



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D. C. 20531

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

August 7, 2012

Douglas A. Racine, Secretary
Vermont Agency of Human Services
208 Hurricane Lane, Suite 103
Willston, VT 05495

Dave Yacovone, Commissioner
Department for Children and Families
Vermont Agency of Human Services
2nd Floor, 5 North
103 South Main Street
Waterbury, VT 05671-5920

Re: Vermont Agency of Human Services, Department for Children & Families
Compliance Review (12-OCR-0138) - FINAL

Dear Mr. Racine and Mr. Yacovone:

In March 2012, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), initiated a compliance review of the Vermont Agency of Human Services, Department for Children and Families (DCF), a State Administering Agency, in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the DCF'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 June 5, 2012, the OCR conducted an onsite visit to the DCF. The OCR would like to your DCF staff for assisting Attorney-Advisor [REDACTED] during her onsite visit.

The DCF administers DOJ funds from the Office of Juvenile Justice Delinquency Prevention (OJJDP), a component of OJP. Based on the DCF's responses to our Data Request and the information we gathered while onsite, the OCR concludes that the DCF is not fully in compliance with the requirements of the federal civil rights laws that the OCR enforces. Specifically, we recommend that the DCF: (1) implement Department-specific 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) establish monitoring methods; (4) develop civil rights

training for all of its subgrantees; 5) ensure nonprofit applicants of JJDP A funding comply with applicable law; and 6) notify applicants in solicitations open to nonprofit organizations of the Equal Treatment Regulations.

On July 13, 2012, the OCR issued a draft Compliance Review Report to the DCF inviting the DCF to provide comments regarding any factual inaccuracies in the Report. On August 7, 2012, the DCF notified the OCR that it did not have any corrections to the facts stated in the draft Report. The OCR issues this Compliance Review Report as final.

Compliance Review Report

I. Overview

The DCF administers the following DOJ grant programs: Title II formula grants (Title II) and Title V Community Prevention grants (Title V) authorized under the Juvenile Justice and Delinquency Prevention Act (JJDP A) of 1974, as amended (42 U.S.C. § 5672); and the Juvenile Accountability Block Grant (JABG) authorized pursuant to the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. § 3789d(c)(1).

This Report first examines the DCF'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 DCF'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 DCF, are responsible for certifying that subgrantees under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the DCF's general efforts to ensure subgrantees' compliance with civil rights obligations, the OCR examined how the DCF 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 of Civil Rights Obligations

According to its Data Request Response, the DCF's *Agency of Human Services' Customary Grant Provisions* (Customary Grant Provisions) document outlines applicable financial, legal, and programmatic obligations incumbent upon each subgrantee. In reference to the nondiscrimination requirements, the *Customary Grant Provisions* contain the following pertinent

paragraphs:

Paragraph 4 Non-discrimination Based on National Origin as evidenced by Limited English Proficiency. The Grantee agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that Grantees and subgrantees receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Grantee provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

Paragraph 14 Non-discrimination. The Grantee will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds. The grantee will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

2. Onsite Visits and Other Monitoring Methods

According to the DCF's Data Request Response and DCF staff with whom the OCR spoke, the DCF grant and contract monitors conduct annual onsite visits of Title II and JABG subgrantees. The DCF's grant monitors of the Title V grant programs (available primarily to municipal entities) conduct desk audits of subgrantees by reviewing quarterly programmatic reports.

The DCF has not developed a written monitoring instrument for use by grant and contract monitors during onsite visits or desk audits. The DCF does not have monitoring methods that focus on subgrantees' compliance with federal civil rights obligations.

3. Training and Technical Assistance

According to its Data Request Response and DCF staff with whom the OCR spoke, the DCF does not provide any training to subgrantees about federal civil rights obligations.

4. Complaint Policies and Procedures

In the DCF's Data Request Response, the DCF states it has written policies for receiving and responding to employment and service discrimination complaints made against subgrantees.

