



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

September 13, 2010

Washington, D.C. 20531

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Paul Stageberg, Ph.D., Administrator
Division of Criminal and Juvenile Justice Planning
Iowa Department of Human Rights
321 East 12th Street, 2nd Floor
Des Moines, Iowa 50319

**Re: Compliance Review of Iowa Department of Human Rights, Division of
Criminal and Juvenile Justice Planning (09-OCR-0085)**

Dear Mr. Stageberg:

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 Iowa Department of Human Rights, Division of Criminal and Juvenile Justice Planning (CJJP), in accordance with federal regulation 28 C.F.R. § 42.206. The review focused on the CJJP's compliance with applicable federal civil rights laws along with the CJJP's monitoring procedures for ensuring that subrecipients comply with these laws. Of particular interest to the OCR was the CJJP's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 ["Equal Treatment Regulations"].

On February 10, 2009, and February 11, 2009, the OCR conducted an onsite visit to the CJJP's offices in Des Moines, Iowa, to interview you and to conduct a training program for CJJP management and program staff about federal civil rights laws that the OCR enforces. The OCR would like to thank you for assisting OCR attorney advisor Michael Thomas during his visit.

On July 28, 2010, we sent you a draft report and asked that you provide any factual inaccuracies within 30-days. Having received none, this letter serves as the final Compliance Review Report.

Based on the limited scope of this compliance review, the OCR concludes that the CJJP 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 CJJP's (1) civil rights and nondiscrimination provisions in its assurances and certifications document, (2) monitoring of subrecipients' civil rights obligations, (3) guidance and training to subrecipients about their legal obligations regarding applicable federal civil rights laws and the Equal Treatment Regulations, and (4) complaint procedures for responding to discrimination allegations. The following Compliance Review Report includes recommendations for improving CJJP'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 CJJP'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 CJJP'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 CJJP's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the CJJP used the following four tools: (1) assurances and certifications document and contract document, (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. Assurances and Certifications Document and Contract Document

The CJJP has a staff of eighteen employees. The CJJP administers grant funding to "support activities to impact the child welfare and juvenile justice system" in the state of Iowa. The CJJP administers the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Bureau of Justice Assistance (BJA), and the Bureau of Justice Statistics (BJS) funding.

The CJJP allocates DOJ funding to the eight judicial district juvenile courts in Iowa, who often subcontract to service providers. Each applicant for DOJ funding through the CJJP must complete an assurances and certifications document in which the applicant agrees to comply with the following non-discrimination provisions:

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS: No person shall, on the grounds of race, creed, color, national origin, age, gender or sexual orientation be excluded from participation in, be refused the benefits of, or be otherwise subjected to discrimination under agency grants awarded pursuant to P.L. 93-145 or any project or program supported by such grants. Subgrantees must comply

Paul Stageberg, Ph.D., Administrator
Division of Criminal and Juvenile Justice Planning
Iowa Department of Human Rights
September 13, 2010
Page 3 of 11

with the provisions of Title VI of the Civil Rights Act of 1964, as amended; the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II 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 Nondiscrimination Regulations 28 CFR Part 42, Subparts C,D,E, and G; and regulations issued by the Department of Justice thereunder as a condition of award of federal funds and continued grant support. The subgrantee shall notify the Division of Criminal and Juvenile Justice Planning of any findings of discrimination made against the agency after a due process hearing.

ASSURANCES OF COMPLIANCE WITH "EQUAL TREATMENT REGULATION:" The applicant ensures that religiously affiliated organizations have a level playing field for consideration for any and all subcontracts under agency grants, pursuant to Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of all Justice Department Program Participants regulation, 28 CFR parts 31, 33, 38, 90, 91, and 93, the participation of faith-based organizations.

BUILDING ACCESSIBILITY AND USE BY PEOPLE WITH DISABILITIES: Any construction, design or alteration of a building or facility which will be used by the public or which may result in the employment or residence of people with disabilities must comply with the regulations issued by Federal Agencies, including the Department of Justice, under the Americans with Disabilities Act of 1990.

Prior to receiving funding, the CJJP requires a recipient to enter into a contract with the CJJP that contains fourteen sections. Section 13.2 of the contract contains the following language regarding civil rights laws:

The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses and religious organizations as subcontractors or suppliers, including but not limited to the following:

All applicable nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act, as amended; Title VI of the Civil Rights Act of 1964, as amended; the Omnibus Crime Control and Safe Streets Act of 1968, as

amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II 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 Nondiscrimination Regulations 28 CFR Part 42, Subparts C,D,E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 thereunder as a condition of award of federal funds and continued grant support. The subgrantee shall notify the Division of Criminal and Juvenile Justice Planning of any findings of discrimination made against the agency after a due process hearing.

All applicable provisions of the "Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of all Justice Department Program Participants" regulation, 28 CFR parts 31, 33, 38, 90, 91, and 93.

