



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

June 19, 2009

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Ms. Jen Bennecke
Executive Director
Governor's Office for Children and Families
55 Park Place, NE
Suite 410
Atlanta, GA 30303-2729

Re: Compliance Review of Governor's Office for Children and Families
(09-OCR-0060)

Dear Ms. Bennecke:

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 Governor's Office for Children and Families (GOCF or Office), in accordance with federal regulation 28 C.F.R. § 42.206.¹ The focus of the review was on the GOCF's compliance with applicable federal civil rights laws along with the Office's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the GOCF'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 March 12, 2009, the OCR conducted an onsite visit to the GOCF's offices in Atlanta, Georgia to interview GOCF representatives and to conduct a training program for GOCF management and program staff about the federal civil rights laws that the OCR enforces. The OCR would like to thank Mr. Joe Vignati for assisting OCR attorney Christopher Zubowicz during his onsite visit.

In regard to the limited scope of this compliance review, the OCR concludes that the GOCF appears to be taking measures to comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about the adequacy of the Office's (1) guidance to subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) onsite monitoring of subrecipients, (3) training for subrecipients, and (4) complaint

¹ The OCR issued its data requests to the Children and Youth Coordinating Council, which subsequently became part of the newly organized Governor's Office for Children and Families.

procedures for responding to certain discrimination allegations. The following Compliance Review Report includes recommendations for improving the GOCF'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 GOCF'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 Office'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 GOCF's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the Office used the following four tools: (1) standard assurances; (2) onsite visits and other monitoring methods; (3) training programs and technical assistance; and (4) procedures for receiving, investigating, and resolving complaints alleging employment and services discrimination.

1. Standard Assurances

The OCR evaluated the standard assurances that the GOCF uses in connection with the following DOJ-funded programs: the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Title V Community Prevention Grants (Title V), the OJJDP's Title II Formula Grants (Title II), the OJJDP's Juvenile Accountability Block Grants (JABG), and the OJJDP's Enforcing the Underage Drinking Laws Block Grants (EUDL). The Office requires all applicants for these programs to sign the OJP's Standard Assurances along with Certifications Regarding Lobbying; Disbarment; Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, found at <http://www.ojp.usdoj.gov/funding/forms.htm>. The Standard Assurances document contains the following language regarding civil rights laws:

13. It will comply, and all its contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A. Title 11 [sic] of the Americans With

Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on [sic] disability discrimination, 28 CFR Part 35 and Part 39.

14. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on [sic] the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.
15. It will provide an Equal Employment Opportunity Program if required to maintain one, where the application is for \$500,000 or more.

(Standard Assurances at ¶¶ 13-15.) The GOCF also requires an applicant to certify that it either has an EEOP on file or is exempt from the EEOP requirement so that the Office can monitor its subrecipients' compliance with the DOJ's EEOP regulations at 28 C.F.R. § 42.301-.308.² If an applicant does not include the Standard Assurances or EEOP Certification documents in its grant application, the Office follows up with the applicant to obtain them.

The GOCF emphasizes a system of care model to providing federally-funded services, which encourages local units of government to collaborate with nonprofit organizations, including faith-based groups. In an effort to administer this service model during the grant award process, the Office requires all of the entities that seek to partner on a particular program to submit a collective application, while one fiscal agent signs the assurances document. The GOCF also requires each partner to submit a memorandum of understanding or contract that reflects its role in providing services; otherwise, the Office will not release any funds to the subgrantee.

Before it releases funds, the GOCF also requires the subrecipient to sign a General Conditions document, which contains the following language regarding civil rights obligations:

13. In the event of a finding of discrimination by a federal or state court/administrative agency, subgrantee agrees to forward a copy of such finding to both the Governor's Office for Children and

² In addition, the GOCF highlights pertinent equal employment opportunity requirements in its various application kits for DOJ-funded programs.

Families and the Office for Civil Rights, Office of Justice Programs, 810 7th Street, N.W., Washington, D.C. 20531.

14. Subgrantee agrees that services provided under this grant award will not be withheld from participants based on a protected class as defined by the Omnibus Crime Control and Safe Streets Act of 1968.

(General Conditions at ¶¶ 13-14.) Further, the Office requires a subgrantee to sign a Grant Award Agreement, which incorporates by reference the DOJ's Equal Treatment Regulations. (Annex D, Grant Implementation, Administration, and Reporting Requirements, at 16.)

While the OCR commends the GOCF for seeking to ensure that it notifies all subrecipients of their federal civil rights obligations, the Standard Assurances and General Conditions documents do not consistently represent those obligations, which may confuse subrecipients. (*Compare* Standard Assurances at ¶ 14, *with* General Conditions at ¶ 13.) Moreover, in several instances, the application and award documents fail to address certain applicable civil rights requirements. Specifically, they do not:

- notify subrecipients of their obligation to designate a contact person who is responsible for meeting all civil rights requirements and serving as a liaison with the OJJDP and the OCR. 28 C.F.R. § 31.202(a)(1);
- notify subrecipients that they must submit to the OCR either an EEOP or the OJP's Certification Form stating that they are eligible for a full or partial exemption from the EEOP requirement. *See id.* § 31.202(b)(2); *id.* § 42.305;
- inform subgrantees of affected persons' rights to file a complaint of discrimination with the OCR for investigation. *See id.* § 31.202(b)(3); and
- require subrecipients to certify that they will take reasonable steps to provide meaningful access to their services to persons with limited English proficiency (LEP).

2. Onsite Visits and Other Monitoring Methods

Each subrecipient is monitored by a designated GOCF staff member, which allows the Office to evaluate the programmatic and financial aspects of the program to ensure they remain in compliance with pertinent grant requirements. A staff member conducts a site visit of each subrecipient at least once each year and maintains his or her own site visit schedule. Before performing a site visit, the staff member sends a site visit form to the subrecipient in an effort to

notify them about the areas that he or she will cover during the review. While the GOCF's site visit report determines whether certain subrecipients have EEOP certifications, it does not assess whether a subrecipient is complying with its other federal civil rights obligations. Staff members also conduct desk reviews when they evaluate the periodic reports that subrecipients submit to the Office.

3. Training and Technical Assistance

The GOCF offers a series of regular training sessions to grant applicants and subrecipients. In anticipation of the release of a Request for Proposal (RFP) in March 2009, the Office hosted five regional training sessions in February 2009 in an effort to improve the level of coordination between nonprofit groups and local units of government in providing services. During this training, the Office highlighted the certifications that applicants must file, including those relating to EEOPs. As a result of this outreach effort, the GOCF communicated with over 1000 participants, including representatives of the faith-based community. In April of each year, the Office also conducts several grant training workshops regarding the grant application and award process. The Office sends an e-mail announcement about the annual workshops through an extensive network of contacts, which includes prior applicants. The GOCF also provides post-award mandatory training to successful subrecipients.

In addition to its various training programs, the GOCF provides routine technical assistance to subrecipients in response to their specific written and telephonic requests for information. It also posts a "frequently asked questions" document on its Web site. The Office notifies subrecipients that staff members can provide technical assistance about various areas, including program and idea development, refinement of program goals, data and evaluation development, programmatic problem solving and trouble shooting, resource development, and overall grants management. If an organization's grant application is denied, the Office also will provide constructive criticism about improving its future applications.

4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluated the processes in place for individuals to pursue complaints of employment and services discrimination against the GOCF and its subrecipients. The Office has an internal discrimination complaint procedure that is available for Office employees, which encourages employees to file complaints with the Human Resources Office, Office of Planning and Budget. The GOCF forwards subrecipient employee complaints that it receives to the Georgia Commission on Equal Opportunity (GCEO), although the Office has not memorialized this response in any written policy or procedure. The GCEO is responsible for enforcing the provisions of Georgia law that prohibit employment discrimination in public employment on the basis of race, color, religion, national origin, sex, disability, or age. Ga. Code Ann. § 45-19-21(a)(1) (2009). A GOCF or subrecipient employee also can file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). The GOCF does

not require all subrecipients to have policies or procedures regarding the handling of employment complaints, although it expects counties and other local units of government to have their own internal employee complaint procedures. It also has no mechanism in place to receive notice of employment discrimination complaints that a subrecipient employee files with the GCEO or the EEOC.

The GOCF does not serve beneficiaries directly and, as a result, does not have a separate policy or procedure regarding services complaints. The Office does not require subrecipients to have any policy or procedure regarding the handling of services complaints they receive. However, the GOCF informs subrecipients during training that they should notify it of any beneficiary complaints. The Office also may learn about services complaints directly from the beneficiary, during site visits, or through staff review of periodic subrecipient reports.

The GOCF is not aware of any employment or services discrimination complaints that have been filed relating to DOJ-funded programs.

B. Monitoring Compliance with Faith-Based Regulations

The purpose of the Equal Treatment Regulations is to ensure that “[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible.” 28 C.F.R. § 38.1(a). The Regulations prohibit the DOJ and DOJ funding recipients from discriminating either for or against an organization on the basis of the organization’s religious character or affiliation. *Id.* In evaluating the GOCF’s equitable treatment of faith-based organizations, the Compliance Review Report 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
 - a. General grant application and award process

Typically, the GOCF releases RFPs for new DOJ-funded programs on January 1 of each year. At that point, the Office seeks to include faith-based organizations in the grant application process by inviting them to its various training and technical assistance sessions for potential applicants. Even if faith-based groups cannot apply directly to the GOCF for grant funding, the Office encourages them to partner with local units of government and act as the implementing agency for specific services.³ Once applicants submit their materials to the GOCF, program and

³ In the 2009 Juvenile Justice Continuation Application Kit Instructions, the GOCF explains that an applicant should note on the application whether it is a faith-based organization. The Office appears to consider faith-based organizations for awards on the same basis as other eligible applicants.

finance staff members score the applications and review them to ensure they have included a budget narrative, detailed budget summary, project narrative, and required assurances and certifications. After completing this initial review and determining applicant eligibility for funding, the staff members provide their assessments to the GOCF executive director, who in turn presents specific funding recommendations to the Board. Once the Board makes its final award decisions in early May, the GOCF sends award notices and denial letters several weeks later.

b. Inclusion of faith-based organizations in specific DOJ-funded programs

The GOCF participates in the OJJDP's Title V program, which focuses on assisting units of local government to reduce risks and to enhance protective factors to prevent youth at risk from becoming delinquent and entering the juvenile justice system. Faith-based organizations are statutorily ineligible to apply directly to the OJJDP or the Office for Title V funds. However, the OJJDP encourages faith-based organizations to access such funds by partnering with units of local government in developing the required local delinquency prevention plan and implementing the proposed prevention activities. *OJJDP FY 09 Title V Community Prevention Grants Program*, OJJDP, at <http://ojjdp.ncjrs.gov/grants/solicitations/FY2009/Title%20V.pdf> (last visited May 27, 2009) at 3. At this point, no faith-based organizations receive Title V funds through the GOCF subaward process; however, as discussed above, the Office actively encourages faith-based groups to partner with local government to implement specific Title V services.

The GOCF also administers the OJJDP's Title II program, which shares similar goals with the Title V program. As with the Title V program, faith-based organizations are statutorily ineligible to apply directly to the OJJDP or the Office for Title II funds. However, the OJJDP encourages faith-based organizations to access such funds by partnering with units of local government in developing the required local delinquency prevention plan and implementing the proposed prevention activities. *OJJDP FY 09 Title II Formula Grants Program*, OJJDP, at <http://ojjdp.ncjrs.org/grants/solicitations/FY2009/TitleIIFormula.pdf> (last visited May 27, 2009) at 3. In its response to the OCR's data requests, the GOCF noted that one faith-based organization partnered with local government to implement specific Title II services in fiscal years 2007 and 2008.

Next, the GOCF participates in the OJJDP's JABG program, which supports state and units of local government in their efforts to strengthen juvenile justice systems. While faith-based organizations are statutorily ineligible to apply directly to the OJJDP or the Office for funding under the JABG program, Section 1806 of the Omnibus Crime Control and Safe Streets Act of 1968 permits units of local government to contract with such groups to implement appropriate JABG purpose areas. *OJJDP FY 09 Juvenile Accountability Block Grants Program*, OJJDP, at <http://ojjdp.ncjrs.gov/grants/solicitations/FY2009/JABG.pdf> (last visited May 27, 2009) at 3-4.

At this point, no faith-based organizations receive JABG funds through the Office's subaward process; however, as discussed above, the Office actively encourages faith-based groups to partner with local government to implement specific JABG services.

Finally, the GOCF administers the OJJDP's EUDL program, which aims to enforce state laws that prohibit the sale of alcoholic beverages to minors and to prevent the purchase or consumption of alcoholic beverages by minors. While faith-based organizations are statutorily ineligible to apply to the OJJDP for funding under the EUDL program, they may apply for funding from the Office. See *OJJDP FY 09 Enforcing the Underage Drinking Laws Block Grants Program*, OJJDP, at <http://ojjdp.ncjrs.org/grants/solicitations/fy2009/EUDL%20block.pdf> (last visited May 27, 2009) at 3. In its response to the OCR's data requests, the GOCF noted that two faith-based organizations successfully applied for EUDL funds in fiscal year 2008.

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

In a general effort to ensure that faith-based organizations comply with the DOJ's Equal Treatment Regulations, the GOCF emphasizes in its application kits for DOJ programs that subrecipients may not use funds to provide programs that teach or promote religion. The Office also evaluates during onsite visits whether subrecipients use funds for inherently religious activities and whether they exclude beneficiaries based on their religion.

