



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

CERTIFIED-RETURN RECEIPT REQUESTED

August 15, 2012

Linda Rosenberg
Executive Director
Pennsylvania Commission on Crime and Delinquency
P. O. Box 1160
Harrisburg, PA 17108-1167

Re: Compliance Review of the Pennsylvania Commission on Crime and Delinquency
(11-OCR-0355) - Final

Dear Ms. Rosenberg:

On September 30, 2011, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) initiated the above-referenced Compliance Review of the Pennsylvania Commission on Crime and Delinquency (PCCD) in accordance with 28 C.F.R. § 42.206. The stated purpose of the Compliance Review was to examine not only the PCCD's compliance with the applicable federal civil rights laws but also the PCCD's monitoring process to ensure that its subrecipients comply with the same laws. On July 30, 2012, I sent to you for comment a draft report on the Compliance Review. Receiving no corrections from the PCCD on the draft report, I write to present this final Compliance Review Report in which the OCR finds that the PCCD is in substantial compliance with the federal civil rights laws that the OCR enforces, as long as the PCCD follows the Report's recommendations.

Compliance Review Report

A. Previous Compliance Review

The current Compliance Review of the PCCD follows an earlier compliance review of the PCCD that the OCR conducted in 2006-07. *See* Pa. Comm'n on Crime and Delinq., No. 06-OCR-0205, Office for Civ. Rts. Compl. Rev. Rep. (U.S. Dep't of Justice Jan. 30, 2007) (on file with the OCR). As a result of the earlier compliance review, the PCCD agreed to follow the OCR's

recommendations by providing information on the applicable civil rights laws to employees and subrecipients; amending the standard assurances for subrecipients to add a citation to the DOJ regulation, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulation]; using a civil rights compliance checklist to monitor subrecipients; modifying the Standard Subgrant Conditions on sexual harassment and retaliation; and working with PCCD program offices to provide training to staff and subrecipients on compliance with federal civil rights laws. Letter from Michael L. Kane, Executive Director, PCCD, to Michael L. Alston, Director, OCR (Feb. 27, 2007) (on file with the OCR).

B. Implementation of Compliance Practices

The PCCD's response to the OCR's September 30, 2011, Data Request provides evidence of the PCCD's continued implementation of the recommendations of the earlier compliance review.

1. Notifying Subrecipients of the Application of the Equal Treatment Regulation

The PCCD's Federal Funding Announcement Agreement (FFAA), which the PCCD includes in every federally funded grant agreement, contains language closely tracking the Equal Treatment Regulation, informing subrecipients of their obligation not to use federal funds for inherently religious activities.

2. Implementing Complaint Procedures

The FFAA also informs subrecipients that as a condition for receiving financial assistance from the Justice Department, they must respond to discrimination complaints not only from employees but also beneficiaries. The FFAA advises subrecipients that information on the applicable civil rights laws is available on the OCR's website and that an aggrieved person may file a complaint with the OCR by downloading the appropriate forms from the OCR's website, completing them, and then returning them to the OCR for review. The FFAA provides a copy of the OCR's mailing address and advises subrecipients to send a copy of the complaint to the PCCD.

The OCR commends the PCCD for implementing a grievance process that responds to complaints alleging discrimination in the delivery of services or benefits and then notifying subrecipients about the process. The PCCD, however, did not comment on whether the subrecipients actually provide notice about the availability of the complaint procedures to beneficiaries or potential beneficiaries.

3. Instructing Subrecipients on Compliance with the Equal Employment Opportunity Program (EEOP) Requirements

The FFAA accurately advises subrecipients about the obligation to create, maintain on file, or submit to the OCR for review an Equal Employment Opportunity Plan (EEOP) Short Form. The FFAA also contains accurate information on the obligation that subrecipients may have to complete and send to the OCR a certification form claiming a complete or partial exemption from the EEOP requirements.

The fax number in the FFAA for submitting an EEOP Short Form to the OCR is, however, outdated. The PCCD should delete the fax number, and in addition to advising subrecipients that they may send the EEOP Short Form to OCR's mailing address, the PCCD should inform subrecipients that they may also send an electronically scanned version of the EEOP Short Form to the OCR by means of the following e-mail address:

EEOSubmissions@usdoj.gov.

4. Notifying Subrecipients of the Applicable Federal Civil Rights Laws

For the most part, through the subaward document Additional Terms for Projects Using Federal Funds (Additional Terms), the PCCD provides accurate notice to subrecipients of the federal civil rights laws that apply to them as a result of accepting financial assistance from the DOJ.

There are, however, a few corrections that would make the notice more accurate. In the introductory paragraph of the Additional Terms, prior to paragraph thirty-four, the PCCD should add age to the list of federally protected classes. *See* 42 U.S.C. § 6102. In paragraph thirty-four of the Additional Terms (para. 34(2)(a)), in addition to citing Executive Order 13,279, the PCCD should also cite Executive Order 13,559. *See* Exec. Order No. 13, 279, 67 Fed. Reg. 77,141 (Dec. 12, 2002) (Equal Protection of the Laws for Faith-Based and Community Organizations); Exec. Order No. 13,559, 75 Fed. Reg. 71,319 (Nov. 17, 2010) (Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations). Although subrecipients do have an obligation under the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968 to send adverse findings of discrimination based on race, color, national origin, religion, and sex to the OCR for review (*see* 28 C.F.R. §42.205(c)), subrecipients do not have a similar obligation to send adverse findings based on disability to the OCR. For the sake of accuracy, the PCCD should delete the reference to disability in paragraph thirty-four of the Additional Terms (para. 34(2)(c)). The statement of the EEOP requirement in paragraph thirty-four (para. 34(2)(d)), is not complete. The information that the PCCD presents in the FFAA is more accurate.

5. Employing a Civil Rights Monitoring Checklist

As a result of the earlier compliance review, the PCCD developed a Civil Rights Monitoring Checklist (Checklist) that PCCD program managers use to assess the civil rights compliance of subrecipients. The PCCD also has two forms to record the programmatic monitoring of subrecipients, one for onsite visits and another for monitoring over the telephone. Both forms have a section for the monitor to complete that indicates whether the monitor reviewed the Checklist with the subrecipient. In addition, the PCCD's fiscal monitoring tool requires the fiscal monitor to review the subrecipient's compliance with the Checklist.

The PCCD's usage of a checklist to ensure the compliance of subrecipients with federal civil rights laws is commendable, but the OCR has some concerns about how monitors may actually use the checklist.

a. Posting Notification of Applicable Federal Civil Rights Laws

The Checklist requires monitors to note whether the subrecipient has posted non-discrimination information for the Pennsylvania Human Relations Act, but it omits any similar assessment as to whether the subrecipient posted information on the protections afforded under federal laws, notably Title VI, the Safe Streets Act, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973.

b. Assessing Disability Access

The Checklist includes questions as to whether the subrecipient's building is "handicapped accessible"¹ and whether auxiliary aids and services are provided to beneficiaries with vision, hearing, or speaking impairments. The Checklist implies that either the monitor or the subrecipient is knowledgeable of the applicable regulatory standards for modifying funded programs to make them accessible to persons with disabilities. The PCCD noted during the previous compliance review that program monitors would more often assess the compliance of subrecipients through a telephone inquiry than through an onsite visit. Program monitors who use the Checklist to determine whether a subrecipient's programs are accessible to persons with disabilities (e.g., a telephone inquiry about the accessibility of building) must inevitably rely heavily on the subrecipient's self-assessment. Under these circumstances, both the monitor and the subrecipient need to know where to turn for answers when questions arise about the obligation under federal law to make funded programs accessible.

¹ Although the term "handicap" appears in federal law (e.g., Section 504), many advocates for disability rights prefer the term disability in its place.

c. Assessing Language-Access Services

The Checklist requires the recipient to describe how services are being provided to beneficiaries with limited English proficiency (LEP) and whether “standard forms” and “written communications” are provided in Spanish. Monitoring the language services that a subrecipient provides to its LEP service population presumes that the monitors are familiar with the DOJ’s guidance on the obligation funded programs have to provide services to LEP beneficiaries.² All subrecipients have an obligation to take reasonable steps to provide LEP persons with meaningful access to funded programs. Do the monitors receive training on the four-factor analysis that subrecipients should consider in assessing the adequacy of the language services provided to LEP individuals? *See id.* 41,459-61. What do monitors do when they encounter a subrecipient that either does not have a language assistance plan or requests technical assistance in developing one?

The question on the Checklist concerning whether subrecipients have translated standard forms into Spanish may be too narrow if the PCCD’s goal is to help subrecipients comply with the “safe harbor” provision in the DOJ Guidance, a non-obligatory standard that subrecipients can affirmatively use to demonstrate, at least in regard to written communication, that they are in full compliance with language-services requirements of Title VI. *Id.* 41,464. To take advantage of the “safe harbor” provision, a subrecipient must conduct an inventory of all its written communication with beneficiaries, determine which documents are “vital,” and then accurately translate the vital documents into the languages of its significant LEP service population. *Id.* 41,463-64.

