



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

October 2, 2012

VIA E-MAIL AND CERTIFIED MAIL

Adonis J. Mendiola
Director
Department of Youth Affairs
Government of Guam
P.O. Box 23672 GMF
Barrigada, Guam 96921

Re: Compliance Review of Guam Dep't of Youth Affairs (12-OCR-0162)

Dear Mr. Mendiola:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is responsible for ensuring that recipients of federal financial assistance from the Office of Community Oriented Policing Services, the Office on Violence Against Women (OVW), the OJP, and OJP components comply with federal civil rights laws. As you know, recipients of federal financial assistance have an obligation not to discriminate against protected classes of people either in employment or in the delivery of services.

In carrying out the OCR's civil rights enforcement responsibilities, the OCR is conducting a broad compliance review of all state administering agencies (SAA) in accordance with federal regulation 28 C.F.R. § 42.206. The focus of this review is to determine both compliance with applicable federal civil rights laws and SAA monitoring procedures for ensuring the compliance of subrecipients with these laws. As part of that review, the OCR is evaluating the Guam Department of Youth Affairs (DYA or Department). Of particular interest to the OCR is the DYA's compliance with the federal regulations that the DOJ issued in January of 2004, Equal Treatment for Faith-Based Organizations, 28 C.F.R pt. 38. The regulations advise SAAs not to discriminate either in favor of or against faith-based organizations. The regulations also instruct funded faith-based organizations not to discriminate in the delivery of services or benefits based on religion or to use federal funds for inherently religious activities.

On May 15, 2012, the OCR conducted an onsite visit with the DYA in Barrigada, Guam, to interview management and program staff; we also provided a training program for Department representatives about the OCR and the federal civil rights laws that the OCR enforces, how the OCR enforces civil rights laws, a recipient's obligations to provide services to limited English proficient individuals, civil rights laws that affect faith-based organizations, and effective ways

to monitor subrecipient compliance with applicable civil rights obligations. The OCR would like to thank your personnel for assisting the DOJ during its onsite visit.

In regard to the limited scope of this Compliance Review, the OCR concludes that the DYA is not fully in compliance with the requirements of the federal civil rights laws that the OCR enforces. Specifically, we have reservations about the adequacy of the Department's (1) guidance to subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) monitoring of subgrantee compliance with their civil rights duties, (3) civil rights training for subrecipients, (4) information and training provided to DYA personnel on the Department's employment nondiscrimination policy and procedures, (5) complaint procedures for responding to certain discrimination allegations, and (6) confirmation of federal tax exempt status of nonprofit subrecipients of funds under the Juvenile Justice and Delinquency Prevention Act of 2002 (JJDP). The following Compliance Review Report includes recommendations for improving the DYA's methods for monitoring the civil rights compliance of subrecipients and ensuring compliance with its federal civil rights obligations.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the DYA'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 Department'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 DYA's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR evaluates how the Department uses 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 examines the standard assurances that the DYA uses in connection with its administration of the following programs: (1) the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Title V Community Prevention Grants (Title V), and (2) the OJJDP's

Juvenile Accountability Block Grants (JABG).¹ In order to receive DOJ funds through the DYA, a successful applicant must sign a grant agreement. On July 22, 2012, the Department represented to the OCR that it would incorporate the following language on federal civil rights laws into its grant agreement:

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 (Safe Streets Act) (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); 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 other neighborhood 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 (OCR), Office of Justice Programs.

Recipient will inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with the OCR for investigation.

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a

¹ The DYA is also the designated SAA for the Title II Formula Grants (Title II) program; however, the Department has not subawarded any recent funds through this program and there are no current subrecipients receiving Title II funds. As a result, the DYA's civil rights compliance with this program is beyond the scope of the instant Report.

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 OCR and the Guam Department of Youth Affairs (DYA).

Recipient will provide an Equal Employment Opportunity Plan (EEO) to the OCR and the DYA, if it is a state government, a local government, or a for-profit entity that has 50 or more employees and receives a single award for \$500,000 or more that is subject to the administrative provisions of the Safe Streets Act; otherwise, it will provide a certification to the OCR and the DYA that it has a current EEO on file, if it has 50 or more employees and receives a single award for \$25,000 or more, but less than \$500,000, that is subject to the administrative provisions of the Safe Streets Act. For state governments, local governments, and for-profit entities receiving less than \$25,000, or for state governments, local governments, and for-profit entities with fewer than 50 employees, regardless of the amount of the award, no EEO 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 Safe Streets Act 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 and activities. 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>.