II. Recommendations

The GOCF already has in place a number of procedures for monitoring the civil rights compliance of its subrecipients. To strengthen the Office's monitoring efforts and its inclusion of faith-based organizations in the grant funding process, the OCR offers the following four recommendations: (1) modify the civil rights/nondiscrimination provisions in its Standard Assurances and General Conditions documents, (2) use a federal civil rights laws compliance checklist, (3) refine its training to subrecipients regarding their obligations to comply with federal civil rights laws, and (4) refine its complaint procedures.

A. Modify the Civil Rights/Nondiscrimination Provisions in Standard Assurances and General Conditions

The GOCF should ensure that all DOJ subrecipients agree to grant agreements that accurately reflect their federal civil rights obligations. To that end, the OCR recommends that the Office replace paragraphs 13, 14, and 15 of its Standard Assurances document and paragraph 13 of its General Conditions document with the following language or substantially similar language, which would continue to apply to all applicants for and subrecipients of DOJ funding, regardless of the amount of federal financial assistance at issue:

Recipient will comply (and will require any subgrantees or contractors to comply) with any applicable federal nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

Recipient will designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as a liaison in all civil rights matters with the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs and the Office for Civil Rights, Office of Justice Programs.

Recipient will inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with the Office for Civil Rights, Office of Justice Programs for investigation.

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the Governor's Office for Children and Families (GOCF).

Recipient will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs and the GOCF, if required to submit one; otherwise, it will provide a certification to the Office for Civil Rights, Office of Justice Programs and the GOCF that it has a current EEOP on file, if required to maintain one. For grantee agencies receiving less than

\$25,000, or grantee agencies with less than 50 employees, regardless of the amount of the award, no EEOP is required. Information about civil rights obligations of grantees can be found at <http://www.ojp.usdoj.gov/ocr/>.

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, recipient must take reasonable steps to ensure that LEP persons have meaningful access to its programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing its budgets and in conducting its programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

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

B. Use Federal Civil Rights Laws Compliance Checklist

The GOCF is to be commended for its efforts to monitor subrecipients through onsite visits and desk reviews. Going forward, however, the OCR recommends that the Office ensure that staff members prepare a uniform summary of each site visit they conduct that includes information about whether the subrecipient is in compliance with pertinent grant requirements, deadlines for completing any compliance recommendations, and the next scheduled review. As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the GOCF also should develop and utilize a federal civil rights laws compliance checklist that comprehensively evaluates the various civil rights requirements that apply to 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 GOCF or 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 whether the subrecipient is taking reasonable steps to provide meaningful access to programs and activities for LEP persons). Additionally, the checklist should include questions that evaluate whether the subrecipient is complying with the 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. In an effort to assist the GOCF in refining its checklist, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Office's review.

C. Refine Training to Subrecipients Regarding Their Obligations to Comply with Federal Civil Rights Laws

While the GOCF is making a concerted effort to provide training to applicants and subrecipients, it should refine its training program to ensure that subrecipients in all DOJ-funded programs receive training about their obligations under applicable federal civil rights laws, such as to provide services to LEP individuals and to have procedures in place to receive and evaluate complaints alleging discrimination from employees and beneficiaries. The OCR is available to provide the Office with technical assistance in expanding its civil rights training programs.

D. Develop Comprehensive Policy for Addressing Discrimination Complaints

The GOCF has procedures in place regarding its response to discrimination complaints from its own employees, and the GCEO and the EEOC provide forums for resolving employment discrimination complaints filed by GOCF and subrecipient employees. Nonetheless, the Office has an obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to employment and services discrimination complaints that it receives from the employees and beneficiaries of subrecipients. Specifically, it should ensure that it has a policy for addressing discrimination complaints that includes at a minimum the following elements:

- designating a coordinator who is responsible for overseeing the complaint process;
- notifying employees of the GOCF, beneficiaries, and subrecipients of prohibited discrimination in funded programs and activities and the Office's policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from subrecipient employees and beneficiaries;
- referring each complaint to the appropriate agency for investigation and resolution, such as the GCEO or the EEOC; or referring the complaint to the OCR, which will review the complaint and work with the GOCF to resolve it;

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- notifying the OCR in writing when the GOCF refers a discrimination complaint to another agency or when the Office investigates the complaint internally; and
- training GOCF program staff on their responsibility to refer discrimination complaints or potential discrimination issues to the Office'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 can be found at <http://www.ojp.usdoj.gov/about/offices/ocr.htm>.

III. Conclusion

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

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

Sincerely,

/S/

Michael L. Alston
Director

Enclosure

cc: Mr. Joe Vignati
Governor's Office for Children and Families