Whether a document is “vital” depends on “the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.” *Id.* 41,463. Examples of documents that may be “vital” are consent and complaint forms; intake forms; written notices of rights or the denial, loss, or decrease of benefits; notices of disciplinary actions; written tests for a license, skill, or job for which knowing English is not required; applications to participate in a program or activity; and applications to receive a benefit or service. *Id.*

To satisfy the safe harbor provision, subrecipients should translate vital documents into the LEP language groups that comprise five percent or 1000, whichever is less, of their eligible service population. *Id.* 41,464.

² *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002) [hereinafter DOJ Guidance].

For most subrecipients of the PCCD, Spanish may be the sole language group that meets the criteria of the safe harbor provision. It is conceivable, however, that some subrecipients may have an eligible LEP service population whose primary language is other than Spanish. The question on the Checklist concerning a subrecipient's translation of standard forms into Spanish may be a practical, shorthand way of noting whether a subrecipient has taken some reasonable steps to communicate in writing to its LEP service population. If the goal is to help subrecipients comply with the DOJ Guidance's safe harbor provision, monitors should be aware, however, of the limitations of this inquiry. Standard forms may not be coterminous with vital documents; Spanish may not be the language (or only language) into which conscientious subrecipients should translate vital documents.

6. Other Monitoring Tools

The PCCD provided the OCR with an example of a monitoring report of one of its identified faith-based programs, the Young Women's Christian Association (YWCA) of York.³ The monitoring report noted that the subrecipient had a process for collecting beneficiary complaints. The report also stated that staff professional development included eight hours of orientation and twenty hours of additional training to staff members in public-contact positions. The report stated that the subrecipient would develop informational material for beneficiaries on victims' rights. The report did not indicate, however, whether any of the staff training materials or the information for distribution to beneficiaries addressed either the subrecipient's obligations or the protections afforded to the subrecipient's employees and beneficiaries under the applicable federal civil rights laws.

C. Funding Faith-Based Organizations

In fiscal years 2011 and 2012, no faith-based organizations applied to the PCCD for funding under any of the following DOJ programs: the Bureau of Justice Assistance's (BJA) Edward Byrne Memorial Justice Assistance Grants (JAG), the BJA's Residential Substance Abuse Treatment (RSAT) Grants, the Office on Violence Against Women's (OVW) Violence Against Women Act (VAWA) Services · Training · Officers · Prosecutors Grants (STOP), the VAWA Sexual Assault Services Programs (SASP) Grants, the Office of Juvenile Justice and

³ The Equal Treatment Regulation does not define faith-based organization. Subsequently, state administering agencies such as the PCCD have no guidance on the criteria they might use to determine whether a subrecipient is a faith-based organization. In the absence of federal guidance, in practice, the only standards available to a state administering agency in identifying a subrecipient as a faith-based organization are the subrecipient's name and the subrecipient's self-identification as a faith-based organization. Given these limitations, and in light of a consultation the OCR had with the national office of the YWCA, which stated that it did not consider itself a faith-based organization, the OCR wonders whether the YWCA in York, as well as the other PCCD-funded YWCAs in Pennsylvania, would characterize themselves as faith-based organizations.

Delinquency Prevention's (OJJDP) Juvenile Accountability Block Grants (JABG), and the OJJDP's Title V Community Prevention Grants.

In fiscal year 2011, six faith-based organizations applied to the PCCD for financial assistance under the Victims of Crime Act (VOCA) Victim Assistance program. All six received funding for the full amount requested.⁴ In fiscal year 2012, no faith-based organization applied to the PCCD for VOCA funding.

In fiscal year 2011, three faith-based organizations applied to the PCCD for financial assistance under the OJJDP's Title II Formula Grants (Title II), and PCCD declined to fund all three. In fiscal year 2012, no faith-based organizations applied to the PCCD for Title II funding.

In reviewing the denial of funding to the three faith-based organizations that applied to the PCCD under Title II in fiscal year 2011, the OCR found no evidence of discrimination based on the religious character of the applicants. The PCCD stated that it had objective criteria for assessing the merits of the proposals, noting that "any organization meeting the program specific requirements may apply for funding." The PCCD also maintained that in the funding process "[f]aith based organizations are neither favored nor discriminated against."

As to the first faith-based organization that the PCCD declined to fund, the PCCD explained that one of the key reasons that it chose not to fund the applicant's youth diversion program was that it served children between the ages of six to twelve, whereas a youth must be at least age ten for the juvenile court to have jurisdiction. Consequently, the PCCD concluded that the applicant poorly designed the program to serve as a diversion from the juvenile justice system.

As to the second faith-based organization that the PCCD declined to fund, the PCCD found that the applicant's youth diversion program failed to demonstrate that it received support from the juvenile probation office, which would be a key factor in successfully implementing the program. Moreover, the program failed to provide the PCCD with a policy on diversion, one of the most important requirements explicitly stated in the grant announcement.

As to the third faith-based organization that the PCCD declined to fund, the PCCD explained that the program failed to provide details on measuring outcomes and how they would affect the

⁴ Based on the information that the PCCD provided to the OCR, in fiscal year 2011, the PCCD funded the YWCA of York in York, Pa. (\$852,710); the Mercy Life Center Corporation in Pittsburgh, Pa. (\$39,600); the YWCA of Greater Harrisburg in Harrisburg, Pa. (\$306,995 and \$24,365); Womansplace in McKeesport, Pa. (\$314,422); the YWCA of Hanover Pa., in Hanover, Pa. (\$401,276), and The Center for Victims of Violence and Crime in Pittsburgh, Pa. (\$382,405).

project as it moved forward. The PCCD also expressed concerns about the program's vague goal to address victim issues, its high administrative costs, and the undefined roles of consultants.

Based on the OCR's review of the application materials, the PCCD's funding record, the criteria the PCCD used to evaluate applications, and the reasons provided for declining particular faith-based applicants, the OCR concluded that there was no reason to question the PCCD's compliance with the Equal Treatment Regulation's requirement to treat faith-based organizations equitably in the funding process. *See* 28 C.F.R. §§ 38.1(a), (e) .2(a), (e).

D. Recommendations

Based on the foregoing discussion of the PCCD's practices to ensure the civil rights compliance of subrecipients, the OCR makes the following recommendations: (1) correct the notice to subrecipients on the contact information for the OCR in submitting EEO Short Forms and Certifications (*see supra* Part B.3), (2) redraft the Additional Terms so that the notice to recipients about the applicable federal civil rights laws is more accurate (*see supra* Part B.4), (3) revise the Checklist so that monitors can record (a) whether subrecipients provide notice to employees and subrecipients of the right to file a discrimination complaint with the OCR and (b) whether subrecipients post information about federal civil rights laws in addition to state civil rights laws, and (4) provide training to monitors and subrecipients on the federal civil rights requirements.

The OCR encourages the PCCD to include in its training programs for PCCD monitors and subrecipients information about the OCR as a resource that provides technical assistance on civil rights compliance matters. Both monitors and subrecipients should be aware that if they have questions about making programs accessible to LEP and disabled persons, they can turn to the OCR for guidance. An important training resource that is available to the PCCD is a series of training segments on a variety of civil rights issues that the OCR has posted on its website. See <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>. At a minimum, the PCCD should require all monitoring staff members to view these online training programs.

E. New Civil Rights Reporting Obligation for State Administering Agencies

In the next DOJ funding cycle affecting many of the grant programs that the PCCD administers, the OJP and other DOJ program offices will be requiring, through a special grant condition, that state administering agencies, such as the PCCD, provide a written statement, known as Methods of Administration (MOA), that describes the procedures that the state administering agency has in place to ensure the compliance of subrecipients with their federal civil rights obligations. The language of the special condition is as follows:

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The recipient understands and agrees that it has a responsibility to monitor its subrecipients' compliance with applicable federal civil rights laws. The recipient agrees to submit written Methods of Administration (MOA) for ensuring subrecipients' compliance to the OJP's Office for Civil Rights at CivilRightsMOA@usdoj.gov within 90 days of receiving the grant award, and to make supporting documentation available for review upon request by OJP or any other authorized persons. The required elements of the MOA are set forth at http://www.ojp.usdoj.gov/funding/other_requirements.htm, under the heading, "Civil Rights Compliance Specific to State Administering Agencies."

Until the PCCD receives notice of this new special condition in an award letter, there is nothing that the PCCD needs to do at this time. The OCR brings this information to the attention of the PCCD because the changes that the PCCD has made as a result of the prior compliance review, the responses that the PCCD has prepared for the OCR's September 30, 2011, Data Request, and the PCCD's implementation of the recommendations that the OCR currently offers in this Report are sure to provide the basis for the PCCD's MOA.

F. Finding and Next Steps

As the PCCD has already in place many procedures to ensure the compliance of subrecipients with the federal laws that the OCR enforces, the OCR finds that with the implementation of the recommendations in this Report, the PCCD will ensure that it is in substantial compliance with those laws. The OCR requests that the PCCD responds to this Compliance Review Report in writing, noting in particular its plans to implement the Report's recommendations.

If you have any questions, please contact Senior Counsel George Mazza at [redacted].

Sincerely,

/s/ Michael L. Alston

Michael L. Alston
Director

cc: Ms. Karla Freeman, Accountant 3
PCCD