In accordance with federal civil rights laws, Recipient will not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.²

² During the OCR's site visit, the DYA provided a grant agreement that required a subrecipient to "[c]omply with the requirements set forth in 28 CFR Parts 35, 36, 41, 42 and 54 regarding nondiscrimination and equal employment opportunity, to the extent applicable." Memorandum of Understanding Between the Department of Youth Affairs and the Dededo Mayor's Office, "2011 Public Safety and Social Education Program." Once the Department

At the time of the OCR's site visit, the DYA required an applicant to sign two documents that address federal civil rights protections. First, an applicant needed to include a Certification of Non-Discrimination with its grant application, which (a) identified nondiscrimination obligations under several federal civil rights laws, (b) addressed applicable Equal Employment Opportunity Plan requirements, and (c) described a subrecipient's duty to report certain findings of discrimination. Each provision in this certification is addressed by the federal civil rights language that the Department will add to its grant agreement. In fact, in many instances, the provisions quoted above contain more information than those contained in the certification. Second, the DYA required each applicant to include a standard assurances document with its grant application. This document includes seven provisions that describe separate obligations of a subrecipient of federal financial assistance. One of these paragraphs identifies several of the federal civil rights laws that apply to subrecipients, and is similar to, although less detailed than, the first paragraph quoted above. Both of these documents fail to include key obligations, which are covered in the above language, that apply to subrecipients of funds under the JJDP. To ensure that the DYA provides clear and consistent information to subrecipients on applicable federal civil rights requirements, once the Department revises its grant agreement, it should use that agreement as the sole vehicle for requiring subrecipients to acknowledge their federal civil rights obligations.

2. Onsite Visits and Other Monitoring Methods

Typically, the DYA requires its subrecipients to submit quarterly financial and programmatic reports regarding their implementation of Title V or JABG funds;³ these reports do not contain information related to applicable federal civil rights requirements. The DYA does not conduct site visits of its subrecipients and does not have any procedures in place to monitor the federal civil rights compliance of its subgrantees.

3. Training and Technical Assistance

The DYA does not provide any training to its subrecipients on the civil rights obligations that apply to the receipt of federal financial assistance from the DOJ. The Department, primarily through its juvenile justice specialists, provides ongoing technical assistance to subrecipients. These specialists are available by e-mail and telephone to respond to subrecipient questions about grant requirements that arise at any point during the grant cycle.

4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluates the processes in place for individuals to pursue complaints of employment and services discrimination against the DYA, as well as

expands its grant agreement to incorporate the above language, it should remove this sentence from the agreement.

³ Two clinicians that receive JABG funds provide annual, rather than quarterly, reports on various performance measures related to their subawards.

complaints of employment and services discrimination against its subrecipients.

As a part of the Guam government, the DYA is subject to Guam's personnel rules and regulations, which are administered by the Department of Administration and prohibit discrimination in employment based on, among other protected classes, race, color, national origin, religion, sex, and disability. *See* 4 Guam Code Ann. § 4101 (2012); 17 Guam Admin. R. & Regs. § 6102 (1997); Guam Dep't of Administration, Personnel Rules and Regulations, at 1.200. The personnel rules and regulations contain a detailed process for receiving, investigating, and resolving employment discrimination complaints. Personnel Rules and Regulations at F1-F5; *see also* Guam Exec. Order No. 2006-16 (June 19, 2006). The Department of Administration prepared a summary of these procedures that is aimed at employees.⁴ In certain circumstances, a DYA employee can also file an employment discrimination complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the OCR. Despite the availability of these complaint procedures, neither the DYA nor the Department of Administration ensures that all new and existing employees learn about the DYA's nondiscrimination obligations or the applicable process for addressing employment discrimination complaints.

The DYA operates various programs and activities that involve the provision of services and benefits to at-risk youth, adjudicated youth, families of youth, and members of the broader community. When adjudicated youth enter a secure or a non-secure detention facility, the Department gives them a Client Handbook, which states that they "have the right not to be discriminated against and will have the same access to all services and programs." Client Handbook, at 1. The Client Handbook also provides general information about a youth's right to file a grievance. *Id.* at 2. In a separate policy that it provides to personnel, the Department explains its process for receiving and resolving complaints from adjudicated youth. Under that policy, "[c]lients must have access to grievance forms, which shall contain the name of the client, the date, the person or policy grieved, and the nature of the grievance." Policy No. 2.2, Grievance Procedures, Youth Correctional Facility Manual of Operations, at 58. Despite this requirement that clients should have access to grievance forms, a representative from the Department noted to the OCR during its site visit that a grievance form was not readily available. The DYA does not have any policy, procedure, or protocol in place to handle services discrimination complaints they receive from at-risk youth, families of youth, or other beneficiaries of their programs and activities.

In monitoring subrecipients, the DYA does not evaluate whether subrecipients have policies, procedures, or protocols regarding the handling of employment or services discrimination complaints they receive. The Department also does not determine if subgrantees provide any

⁴ This department also created a training presentation that emphasizes the importance of preventing sexual harassment in the workplace. According to the DYA, this training is mandatory for managers and voluntary for other employees.

notification to their employees and beneficiaries about subrecipient processes for handling discrimination complaints or available avenues for filing civil rights complaints.

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) (2011). The Regulations prohibit the DOJ and DOJ-funded recipients from discriminating either for or against an organization on the basis of the organization’s religious character or affiliation. *Id.* In evaluating the DYA’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. Selecting DOJ-Funded Subrecipients

The DYA subawards Title V and JABG funds. Under the JJDP, these grant programs require eligible nonprofit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) in order to apply for funds. Contrary to the JJDP’s requirement that funded nonprofit organizations be exempt from taxation under federal law, the DYA permits a nonprofit to apply for DOJ funding regardless of their classification under the Internal Revenue Code.

Generally, the DYA uses a request for proposal (RFP) process to subaward Title V and JABG funds. In an effort to inform potential applicants about the RFPs, the Department advertises them in the local newspaper for at least ten days and posts them on its Web site. DYA staff persons are available to provide technical assistance to other entities that want to seek funding. Once applicants submit their proposals, the Department relies on a three-member committee of employees to review the submissions. This committee uses a set of evaluation criteria, which are available to applicants, to consider and rate the proposals on a 100-point scale. During this review, the committee may ask applicants to provide additional information about their qualifications, their plans to implement a specific program or activity, and the scope and nature of the contemplated services that would be provided with the grant funds. Once staff members complete this assessment, the DYA’s procurement administrator tabulates the points assigned by the committee and, based on those point totals, ranks the proposals. At the end of this process, the committee makes a recommendation to the Director about which proposal should receive funds under each program. After the Director makes the final award decisions, the Department enters into negotiations with the successful applicants about the terms of each award.⁵ The DYA

⁵ If these negotiations are unsuccessful, then the Director, relying on the committee’s ratings of the other proposals,

also notifies each unsuccessful applicant about the outcome of the Department's subaward process.

b. Faith-Based Organizations as Subrecipients

This section of the Report discusses the DYA's efforts to include faith-based organizations in the Title V and JABG programs. In reviewing the inclusion of faith-based organizations in the subaward process for these programs, it is important to emphasize that these juvenile justice programs limit the ability of such groups to apply to the OJJDP or the Department for specific funds as follows:

- Title V Program: Faith-based organizations are statutorily ineligible to apply directly to the OJJDP or the Department for Title V funds. *See* 42 U.S.C. § 5783(a). The OJJDP, however, encourages faith-based organizations to access such funds by partnering with governmental subrecipients in developing the required local delinquency prevention plan and implementing the proposed prevention activities.
- JABG Program: Faith-based organizations are statutorily ineligible to apply directly to the OJJDP or the DYA for funding under the JABG program; however, section 1806 of the Omnibus Crime Control and Safe Streets Act of 1968 permits governmental subrecipients to contract with such groups to implement appropriate JABG purpose areas. *Id.* § 3796ee-6.

Recently, the DYA has endeavored to engage faith-based organizations in the application process by notifying them of available RFPs and providing technical assistance to them about preparing proposals. Despite these outreach efforts, in fiscal year 2011, the DYA did not receive any applications that contemplated the involvement of faith-based organizations in the administration of Title V or JABG funds.

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

The Equal Treatment Regulations circumscribe how faith-based subrecipients may use federal financial assistance. Specifically, such subgrantees may not engage in inherently religious activities with federal funds; nor can they discriminate against potential or actual program beneficiaries on the basis of religion or religious belief. 28 C.F.R. §§ 38.2(b)(1), (d). In administering its DOJ program funds, the DYA does not have a system in place to monitor whether faith-based organizations that may receive Title V or JABG funds would provide services consistent with these restrictions.

selects another applicant to receive the Title V or JABG funds.

II. Recommendations

To strengthen the DYA's civil rights monitoring efforts, the OCR concludes that the Department should implement the following six recommendations: (1) confirm its modification of the civil rights/nondiscrimination provisions in its grant agreement, (2) refine its monitoring protocols to include additional items regarding federal civil rights laws, (3) provide consistent training to all subrecipients regarding their obligations to comply with federal civil rights laws, (4) provide information and training to DYA personnel on applicable employment nondiscrimination policy and procedures, (5) develop a comprehensive policy for addressing discrimination complaints, and (6) confirm federal tax exempt status of nonprofit subrecipients of JJDPA funds.⁶

A. Confirm Its Modification of the Civil Rights/Nondiscrimination Provisions in Grant Agreement

The DYA should provide confirmation to the OCR that each of the Department's subrecipients has agreed to all of the federal civil rights provisions identified in Section I.A.1. of this Report.

B. Refine Monitoring Protocol

As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the DYA should ensure that it conducts periodic monitoring of its subrecipients and strengthen its review of issues involving civil rights compliance. To that end, the Department should develop a monitoring instrument that evaluates compliance with the various civil rights requirements that apply to all DOJ-funded subrecipients (e.g., 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; and whether the subrecipient is taking reasonable steps to provide meaningful access to programs and activities for LEP persons). This monitoring tool should also include questions that evaluate whether a 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 DYA in refining its monitoring materials, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Department's review.

⁶ Most of these recommendations directly relate to the Methods of Administration that the DYA will need to implement as a condition of administering fiscal year 2012 funds as an SAA under the Title V and JABG programs. See Letter from M. Alston, Director, to SAA Points of Contact (Aug. 1, 2012); Other Requirements for OJP Applications, http://www.ojp.usdoj.gov/funding/other_requirements.htm (last visited Aug. 15, 2012).

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

The DYA should ensure, through periodic and mandatory training, that all subgrantees are aware of their obligations under applicable federal civil rights laws. The Department should provide this training at least once during a grant cycle, whether it provides the training in person, during a teleconference, or through other means. The OCR has developed training modules that explain a recipient's various civil rights obligations, and which are available at <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>. The Department may wish to incorporate these videos into its own subgrantee training program. The OCR is also available to provide the Department with additional technical assistance in developing its civil rights training programs. In addition, the DYA should continue to provide ongoing technical assistance to subrecipients regarding their statutory and contractual obligations.

D. Provide Information and Training to DYA Personnel on the Department's Employment Nondiscrimination Policy and Procedures

The DYA does not have any mechanism in place to educate its employees about applicable employment nondiscrimination policy and related procedures. To address this deficiency, the Department, in coordination with the Department of Administration, should provide information and training to new and existing employees on the DYA's nondiscrimination obligations and the applicable complaint process for receiving and resolving employment discrimination complaints.

E. Develop Comprehensive Policy for Addressing Discrimination Complaints

As previously noted, the DYA is covered by the Department of Administration's procedures for responding to discrimination complaints from the Department's own employees, and the EEOC and the OCR are also available to resolve certain discrimination complaints. The DYA also has a system for handling discrimination complaints it receives from adjudicated youth. While these measures are important, the Department has the broader obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to (1) services discrimination complaints that it receives from any beneficiary,⁷ and (2) employment and services discrimination complaints that it receives from subgrantee employees and beneficiaries. 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 all DYA beneficiaries and appropriate subrecipient employees and beneficiaries

⁷ In implementing this recommendation, the DYA should ensure that grievance forms are available to juvenile offenders in its secure and non-secure detention facilities.

of prohibited discrimination in funded programs and activities and the DYA's policy and procedures for handling discrimination complaints;

- establishing written procedures for receiving discrimination complaints from all DYA beneficiaries and subgrantee employees and beneficiaries;
- investigating each complaint internally or referring it to the appropriate agency, such as the EEOC or the OCR, for investigation and resolution;
- notifying the complainant that he or she may also file a complaint with the OCR;
- training DYA program staff members on their responsibility to refer discrimination complaints or potential discrimination issues involving the DYA or subrecipients to the Department's complaint coordinator for processing as soon as the alleged discrimination comes to their attention;
- ensuring that subrecipients have procedures in place for responding to discrimination complaints that employees and beneficiaries file directly with the subrecipient; and
- ensuring that subrecipients notify their employees and beneficiaries of prohibited discrimination and the procedures for filing a complaint of discrimination.

To assist the DYA in developing an appropriate complaint policy, the OCR encloses discrimination complaint procedures that were adopted by three other state administering agencies. While the Department's adoption of these procedures would satisfy the instant recommendation, the OCR also recognizes that there may be other, equally effective complaint procedures that accomplish the same objectives. Additional information about the applicable laws, complaint forms, and the investigative process can be found at <http://www.ojp.usdoj.gov/ocr/crc>.

F. Confirm Federal Tax Exempt Status of Nonprofit Subrecipients of JJDPA Funds

In subawarding Title V and JABG funds, the DYA should be mindful that a nonprofit applicant is only eligible to receive such funds if it provides proof that the Internal Revenue Service classifies the organization as exempt under section 501(c)(3) of the Internal Revenue Code. The Department should also ensure that governmental subrecipients under these programs are aware that, while they may retain faith-based organizations to provide services under their grant awards, each contracted faith-based group must have federal tax exempt status.

Adonis J. Mendiola, Director
Guam Department of Youth Affairs
October 2, 2012
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III. Conclusion

We find that the DYA 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 Department in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible DYA official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing the OCR's recommendations.**

Thank you for your cooperation and assistance during the Compliance Review process. If you have any questions, please contact Mr. Zubowicz at 202.305.9012.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston
Director

Enclosures