The DCF identified a written policy prohibiting discrimination in the delivery of services entitled *Agency of Human Services Non-Discrimination Regarding Receipt of Services and Benefits* (Agency of Human Services Nondiscrimination Service Policy). The *Agency of Human Services Nondiscrimination Service Policy* states:

Federal enactments, including Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 200d et seq., the federal guidelines promulgated pursuant to Executive Order 13166 of 2000 relating to assuring meaningful access to services for persons with limited English proficiency, the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Americans with Disabilities Act, require that benefits and services offered to applicants and recipients must be provided without discrimination based on race, religion, color, gender, sexual orientation, gender identity, national origin, disability, age, or other factors, as required by law. State laws and regulations impose some similar protections. *The Agency and its departments and offices shall comply with all laws relating to the fair and non-discriminatory access to and delivery of services, benefits, programs, and activities.*

...

It is the responsibility of individual departments and offices to ensure dissemination and review of this policy to all employees and to contractors, grantees, and business associates who provide services and benefits on behalf of the Agency, departments, and offices.

(emphasis added).

Staff further informed the OCR that the DCF Commissioner's Office is the office responsible for reviewing, investigating, and responding to service discrimination complaints. The *Agency of Human Services Nondiscrimination Service Policy* states that individual departments, such as the DCF, are required to ensure the dissemination and review of the *Policy* to all of contractors and

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subgrantees who provide services or benefits. The DCF staff with whom the OCR spoke stated that they do not have formal procedures for disseminating and notifying subgrantees or subgrantees' employees and beneficiaries about the *Agency of Human Services Nondiscrimination Service Policy*.

In its Data Request Response, the DCF also referenced Vermont State Law, 33 V.S.A. § 301, entitled *Departmental [Department for Children and Families] Services Policy* that states

[i]t is the policy of the state of Vermont that:...(3) [a]ssistance, care, and services shall be provided promptly, with regard for the preservation of family life and without restriction of individual rights or discrimination on account of race, religion, political affiliation, or place of residence within the state..."

According to the DCF's Data Request Response, the statewide *Agency of Human Services Nondiscrimination Service Policy* and the state law, 33 V.S.A. § 301, establishes the DCF's written policy for handling service discrimination complaints.

According to information the OCR obtained during the review, the Vermont Office of the Attorney General, Civil Rights Unit, or the Vermont Human Rights Commission would receive, investigate, and/or resolve claims of employment discrimination. The DCF staff informed the OCR that these entities accept employment discrimination complaints by employees or applicants of subgrantees. The OCR found that the DCF does not have procedures for notifying employees or applicants of subgrantees about how and where to file an employment discrimination complaint.

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 DCF and DCF contractors from discriminating either for or against an organization based on the organization's religious character or affiliation. *Id.*

The DCF stated in its Data Request Response that no FBO (Faith-Based Organization) had applied for grant funding and it had not awarded any grants to FBOs in FY 2011 or FY 2012. The DCF stated that in FY 2012, one faith-based organization applied for funding. The FBO did not receive funding, however, because the organization did not collaborate with a community program as required by the grant solicitation.

In accordance with the Equal Treatment Regulations' directive that no grantmaking agency

should discriminate either for or against an organization based on religious character or affiliation, the DCF stated in its Data Request Response that with regard to those grants open to nonprofit organizations, “[a] religious applicant is entitled to and receives the same grant review process as a non-religious applicant.” The DCF staff with whom the OCR spoke stated that all notices about the availability of funding opportunities are available to interested applicants via the state’s contract and grant bid website. The DCF staff stated that it does not include specific language referring to 28 C.F.R. Part 38.1 (a) in its grant applications.

The Vermont Children’s Trust Fund (VCTF), a state contractor, generally manages and oversees the application review process. According to DCF staff, nonprofit grant applicants are reviewed by a panel of “readers” consisting of current and former members of the Children and Family Council for Prevention Programs (CFCPP), Vermont’s JJDP State Advisory Group (SAG), members on the board of directors for the VCTF, and DCF staff members. During the onsite review, the DCF provided the OCR with the VCTF reader instructions. The reader’s instruction states the following and specifically lists faith-based organizations as eligible grantees:

Eligible applicants include community-based organizations, local educational agencies (including religious schools), public or private non-profit organizations, including faith-based, or a consortium of two or more agencies, organizations, or entities. Municipalities may also apply.

According to DCF staff with whom the OCR spoke, the DCF does not require nonprofit applicants to obtain federal tax exemption status under 26 U.S.C. § 501(c)(3).

