



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

March 17, 2009

Thomas R. Tremblay, Commissioner
Vermont Department of Public Safety
103 South Main Street
Waterbury, VT 05671-2101

Re: Compliance Review of Vermont Department of Public Safety (08-OCR-0396)

Dear Commissioner Tremblay:

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 Vermont Department of Public Safety (DPS), in accordance with federal regulation 28 C.F.R. ' 42.206. The focus of the review was on the DPS' compliance with applicable federal civil rights laws along with the DPS' monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the DPS' 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 6, 2008, the OCR conducted an onsite visit to the DPS' offices in Waterbury, Vermont, to interview DPS administrators and to conduct a training program for DPS administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank DPS staff, especially Auditor Brian George Pretti, Jr., for assisting OCR attorney Shelley Langguth during her onsite visit.

Based on the DPS' responses to our data request and the information that the OCR gathered during our onsite visit, the OCR sent the DPS a draft Compliance Review Report on January 27, 2009. During a March 16, 2009, telephone conversation, Mr. Pretti provided Ms. Langguth with some minor factual corrections to the draft Compliance Review Report. In accordance with Mr. Pretti's comments, the OCR slightly revised our discussion of the DPS' complaint procedures on pages 4-5 and our discussion of the DPS' process for making awards to faith-based organizations on page 6 of this Compliance Review Report.

In regard to the limited scope of our review, the OCR concludes that the DPS has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. Nonetheless, we

have reservations about whether the DPS has adequate complaint procedures in place to respond to discrimination complaints from beneficiaries and employees of subrecipients, and whether it is sufficiently training and educating its subrecipients on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the DPS' methods for monitoring the civil rights compliance of subrecipients and ensuring substantial compliance with civil rights requirements.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the DPS' 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 DPS' 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 DPS' general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the DPS 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

Depending on the nature of the grant program, either the DPS' Division of Criminal Justice Services or the Vermont State Police administers DOJ subawards. During the OCR's onsite visit, program managers from these divisions explained that the Vermont State Police currently administers the following two DOJ grant programs: 1) a COPS in Schools (CIS) grant from the Office of Community Oriented Policing Services, which is earmarked to a local sheriff's office; and 2) Edward Byrne Memorial Justice Assistance Grant (JAG) funds, which the Vermont State Police competitively awards to local law enforcement agencies so that they can place a sworn officer on a drug task force operated by the Vermont State Police. The program managers further explained that the Division of Criminal Justice Services administers the following four DOJ grant programs: 1) a Paul Coverdell Forensic Science Improvement Grant, which the Division of Criminal Justice Services subawards to the Vermont Medical Examiner's Office; 2) a State Justice Statistics grant, which the Division of Criminal Justice Services subawards to the non-

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profit research institute Norwich Studies; 3) a National Criminal History Improvement Program grant, which the Division of Criminal Justice Services passes through to the Vermont Department of Corrections; and 4) a Residential Substance Abuse Treatment grant, which the Division of Criminal Justice Services also passes through to the Vermont Department of Corrections.

Before the DPS releases DOJ funds, either through the Vermont State Police or the Division of Criminal Justice Services, subrecipients must sign the State of Vermont Standard Grant Agreement. During the OCR's onsite visit, DPS program managers and audit staff said that this is a standard agreement developed by the Vermont Department of Finance Management that all state agencies utilize when making awards or subawards. The DPS staff explained that any changes to the Standard Grant Agreement had to be made by the Vermont Department of Finance Management, but that agencies had the ability to add particular terms to their grant agreements under Attachment D to the Agreement, entitled "Other Grant Agreement Provisions."

Under Attachment C to the Standard Grant Agreement, "Customary Provisions," paragraph 2 states that "[t]he Subrecipient must comply with all the federal requirements pertaining to the expenditure of federal funds." Paragraph 10 of Attachment C is entitled "Fair Employment Practices and Americans with Disabilities Act" and says that a subrecipient agrees to comply with the requirements of "Title 21 V.S.A Chapter 5, Subchapter 6" relating to fair employment practices; this subchapter makes it unlawful for any employer to discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or disability. Paragraph 10 further states that "[s]ubrecipient shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Subrecipient under this Grant Agreement." These are the only provisions within the Standard Grant Agreement that reference civil rights requirements.

At the time of the OCR's onsite visit, the DPS did not require its DOJ subrecipients to submit any type of certification to the DPS or the OCR in regard to Equal Employment Opportunity Plan (EEO) requirements. Following the OCR's onsite visit, the DPS provided the OCR with information demonstrating that the DPS now requires DOJ subrecipients to complete the OJP's EEO Certification Form and submit the Certification Form to the OCR.

