similar form containing all of the relevant information that applicant subrecipients must complete and submit to the OCR and the OJA if they are not required to submit an EEOP.

Conclusion

Gene Christian, Executive Coordinator
Oklahoma Office of Juvenile Affairs
November 20, 2009
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The OJA should implement the recommendations set forth in this report to ensure substantial compliance with the federal civil rights laws the OCR enforces. On request, the OCR is available to provide technical assistance to the OJA in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we kindly request a responsible OJA official contact Attorney [REDACTED] 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 [REDACTED] electronically at [REDACTED] or by telephone at [REDACTED]

Sincerely,

Michael L. Alston
Director

Enclosures

cc: Anna Kelly, Administrator
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