II. Recommendations

A. Develop Comprehensive Complaint Policies and Procedures

Although the DCF relies upon the *Agency of Human Services Nondiscrimination Service Policy* and the state law, 33 V.S.A. § 301, as its policy for receiving and responding to service discrimination complaints, the DCF should, develop and implement written, comprehensive Department-specific complaint policies for receiving and responding to service and employment discrimination complaints against subgrantees. The policies should include provisions for notifying employees and beneficiaries of subgrantees of discrimination complaint procedures. The DCF’s complaint policies, should, at a minimum, include the following elements:

- 1) specifically designating the position within the Office of the Commissioner who is responsible for overseeing the complaint process;
- 2) notify employees, beneficiaries, and subgrantees of prohibited discrimination in funded programs and activities and the DCF policy and procedures for handling

discrimination complaints;

3) establish written procedures for receiving discrimination complaints from employees, clients, customers, or program participants of subgrantees implementing funding from DOJ;

4) provide for the referral each complaint to the appropriate agency for investigation and resolution, such as the Office of the Commissioner, Civil Rights Unit of the Vermont Office of the Attorney General, or the Vermont Human Rights Commission, or the OCR, which will review the complaint and work with the DCF and subgrantee to resolve;

5) notify 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) provide for the notification, in writing, to the OCR when the DCF refers a discrimination complaint to another agency or when the DCF investigates the complaint internally; and

7) inform of DCF program staff (including grant and contract monitors) training on their responsibility to refer discrimination complaints, or potential discrimination issues, to the appropriate entity for processing as soon as the alleged discrimination comes to their attention.

The OCR has enclosed sample templates to assist the DCF in revising and drafting more comprehensive 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. Developing comprehensive policies for addressing discrimination complaints should be a top priority for the DCF given my letter, dated June 18, 2012, to all SAAs. In my letter, I informed SAAs of a new special condition in OJP awards requiring the development of written Methods of Administration (MOA) for ensuring subgrantees comply with federal civil rights laws.

B. Update and Revise the Nondiscrimination Provisions in all of its *Customary Grant Provisions*

The OCR recommends that the DCF 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 DCF revise its *Customary Grant*

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Provisions to incorporate the following comprehensive language or substantially similar language, which would apply to all subgrantees of DOJ funding, regardless of the program or amount of the 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 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); 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 recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the Department of Children for Children and Families (DCF).

The recipients will determine whether it is required to formulate an Equal Employment Opportunity Plan (EEOP) in accordance with 28 CFR § 42.301 et seq. If the recipient is not required to formulate an EEOP, it will submit a certification form to the U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights (OCR), and the DCF indicating that it is not required to develop an EEOP. If the recipient is required to develop an EEOP, but is not required to submit the EEOP to the OCR, the recipient will submit a certification form to the OCR and the DCF certifying that it has an EEOP on file which meets the applicable requirements. If the recipient is awarded a grant of \$500,000 or more and has fifty or more employees, it will submit a copy of its EEOP to the OCR and DCF. Non-profit organizations, Indian Tribes, and medical and educational institutions are exempt from the EEOP requirement, but are required to submit a certification form to the OCR to claim the exemption (a copy should also be submitted to the DCF). Additional information regarding a grantee's EEOP requirements can be found at:

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http://www.ojp.usdoj.gov/about/ocr/eeop_comply.htm.

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. The 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 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 DCF should develop a monitoring instrument for use by grant and contract monitors when conducting site reviews or quarterly desk audits to evaluate whether subgrantees are meeting their federal civil rights obligations. The OCR has developed the attached comprehensive federal civil rights compliance checklist to assist the DCF. The DCF may use the checklist as a new tool or incorporate it within an existing monitoring instrument.

D. Training

The DCF should provide mandatory civil rights training for every subgrantee at least once during a grant cycle, whether the DCF staff provides training in person, by way of teleconference, or through other means. The DCF 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; to provide services to LEP individuals; 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 an online training program which the DCF may use. 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 DCF in developing a training program.

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E. Nonprofit Status of Applicants

Although generally nonprofit applicants are not required to document federal tax-exempt status under Section 501(c)(3) to be eligible for funding pursuant to the Equal Treatment Regulations (*see* 28 C.F.R. §§ 38.1 (g), .2(g)), the DCF should be aware that there is an exception. To be eligible for funding under the Juvenile Justice and Delinquency Prevention Act (JJJPA), nonprofit organizations must have documentation of their Section 501(c)(3) status. 42 U.S.C. § 5672 (b)(2011); *see also* 42 U.S.C. § 5603(23) (2011). Therefore, the DCF should be sure that nonprofit applicants of JJJPA funding, including faith-based organizations, comply with the applicable law.

