



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

March 25, 2009

Anne H. Jordan, Commissioner
Maine Department of Public Safety
104 State House Station
45 Commerce Drive, Suite 1
Augusta, Maine 04333-0104

Re: Maine Department of Public Safety (08-OCR-0426)

Dear Commissioner Jordan:

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 Maine Department of Public Safety (DPS), in accordance with federal regulation 28 C.F.R. ' 42.206. The focus of the review was on the DPS' compliance with applicable federal civil rights laws along with the DPS' monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the DPS' implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations].

On October 8, 2008, the OCR conducted an onsite visit to the DPS' offices in Augusta, Maine, to interview DPS administrators and to conduct a training program for DPS administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank DPS staff, especially Senior Planner Mary Lucia, for assisting OCR attorney Shelley Langguth during her onsite visit.

Based on the DPS' responses to our data request and the information that the OCR gathered during our onsite visit, the OCR sent the DPS a draft Compliance Review Report on February 4, 2009. In a March 20, 2009, email to Ms. Langguth, Ms. Lucia indicated that the DPS does not have any factual corrections to the OCR's draft Compliance Review Report.

In regard to the limited scope of our review, the OCR concludes that the DPS has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about whether the DPS has adequate complaint procedures in place to respond to discrimination complaints from DPS beneficiaries and from beneficiaries and employees of

subrecipients, and whether it is sufficiently training and educating its subrecipients on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the DPS' methods for monitoring the civil rights compliance of subrecipients.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the DPS' 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 DPS' 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 DPS' general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the DPS used the following four tools: (1) standard assurances, (2) onsite visits and other monitoring methods, (3) training programs and technical assistance, and (4) procedures for receiving, investigating, and resolving complaints alleging discrimination in the delivery of services.

1. Standard Assurances

Grant administrators located within the DPS' Commissioner's Office are responsible for administering DPS grants, including DOJ subawards. Before the DPS releases DOJ funds, subrecipients must sign the State of Maine's standard Agreement to Purchase Services (Agreement), contract BP54. During the onsite visit, a DPS grant administrator explained that all State of Maine agencies utilize this Agreement when making subawards, and that agencies have the discretion to insert the agency's own particular terms and conditions in Rider D of this Agreement.

The standard Rider B of this Agreement contains a section (section 10) entitled "Equal Employment Opportunity." This section states in part that the subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation. The section requires the subrecipient to include a nondiscrimination statement in all solicitations or advertisements for employment, in any contract or subcontract, in labor or collective bargaining agreements, and in a public posting conspicuous to employees and applicants for employment.

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This section further states that the subrecipient shall comply with the Americans with Disabilities Act (ADA) in employment and the provision of services, and shall notify the DPS' Equal Employment Opportunity Coordinator of any lawsuit or of any complaint brought to an external regulatory body such as the Maine Human Rights Commission, the Equal Employment Opportunity Commission, or the Office of Civil Rights¹, alleging discrimination by the subrecipient.

As explained above, state agencies have discretion to insert their own particular requirements in Rider D of this Agreement; during the OCR's onsite visit, a DPS grant administrator further said that Rider D may differ within the DPS depending on the particular grant program. In the DPS' data response, the DPS provided an example of a Rider D (effective July 1, 2007) that DPS had used in one of its grant programs funded by the Office on Violence Against Women (OVW). Section 1 of this Rider D states that recipients of federal funding from OVW must comply with some additional requirements, such as civil rights compliance and the Equal Treatment for Faith-Based Organizations regulations at 28 C.F.R. pt. 38, and provides a link to the funding requirements on the OJP's website at www.ojp.usdoj.gov/funding/other_requirements.htm. Section 3 of this Rider D is entitled "Non-Discrimination," and states the following:

The applicant and its contractors will comply with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Sub-parts C, D, E, and G; and Executive Order 11246, as amended by Executive Order 11375, and their implementing regulations, 41 CFR Part 60.1 et. seq., as applicable to construction contracts; and the Equal Treatment for Faith-Based Regulations, 28 C.F.R. pt. 38. In addition to the federal law, contractors will comply with the nondiscrimination requirements of 5 M.R.S.A. § 1825-L(2)(A).

Section 9 of this Rider D contains a similar provision, but omits reference to the Equal Treatment Regulations. Additionally, Section 4 of this Rider D states that if required, the applicant will certify to the DPS grant administrator that it has formulated an Equal Employment Opportunity Program (EEOP) in accordance with 28 C.F.R. § 42.301 et. seq., and that the applicant will provide an EEOP to the Justice Assistance Council² if the grant is for \$500,000 or more.

¹ The OCR is presuming that the "Office of Civil Rights" is referring to the OCR.

² As will be discussed in Section I.B.1 of this Compliance Review Report, the Justice Assistance Counsel is an external body that oversees several of the DOJ grant programs that the DPS implements.