As noted, CJJP's assurances and certifications document, and the contract document specifically mention an applicant's obligation to comply with antidiscrimination laws and regulations, including DOJ's Equal Treatment Regulations. However, neither the assurances and certifications document nor the contract document discuss a subrecipient's Equal Employment Opportunity Program (EEOP) obligation under 28 CFR § 42.301, *et seq.*

2. Onsite Visits and Other Monitoring Methods

The CJJP conducts annual desk audits of subrecipients, and periodically conducts site monitoring visits of subrecipients to evaluate the programmatic and financial aspects of the program to ensure it remains in compliance with pertinent grant requirements. The CJJP does not audit or monitor its subrecipients' compliance with their federal civil rights obligations.

3. Training and Technical Assistance

The CJJP does not provide training to subrecipients on their civil rights obligations. According to the CJJP, subrecipients can receive training on their civil rights obligations through the Iowa Civil Rights Commission (ICRC), an Iowa state agency that enforces state and federal statutes that prohibit discrimination based on race, color, national origin, sex, religion, creed, disability, age, sexual orientation, gender identity, marital status, and familial status in the areas of employment, housing, education, credit, and public accommodation.¹ The ICRC's executive

¹ ICRC's definition of "public accommodation" includes private entities and each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to

Paul Stageberg, Ph.D., Administrator
Division of Criminal and Juvenile Justice Planning
Iowa Department of Human Rights
September 13, 2010
Page 5 of 11

director informed the OCR that the ICRC provides civil rights training to organizations throughout the state of Iowa upon the organizations' requests. The training covers the laws enforced by the ICRC, including the prohibition of discrimination based on religion.

Although the CJJP relies on subrecipients to obtain civil rights training on their own from the ICRC, there is no indication that subrecipients are aware that this training opportunity is available or that they have actually obtained civil rights training through the ICRC.

4. Complaint Procedures

The CJJP has no procedures in place for receiving, investigating, and resolving discrimination complaints from CJJP employees or from its subrecipients' employees and beneficiaries.

According to the CJJP administrator, CJJP employees and employees and beneficiaries of subrecipients can file complaints of discrimination directly with the ICRC or with their local civil rights commission (there are approximately twenty-five local civil rights commissions in Iowa, including the Bettendorf Civil Rights Commission, the Council Bluffs Civil Rights Commission, and the Des Moines Civil Rights Commission). The ICRC and the local civil rights commissions handle complaints of employment discrimination and public accommodation (service) discrimination.

The CJJP administrator indicated that he is not aware of any complaints of discrimination filed against the CJJP.

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. § 38.2(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 CJJP'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.

the public, gratuitously or otherwise. See Iowa Code, §216.2(12).

1. The Process for Making Awards to Applicant Faith-Based Organizations

The CJJP subawards funds under OJJDP's EUDL and Title II programs.²

The OJJDP's EUDL program 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 CJJP and its subrecipients. See *OJJDP FY 09 Enforcing the Underage Drinking Laws Block Grants Program* at <http://ojjdp.ncjrs.org/grants/solicitations/fy2009/EUDL%20block.pdf> (last visited Jan.21, 2010).

The OJJDP's Title II program focuses on improving juvenile justice systems by increasing the availability and types of prevention and intervention programs. While faith-based organizations are statutorily ineligible to apply directly to the OJJDP for Title II funding, they may apply for funding from the CJJP and its subrecipients. See *OJJDP FY 09 Title II Formula Grants Program*, at <http://ojjdp.ncjrs.org/grants/solicitations/FY2009/TitleIIFormula.pdf> (last visited Jan.21, 2010).

The CJJP's funding is for the court system in Iowa; therefore, the CJJP only solicits applications from the eight Iowa judicial districts. When funding is available, the CJJP notifies each of the eight judicial districts by email. All eight judicial districts in the state have applied for OJJDP funding through the CJJP, and all eight districts have been awarded funding. The funding award decision is made by a Juvenile Justice Advisory Counsel that makes the funding decision based on the juvenile population within each judicial district. The eight judicial districts within Iowa can use OJJDP funding to subcontract with other agencies and organizations, including faith-based organizations.

Because the CJJP only solicits applications from the eight judicial districts within Iowa for OJJDP funding, the CJJP received no applications from faith-based organizations for direct funding for fiscal years 2006, 2007, 2008, and 2009.

² The CJJP does not solicit applications for BJA and BJS funding because the funding it receives from these grants goes directly to fund CJJP staffing.

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

The CJJP has no procedures in place for ensuring that faith-based organizations comply with applicable civil rights laws. The CJJP does not monitor whether a subrecipient is in compliance with the DOJ's Equal Treatment Regulations.

II. Recommendations

To ensure that the CJJP is monitoring subrecipients' civil rights obligations, the OCR offers the following four recommendations: (1) modify the assurances and certifications document and the contract document, (2) develop a comprehensive civil rights compliance checklist to monitor subrecipients' compliance with federal civil rights laws during monitoring encounters, (3) conduct training to subrecipients regarding their obligations to comply with federal civil rights laws, including DOJ's Equal Treatment Regulations, and (4) develop a written policy for addressing discrimination complaints.

A. Modify the Nondiscrimination Provisions in the Assurances and Certifications Document

The OCR commends the CJJP for including provisions in its assurances and certifications document that accurately describe the civil rights laws that apply to recipients of federal financial assistance, including DOJ's Equal Treatment Regulations. In an effort to further refine a subrecipient's EEOP obligation, its obligation to take reasonable steps to provide meaningful access to their programs and activities to LEP persons, and its obligation to notify the OCR and the CJJP of any findings of discrimination made against the agency after a due process hearing, the OCR recommends that the CJJP incorporate, at a minimum, the following or similar language in its assurances and certifications document:

The recipient will determine whether it is required to formulate an Equal Opportunity Program (EEOP), in accordance with 28 CFR 42.301 *et. seq.* If the applicant 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 CJJP indicating that it is not required to develop an EEOP. If the applicant is required to develop an EEOP, but is not required to submit the EEOP to the OCR, the applicant will submit a certification form to the OCR and the CJJP certifying that it has an EEOP on file which meets the applicable requirements. If the applicant 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 the

Paul Stageberg, Ph.D., Administrator
Division of Criminal and Juvenile Justice Planning
Iowa Department of Human Rights
September 13, 2010
Page 8 of 11

CJJP. Non-profit organizations, Indian Tribes, and medical and education institutions are exempt from the EEOP requirement, but are required to submit a certification form to the OCR to claim the exemption. A copy of the certification form should also be submitted to the CJJP. 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 your 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 your budgets and in conducting your programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

In the event a federal or state court or federal or state or local 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 OCR and the CJJP.

Finally, the CJJP 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. Develop a Civil Rights Compliance Checklist to Monitor Subrecipient's Compliance

As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights law, the CJJP should ensure that it conducts periodic onsite monitoring of DOJ subrecipients. To that end, the CJJP should develop a civil rights compliance checklist that evaluates the various civil rights requirements that apply to all DOJ-funded subrecipients (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 CJJP and the OCR; whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education

Amendments of 1972; and whether the subrecipient is taking reasonable steps to provide meaningful access to programs and activities for LEP persons). Additionally, the civil rights compliance 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. To assist the CJJP, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, enclosed as Attachment A, for CJJP's review. The CJJP may use or modify this Checklist, or develop its own Checklist to monitor a subrecipient's compliance with applicable civil rights laws and regulations.

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

The CJJP does not provide training or technical assistance to its subrecipients about their civil rights obligations. To ensure that subrecipients are aware of their obligations under applicable federal civil rights laws, such as to provide services to LEP individuals, to have procedures in place to receive and evaluate complaints alleging discrimination from employees and beneficiaries, and to comply with DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion, the CJJP should provide periodic, mandatory training programs for subrecipients. The CJJP 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 is available to provide the CJJP with technical assistance in developing civil rights training programs. In addition, the CJJP should encourage subrecipients to seek technical assistance from CJJP staff regarding their statutory and contractual civil rights obligations.

D. Develop a Comprehensive Policy for Addressing Discrimination Complaints

As previously noted, the CJJP does not have internal discrimination complaint policies or procedures in place available to CJJP employees and beneficiaries, or to employees and beneficiaries of subrecipients. Although the CJJP administrator indicated that employees, and employees and beneficiaries of subrecipients can file complaints of discrimination directly with the ICRC or with their local civil rights commission, the CJJP has an obligation as a recipient of federal financial assistance to have a policy that comprehensively addresses how it responds to employment and services discrimination complaints that it receives from its own employees and beneficiaries, as well as from the employees and beneficiaries of subrecipients. Specifically, the CJJP 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 CJJP, as well as beneficiaries and subrecipients, of prohibited discrimination in funded programs and activities and the CJJP'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 ICRC, the local civil rights commission, or the Equal Employment Opportunity Commission (EEOC); or referring the complaint to the OCR, which will review the complaint and work with the CJJP to resolve it;
- notifying the OCR in writing when the CJJP refers a discrimination complaint to another agency or when CJJP investigates the complaint internally; and
- training CJJP program staff on their responsibility to refer discrimination complaints or potential discrimination issues to the CJJP's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

To assist the CJJP in developing written complaint procedures to address discrimination complaints, a sample policy entitled, *Procedures for Responding to Discrimination Complaints from Employees of the [State Administering Agency] Subrecipients under U.S. Department of Justice Grant Programs*, is enclosed as Attachment B, and a sample policy entitled, *Subrecipients Procedures for Responding to Discrimination Complaints from Clients, Customers, Program Participants, or Consumers of the [State Administering Agency] and the [State Administering Agency's] Subrecipients* is enclosed as Attachment C. The CJJP may use or modify these policies or develop its own policies for addressing discrimination complaints. Additional information about applicable laws, complaint forms, and the OCR's investigative process is available at OCR's Website at <http://www.ojp.usdoj.gov/ocr/crc>.

III. Conclusion

The CJJP should implement 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 CJJP in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, a responsible CJJP official should contact attorney advisor**

Paul Stageberg, Ph.D., Administrator
Division of Criminal and Juvenile Justice Planning
Iowa Department of Human Rights
September 13, 2010
Page 11 of 11

Michael Thomas 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. Thomas at [REDACTED]

Sincerely,



Michael L. Alston
Director

Enclosures