2. Onsite Visits and Other Monitoring Methods

In the DPS' response to the OCR's data request, the DPS stated that it does not currently have any procedures in place to monitor its subrecipients' compliance with applicable civil rights requirements. During the OCR's onsite visit, a program manager from the Vermont State Police said that its subrecipients are required to submit quarterly progress reports to the Vermont State Police; however, it does not appear that these progress reports address civil rights issues. The

program manager said that the Vermont State Police does not conduct formal onsite monitoring visits of its subrecipients, but that it works with the subrecipient employees who are placed on the drug task force on a daily basis and is aware of the employees' activities. The OCR understands that the Division of Criminal Justice Services does not require progress reports of its subrecipients or the agencies it passes through funding to and does not conduct onsite monitoring visits.

During the OCR's onsite visit, an auditor with the DPS stated that the DPS conducts audits of certain subrecipients, depending on the amount of federal funding that a subrecipient receives. Subsequent to the OCR's onsite visit, the auditor provided the OCR with the DPS' written audit plan that governs these audits, entitled "Subrecipient Site Monitoring Guide and Administrative Procedures Compliance Review." This audit plan specifically states that the plan is devised to target financial audits and that a program audit is the responsibility of the grant administrator or manager, and the plan demonstrates that the audits are limited in scope to financial issues of grant administration. However, the DPS auditor told the OCR that the DPS is planning on modifying its audit plan to address civil rights issues.

3. Training and Technical Assistance

According to the DPS' response to the OCR's data request, the DPS does not provide any training or technical assistance for subrecipients regarding their duties to comply with applicable federal civil rights laws. During the OCR's onsite visit, the DPS staff said that the DPS' DOJ grants are rather small and sporadic and confirmed that the DPS does not provide any training for DOJ subrecipients on grant requirements.

4. Complaint Procedures

In its response to the OCR's data request, the DPS provided a copy of the State of Vermont Personnel Policy and Procedures Manual, Number 3.3, entitled "Discrimination Complaints." This policy applies to all employees with the Executive Branch of the State of Vermont, and establishes protocols for reporting and investigating complaints of discrimination filed by state employees on the basis of race, color, religion, creed, ancestry, sex, marital status, age, national origin, disability, sexual orientation, membership or non-membership in the Vermont State Employees' Association, and any other factor prohibited by law. The State of Vermont also has personnel policies and procedures in place to address equal employment opportunity, sexual harassment, and reasonable accommodation in regard to state employment. See State of Vermont Personnel Policy and Procedures Manual, Numbers 3.0, 3.1, and 3.2. Additionally, the DPS provided the OCR with copies of several agreements between the State of Vermont and the Vermont State Employees' Association that prohibit discrimination and harassment and set forth grievance procedures. Subsequent to the OCR's onsite visit, the DPS explained that the DPS' Human Resources Division and/or the State Police Internal Affairs Unit would respond to

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discrimination complaints by DPS employees, depending on whether the employee was a civilian or a sworn officer. The DPS or the State of Vermont does not appear to have any written procedures in place to address discrimination complaints from beneficiaries of the DPS, or from employees or beneficiaries of subrecipients.

Based on the OCR's research, it appears that the Vermont Human Rights Commission also receives and investigates discrimination complaints from employees of state agencies such as the DPS, and also handles allegations of discrimination in housing and public accommodations. Accordingly, beneficiaries of subrecipients may be able to file discrimination complaints with the Vermont Human Rights Commission, depending on whether the program or activity of the subrecipient qualifies as a place of public accommodation. The State of Vermont Office of the Attorney General has jurisdiction over employment discrimination complaints against non-state agencies; therefore, the Office of the Attorney General would be available to receive discrimination complaints from employees of DPS subrecipients who are not a state agency.

During the OCR's onsite visit, DPS staff stated that they are not aware of any discrimination complaints filed against a DOJ subrecipient. The staff said that they do not instruct subrecipients on what to do if they should receive a discrimination complaint from an employee or beneficiary.

B. Monitoring Compliance with Faith-Based 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 DPS' 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

In its response to the OCR's data request, when asked if the DPS has undertaken any procedures to ensure that faith-based organizations are neither being favored nor discriminated against in the funding process, the DPS said that it does not discriminate against any potential subrecipient or applicant for federal assistance. During the OCR's onsite visit, DPS program managers explained that DOJ subawards administered by the Division of Criminal Justice Services are targeted to particular agencies, that the CIS grant administered by the Vermont State Police is earmarked for a local sheriff's office, and that the Vermont State Police sends out letters to state

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and local law enforcement agencies throughout the state to solicit applications for the JAG grant program.