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As noted above, Rider D may vary depending on the particular DOJ grant program. During the OCR's onsite visit, the DPS provided the OCR with the recent March 7, 2008, Request for Proposals (RFP) for the Violence Against Women Act (VAWA) Services-Training-Officers-Prosecutors (STOP) Formula grant; this RFP contained a different Rider D that applicants of this grant program are required to abide by. Section 4 of the Rider D for the 2008 VAWA program is entitled "Non-Discrimination" but differs slightly from the "Non-Discrimination" section contained in the Rider D included in the DPS' data response, stating that:

It [the applicant] will comply, and all its contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title 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 Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.

This version of Rider D does not include reference to the Equal Treatment Regulations. It does contain a section on Equal Employment Opportunity, requiring the applicant to submit a certification or an EEOP to the Justice Assistance Council, as appropriate.

In addition to requiring subrecipients to sign and agree to abide by the Agreement and attached riders, the DPS requires successful applicants to review and submit to the OCR, with a copy to the DPS, an EEOP Certification Form, if the subrecipient is declaring partial or complete exemption from the EEOP requirement. This EEOP Certification Form is similar to the EEOP Certification Form used by the OJP.

2. Onsite Visits and Other Monitoring Methods

During the OCR's onsite visit, a grant administrator said that the DPS monitors its subrecipients by requiring quarterly progress and financial reports and by conducting onsite visits of each subrecipient every one to two years. The grant administrator provided the OCR with a "Civil Rights Monitoring Questionnaire" that grant administrators use during onsite visits; this questionnaire asks for the contact information of the person responsible for submitting findings of discrimination to the OCR, and asks whether a Federal or State court or administrative agency has issued a finding of discrimination against the subrecipient during the last three years on the grounds of race, color, national origin, age, sex, religion, or disability. This questionnaire also

asks whether the subrecipient has submitted an EEOP certification form or an EEOP to the OCR, and whether the subrecipient needs any civil rights training or technical assistance regarding its duties to comply with applicable civil rights laws.

3. Training and Technical Assistance

In its data response, the DPS said that it does not have a formal program in place for providing training to subrecipients on their civil rights obligations, but that any technical assistance is provided upon request. During the onsite visit, a DPS grant administrator explained that training or technical assistance is provided to subrecipients on an individual basis as questions arise. As discussed in section I.A.2 of this Compliance Review Report, during the DPS' onsite monitoring visits, grant administrators inquire whether the subrecipient needs any civil rights training or technical assistance in meeting applicable civil rights requirements.

4. Complaint Procedures

During the OCR's onsite visit, a DPS grant administrator said that the DPS has policies in place to address discrimination complaints from DPS employees, but that these policies do not address discrimination complaints from beneficiaries of DPS or from employees or beneficiaries of subrecipients. In its data response, the DPS said that assistance in investigating discrimination complaints against subrecipients is available through the staff counsel of the Maine State Police³ and the State of Maine Office of the Attorney General.

As discussed in Section I.A.1 of this Compliance Review Report, Rider B of the Agreement governing subawards requires subrecipients to notify the DPS' Equal Employment Opportunity Coordinator of any discrimination lawsuit or complaint against the subrecipient brought to an external regulatory body such as the Maine Human Rights Commission (MHRC), the Equal Employment Opportunity Commission, or the Office of Civil Rights⁴. The DPS grant administrator told the OCR that a number of years ago the DPS did receive notice that someone filed a discrimination complaint against a DPS subrecipient with the MHRC, and that the DPS is not aware of the outcome of that complaint.

Based on the OCR's research, it appears that the MHRC has jurisdiction over complaints alleging discrimination in employment, housing, or access to public accommodations on the basis of race, color, sex, sexual orientation, disability, religion, or national origin, along with complaints alleging employment discrimination on the basis of age. Accordingly, it appears that employees of DPS and employees of DPS subrecipients may file discrimination complaints with the MHRC, and that beneficiaries of subrecipients may be able to file discrimination complaints

³ The Maine State Police is part of the DPS.

⁴ Again, the OCR is presuming that the "Office of Civil Rights" is referring to the OCR.

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with the MHRC as well, depending on whether the program or activity of the subrecipient qualifies as a place of public accommodation.

The OCR's research also indicates that the Office of the Maine Attorney General has authority to seek restraining orders against persons who commit violence, threats of violence, or property damage motivated by bias based on race, color, religion, ancestry, national origin, gender, disability, or sexual orientation. Unless violence, threats of violence, or property damage is involved, it does not appear that the Attorney General would have jurisdiction over discrimination complaints by employees or beneficiaries of DPS or DPS subrecipients.