F. Subaward Process

The DCF should consider notifying applicants of the Equal Treatment Regulations in the solicitations open to nonprofit organizations.

III. Conclusion

The DCF should implement the recommendations set forth in the Report to ensure compliance with the federal civil rights laws the OCR enforces. 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 DCF 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: Susan Harritt, Assistant Attorney General, Vermont Office of the Attorney General
(w/enclosure)

Federal Civil Rights Compliance Checklist

1. If the subrecipient is required to prepare an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R. §§ 42.301-.308, does the subrecipient have an EEOP on file for review?

Yes No

If yes, on what date did the subrecipient prepare the EEOP?

2. Has the subrecipient submitted an EEOP Short Form to the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), if required by 28 C.F.R. §§ 42.301-.308? If the subrecipient is not required to submit an EEOP Short Form to the OCR, has it submitted a certification form to the OCR claiming a partial or complete exemption from the EEOP requirements?

Yes – submitted an EEOP Short Form Yes – submitted a certification No

If the subrecipient prepared an EEOP Short Form, on what date did the subrecipient prepare it?

3. How does the subrecipient notify program participants and beneficiaries that it does not discriminate on the basis of race, color, national origin, religion, sex, disability, and age in the delivery of services (e.g. posters, inclusion in brochures or other program materials, etc.)?

Comments:

4. How does the subrecipient notify employees that it does not discriminate on the basis of race, color, national origin, religion, sex, and disability in employment practices (e.g. posters, dissemination of relevant orders or policies, inclusion in recruitment materials, etc.)?

Comments:

5. Does the subrecipient have written policies or procedures in place for notifying program beneficiaries how to file complaints alleging discrimination by the subrecipient with the [State Administering Agency] or the OCR?

Yes No

If yes, an explanation of these policies and procedures:

6. If the subrecipient has 50 or more employees and receives DOJ funding of \$25,000 or more, has the subrecipient taken the following actions:
- a. Adopted grievance procedures that incorporate due process standards and provide for the prompt and equitable resolution of complaints alleging a violation of the DOJ regulations implementing Section 504 of the Rehabilitation Act of 1973, found at 28 C.F.R. Part 42, Subpart G, which prohibit discrimination on the basis of a disability in employment practices and the delivery of services.

Yes No

- b. Designated a person to coordinate compliance with the prohibitions against disability discrimination contained in 28 C.F.R. Part 42, Subpart G.

Yes No

- c. Notified participants, beneficiaries, employees, applicants, and others that the subrecipient does not discriminate on the basis of disability.

Yes No

Comments:

7. If the subrecipient operates an education program or activity, has the subrecipient taken the following actions:
- a. Adopted grievance procedures that provide for the prompt and equitable resolution of complaints alleging a violation of the DOJ regulations implementing Title IX of the Education Amendments of 1972, found at 28 C.F.R. Part 54, which prohibit discrimination on the basis of sex.

Yes No

- b. Designated a person to coordinate compliance with the prohibitions against sex discrimination contained in 28 C.F.R. Part 54.

Yes No

- c. Notified applicants for admission and employment, employees, students, parents, and others that the subrecipient does not discriminate on the basis of sex in its educational programs or activities.

Yes No

Comments:

8. Has the subrecipient complied with the requirement to submit to the OCR any findings of discrimination against the subrecipient issued by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, or sex?

Yes No

Comments:

9. What steps has the subrecipient taken to provide meaningful access to its programs and activities to persons who have limited English proficiency (LEP)?

Comments, including an indication of whether the subrecipient has developed a written policy on providing language access services to LEP persons:

10. Does the subrecipient conduct any training for its employees on the requirements under federal civil rights laws?

Yes No

Comments:

11. If the subrecipient conducts religious activities as part of its programs or services, does the subrecipient do the following:

a. Provide services to everyone regardless of religion or religious belief.

Yes No

b. Ensure that it does not use federal funds to conduct inherently religious activities, such as prayer, religious instruction, or proselytization, and that such activities are kept separate in time or place from federally-funded activities.

Yes No

c. Ensure that participation in religious activities is voluntary for beneficiaries of federally-funded programs.

Yes No

Comments: