



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

November 20, 2012

Catherine B. Templeton
South Carolina Department of Health & Environmental Control
Mills/Jarrett Complex
Box 101106
Columbia, SC 29211-0106

Re: South Carolina Department of Health and Environmental Control (12-OCR-0493)

Dear Ms. Templeton:

On July 31, 2012, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), initiated a compliance review of the South Carolina Department of Health and Environmental Control (DHEC), a State Administering Agency, in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the DHEC's compliance with various federal civil rights laws and the Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations or ETR].

On September 25, 2012, the OCR conducted an onsite visit to the DHEC to meet with DHEC's administrative and program staff as well as present a training program on federal civil rights laws that the OCR enforces. The OCR would like to your DHEC staff, specifically, Jane Key, for assisting Attorney-Advisor [REDACTED] during her onsite visit.

The DHEC administers the Sexual Assault Services Program (SASP) grant from the Office on Violence Against Women (OVW), a component of DOJ. Based on the DHEC's responses to our Data Request and the information we gathered while onsite, the OCR concludes, given the limited scope of our review, that the DHEC has taken steps to substantially comply with the applicable federal civil rights laws that the OCR enforces. Nevertheless, the OCR strongly

recommends that the DHEC: (1) implement written complaint policies and procedures for responding to employment and service discrimination complaints against subgrantees; (2) modify and revise its standard assurances by expanding references to applicable federal civil rights laws; (3) add a civil rights component to its established monitoring methods; and (4) develop a civil rights training program for its subgrantees.

COMPLIANCE REVIEW REPORT

I. Overview

The DHEC administers the SASP grant program authorized pursuant to the Violence Against Women Act (VAWA), 42 U.S.C. § 3796gg-3, as amended. The SASP grant program provides funding to fifteen sexual assault centers (subgrantees) that serve the state of South Carolina.

This Report first examines the DHEC's procedures for monitoring whether subgrantees 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 DHEC's implementation of the Equal Treatment Regulations (ETR).

A. General Monitoring Procedures to Ensure Subgrantee Compliance with Applicable Federal Civil Rights Laws

Recipients of DOJ federal financial assistance, such as DHEC, are responsible for certifying that subgrantees under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the DHEC's general efforts to ensure subgrantees' compliance with civil rights obligations, the OCR examined how the DHEC used the following four tools: (1) standard assurances; (2) onsite visits and other monitoring methods; (3) training programs; and (4) procedures for receiving, investigating, and resolving complaints alleging employment and services discrimination against subgrantees.

1. Standard Assurances

Section G *Terms and Conditions* at Paragraph 7 of the DHEC's SASP Grant Agreement document notifies subgrantees of the following:

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this grant agreement on the grounds of race, age, health status, handicap, color, sex, religion, or national origin. This includes the provision of language assistance services to individuals of limited English proficiency eligible for services provided by the DHEC.

2. Onsite Visits and Other Monitoring Methods

According to the DHEC's Data Request Response, a DHEC staff conducts onsite visits to SASP subgrantees every three years. The DHEC has a written monitoring instrument, *Program Review Questionnaire*, based on the programmatic goals of the grant program. The *Program Review Questionnaire* does not contain questions that inquire into the subgrantees' compliance with federal civil right obligations.

3. Training and Technical Assistance

According to its Data Request Response and DHEC staff with whom the OCR spoke, the DHEC does not provide any training to its SASP subgrantees about federal civil right obligations. Staff informed the OCR, however, that the South Carolina Coalition Against Domestic Violence and Sexual Assault (Coalition) recently hosted trainings that all subgrantees, which are members of the Coalition, were required to attend entitled *Immigrant, LEP, and Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) and Service Delivery to Underserved Communities*. According to staff, the Coalition is in the process of developing a LEP Plan with guidance from the U.S. Department of Health and Human Services (HHS), Office for Civil Rights that the Coalition will provide to SASP grantees to follow when interacting with LEP beneficiaries. Staff also advised of an opportunity to incorporate additional civil rights training sessions into its bimonthly meeting for the executive directors of the fifteen subgrantees held in Columbia, S.C.

4. Complaint Policies and Procedures

The DHEC does not have policies and procedures for receiving, investigating, and responding to discrimination complaints from employees or beneficiaries of subgrantees. According to its Data Request Response, the DHEC has a general policy, entitled *Nondiscrimination Affirmative Action*, applicable to DHEC's employees. The *Nondiscrimination Affirmative Action* states the following under *Rules* regarding employment discrimination:

3. DHEC will not discriminate against any person in recruitment, examination, appointment, training promotion, retention, discipline, or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race, national origin, disability, gender, and age.
4. Discrimination on the basis of age, sex or physical disability is prohibited, except where specific age, sex, or physical requirements constitute a bona fide occupational qualification necessary and proper and efficient administration.

The *Nondiscrimination Affirmative Action* policy further states the following under *Procedures*:

6. DHEC employees have the responsibility to review the practices of all contracted

vendors and contractors prior to the provision of goods and services to assure that their services are provided in a nondiscriminatory manner. All activity should be carried out without regard to race or national origin.

B. Compliance with Equal Treatment Regulations

The purpose of the Equal Treatment Regulations (ETR) 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. Part 38.1(a). The ETRs prohibit the DOJ and DHEC from discriminating either for or against an organization based on the organization's religious character or affiliation. *Id.*

According to information the OCR obtained onsite, the DHEC does not solicit applications for the SASP grant program. The South Carolina State Legislature appropriates funding specifically designated for the fifteen sexual assault centers each year. The DHEC staff with whom the OCR spoke stated that consistent with the State Legislature’s appropriations specifically designating the fifteen sexual assault centers, the DHEC must award SASP funding to these centers.

None of the DHEC’s fifteen designated subgrantees of the SASP grant are faith-based organizations.

II. Recommendations

A. Develop Complaint Policies and Procedures

The DHEC should develop and implement written complaint policies for receiving and responding to discrimination complaints against subgrantees. The policies should include provisions for notifying employees and beneficiaries of subgrantees of discrimination complaint procedures. The DHEC’s complaint policies, should, at a minimum, include the following elements:

- 1) designating a coordinator who will be responsible for overseeing the complaint process;
- 2) notifying employees, subgrantees, and program beneficiaries of prohibited discrimination in funded programs and activities and the DHEC’s policy and procedures for handling discrimination complaints;
- 3) establishing written procedures for receiving discrimination complaints from employees, clients, customers, or program participants of subgrantees implementing funding from DOJ;

- 4) providing for the referral of each complaint to the appropriate agency for investigation and resolution, such as the DHEC's Affirmative Action Officer, if applicable;
- 5) notifying the complainant that the complainant may also file a complaint with the OCR by submitting a written complaint to the following address: Office for Civil Rights, Office of Justice Programs; U.S. Department of Justice; 810 Seventh Street N.W.; Washington, DC 20531;
- 6) providing for the notification, in writing, to the OCR when the DHEC refers a discrimination complaint to another agency or when the DHEC investigates the complaint internally; and
- 7) training DHEC and subgrantee staff on their responsibility to refer discrimination complaints, or potential discrimination issues to the DHEC's complaint coordinator as soon as the alleged discrimination comes to their attention.

The OCR has enclosed sample templates to assist the DHEC in drafting complaint policies. 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.

B. Update and Revise the Nondiscrimination Provisions in its Grant Agreement

The OCR recommends that the DHEC ensure that all DOJ subgrantees agree to standard assurances that accurately reflect their federal civil rights obligations, including their obligations to comply with all applicable civil rights laws that apply to recipients of federal financial assistance. To that end, the OCR recommends that the DHEC revise Section G *Terms and Conditions* at Paragraph 7 of its Grant Agreement to incorporate the following comprehensive language or substantially similar language, which would apply to all DOJ subgrantees:

Grantee will comply (and will require any subgrantees or contractors to comply) with any applicable federal nondiscrimination requirements, which include the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); 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); Exec. Order No. 13279 (equal protection of the laws for faith-based and community organizations); Exec. Order No. 13559 (fundamental principles and policymaking criteria for partnerships with faith-based and neighborhood organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

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, or sex against a recipient of funds, the grantee will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the South Carolina Department of Health and Environmental Control (SC DHEC), Sexual Violence Services Program.

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 Title VI of the Civil Rights Act of 1964, grantee 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. The grantee 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 LEP obligations can be found at www.lep.gov.

C. Monitoring Methods

As part of its responsibility to monitor the compliance of all subgrantees with applicable federal civil rights law, the DHEC should develop a resource for evaluating whether subgrantees are meeting their federal civil rights obligations during the triennial onsite visits. The OCR has developed the attached comprehensive federal civil rights compliance checklist to assist the DHEC. The DHEC may use the checklist as a new tool or incorporate it within its existing monitoring instrument, the *Program Review Questionnaire*.

D. Training

The DHEC should provide additional civil rights training for subgrantees at least once during a grant cycle, whether the DHEC staff provides training in person, by way of teleconference, or at its bimonthly meetings held in Columbia. The DHEC should ensure that subgrantees are aware of their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations; DHEC's complaint procedures for receiving, investigating, and resolving discrimination complaints by employees or beneficiaries of subgrantees; and to provide the OCR with findings of discrimination issued by a federal or state court or federal or state administrative agency based on race, color, religion, national origin, sex, or disability. The OCR has developed a comprehensive online training program which the DHEC may modify and use as appropriate. The training program is available at: <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>. The OCR is also available to provide additional technical assistance to the DHEC in developing a training program.

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III. Conclusion

Implementing the recommendations set forth in this Report should be a priority for the DHEC. Accordingly, upon receipt of this Report, please contact [REDACTED], OCR attorney, at [REDACTED] to establish timelines for implementing the OCR's recommendations. On request, the OCR is available to provide technical assistance to the DHEC in addressing the concerns discussed in this Report.

Thank you for your cooperation and the assistance of your staff throughout the compliance review process.

Sincerely,

Michael L. Alston
Director

Enclosures

cc: Jane Key, Sexual Violence Services Program Coordinator (w/enclosures)