The DPS stated in its response to the OCR's data request that no faith-based organizations applied for a DOJ subaward in Fiscal Years 2006 and 2007. During the OCR's onsite visit, the DPS staff said that they are not aware of a faith-based organization ever applying for a competitive DOJ grant program.

In its data response and during the OCR's onsite visit, the DPS said that it does not require nonprofit applicants to have federal tax exempt status under 26 U.S.C. § 501(c)(3).

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

In the DPS' response to the OCR's data request, the DPS stated that it does not have any procedures in place for ensuring that faith-based organizations are in compliance with the Equal Treatment Regulations. As discussed in Section I.B.1 of this Compliance Review Report, the DPS has never had a faith-based organization apply for a DOJ subaward.

II. Recommendations

The DPS has some procedures in place for monitoring the civil rights compliance of its subrecipients, such as referencing some prohibitions against discrimination in its Standard Grant Agreement. To strengthen the DPS' monitoring efforts, the OCR offers the following six recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints from beneficiaries of the DPS and employees and beneficiaries of subrecipients; (2) add a citation referring to DOJ's Equal Treatment Regulations to its Standard Grant Agreement; (3) include information on all of the applicable federal civil rights laws in its Standard Grant Agreement; (4) monitor for compliance with federal civil rights laws during onsite monitoring visits or audits; and (5) provide training to subrecipients on their obligations to comply with federal civil rights laws.

A. Develop Comprehensive Complaint Procedures

While the DPS has written procedures in place for receiving and investigating discrimination complaints from employees, the DPS does not have any procedures in place for addressing discrimination complaints from beneficiaries of DPS or from employees or beneficiaries of DPS subrecipients. For example, a juvenile benefiting from the CIS grant award implemented by the local sheriff's office could file a complaint alleging racial discrimination by that subrecipient. Accordingly, the DPS 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;
- 2) notifying employees, beneficiaries, and subrecipients of prohibited discrimination in funded programs and activities and the DPS' policy and procedures for handling discrimination complaints;
- 3) establishing written procedures for receiving discrimination complaints from the DPS' 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, the Vermont Human Rights Commission, or the State of Vermont Office of the Attorney General; or referring the complaint to the OCR, which will review the complaint and work with the DPS to resolve the complaint;
- 5) notifying the OCR in writing when the DPS refers a discrimination complaint to another agency or when the DPS investigates the complaint internally; and
- 6) training DPS program staff on their responsibility to refer discrimination complaints, or potential discrimination issues, to the DPS' 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 DPS.

B. Add a Citation Referring to the Faith-Based Regulations to the DPS' Standard Grant Agreement

The DPS should be sure to include reference to the DOJ's Equal Treatment Regulations, 28 C.F.R. pt. 38, in its Standard Grant Agreement. As discussed in Section I.A.1 of this Compliance Review Report, it appears that the DPS has the ability to add terms or conditions particular to the DPS' grant programs in Attachment D to the Standard Grant Agreement. The DPS 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 DPS' Standard Grant Agreement

The DPS should include reference to all of the federal civil rights laws that the OCR enforces and that subrecipients are required to comply with in Attachment D to the Standard Grant 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 DPS should include reference to the DOJ's Equal Treatment Regulations at 28 C.F.R. pt. 38, as discussed above. The DPS 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

Currently, the DPS does not conduct any onsite monitoring visits of DOJ subrecipients to ensure compliance with programmatic grant requirements, such as compliance with federal civil rights laws. As discussed in Section I.A.2 of this Compliance Review Report, a DPS auditor told the OCR that the DPS intends to modify its audit plan to address compliance with federal civil rights requirements. In doing so, the DPS 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 EEOP 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 DPS should review whether the subrecipient is complying with DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion. The OCR recommends that the DPS conduct onsite monitoring of every DOJ subrecipient for compliance with civil rights requirements at least once during a grant cycle.

E. Provide Training to Subrecipients on Their Obligations to Comply with Federal Civil Rights Laws

The DPS 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 comply with EEOP requirements, the DPS should provide

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periodic training programs for its subrecipients on the applicable federal civil rights laws. The DPS should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the DPS provides the training in person, during a teleconference, or through other means. The OCR is available to provide the DPS with technical assistance in developing civil rights training programs.

Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the DPS 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 DPS in addressing the concerns raised in this Compliance Review Report. **Immediately upon receipt of this letter, we ask that a responsible DPS 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

Enclosure

cc: Brian George Pretti, Jr., Auditor