B. Monitoring Compliance with Faith-Based Regulations

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

During and subsequent to the OCR's onsite visit, a grant administrator explained that the DPS administers the following DOJ grant programs: the Edward Byrne Memorial Justice Assistance Grant (JAG) Program; the Project Safe Neighborhoods (PSN) Program, the Paul Coverdell Forensic Science Improvement Grants Program; the Residential Substance Abuse Treatment for State Prisoners (RSAT) Program; and programs authorized by VAWA. The grant administrator explained that the external Justice Assistance Council oversees the JAG and VAWA grant programs; the Justice Assistance Council is comprised of representatives from twelve to fifteen stakeholder groups, and works with DPS grant administrators to develop a RFP for available grants. The DPS grant administrator said that the DPS will advertise RFPs in the legal section of the local newspaper and will also contact stakeholder groups and other organizations such as the Council of Churches to advise them of funding availability. The Justice Assistance Council then reviews grant applications with the assistance of peer reviewers, and makes funding recommendations to the DPS. According to the grant administrator, the DPS uses a similar process for its PSN grants, using a PSN Task Force comprised of stakeholders from state government agencies, community-based organizations, victim service providers, and the criminal justice and business communities to review grant applications and make funding

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recommendations. The grant administrator further said that the DPS allocates Paul Coverdell Forensic Science Improvement Grant Program funds to three state forensic laboratories, and that RSAT funds are allocated to state and local correctional programs, with the Maine Sheriff's Association selecting the local programs to fund.

As noted above, a DPS grant administrator told the OCR that the DPS has contacted the Council of Churches to advise them of funding availability and provide them with funding announcements. The DPS provided the OCR with its March 7, 2008, RFP for the STOP grant program; this RFP contains a section entitled "Faith Based Organizations" that states that "[c]onsistent with 28 C.F.R. Part 38, faith-based and community organizations that statutorily qualify as eligible applicants are invited and encouraged to apply." This section further states that grant funds may not be used to fund any inherently religious activities and that any such activities must be separate in time or place from the grant-funded program, that participation by beneficiaries in any religious activities must be voluntary, and that funded programs may not discriminate in the provision of services based on religion. During the OCR's onsite visit, the grant administrator said that the DPS has not published any other RFPs since 2006.

The DPS grant administrator also explained to the OCR that the DPS recently provided training to the Justice Assistance Council on the Equal Treatment Regulations. The grant administrator said that she discussed with the Justice Assistance Council the need to include faith-based organizations in RFPs and the restrictions on expending federal funds on religious activities.

According to the grant administrator, the DPS requires nonprofit organizations to obtain tax exempt status under 26 U.S.C. § 501(c)(3) in order to receive funds from the DPS. The grant administrator said that she does not believe that this is required under state law.

Based on the DPS' data response and the information that the OCR obtained during our onsite visit, the OCR understands that in fiscal year (FY) 2006, the DPS was providing a STOP VAWA grant to Catholic Charities Maine for \$60,000.00 to conduct outreach services to Somali populations. This grant ended in FY 2006. The DPS also previously awarded a Victim Services in Rural Law Enforcement grant for \$60,000.00 to the Catholic Charities, which contracted with the Rapid Response Trauma Network. This grant was for family services, and the grant award period was March 1, 2006 to February 28, 2007. The DPS grant administrator told the OCR that during the administration of these grants, no issues arose regarding compliance with the Equal Treatment Regulations. The DPS grant administrator stated that no other faith-based organizations applied for or received funding over the past few years.

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

As discussed in this Compliance Review Report, the DPS references the Equal Treatment Regulations in one version of Rider D to its standard grant Agreement. The recent RFP for the STOP grant program contained a paragraph on the Equal Treatment Regulations, whereby subrecipients under that particular funding program are put on notice of the prohibition against using federal funding for inherently religious activities and discriminating against beneficiaries in the provision of services. The DPS has also trained the Justice Assistance Council on the Equal Treatment Regulations so that they are familiar the prohibition against spending federal funds on inherently religious activities. Additionally, during its onsite monitoring visits, the DPS asks all subrecipients some specific questions regarding their compliance with civil rights requirements, and asks subrecipients if they need technical assistance in meeting their civil rights obligations.

During the OCR's onsite visit, a DPS grant administrator said that during the Catholic Charities Maine's and the Rapid Responses Trauma Network's implementation of DOJ grant funding, no issues arose regarding compliance with the Equal Treatment Regulations.

I. Recommendations

The DPS already has several procedures in place for monitoring the civil rights compliance of its subrecipients. To strengthen the DPS' monitoring efforts, the OCR offers the following recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints; (2) ensure that a citation referring to DOJ's Equal Treatment Regulations is included in all subgrant Agreements; (3) monitor for compliance with additional civil rights requirements during onsite monitoring visits; (4) provide training to DOJ subrecipients on the civil rights laws that the OCR enforces; and (5) allow subrecipients to demonstrate nonprofit status by any of the means identified in the DOJ's Equal Treatment Regulations.

A. Develop Comprehensive Complaint Procedures

While the DPS has written procedures in place for receiving and investigating discrimination complaints from employees, the DPS does not have any procedures in place for addressing discrimination complaints from beneficiaries of DPS or from employees or beneficiaries of DPS subrecipients. Accordingly, the DPS should adopt a policy for addressing discrimination complaints that includes at a minimum the following elements:

- 1) designating a coordinator who is responsible for overseeing the complaint process;
- 2) notifying employees, beneficiaries, and subrecipients of prohibited discrimination in funded programs and activities and the DPS' policy and procedures for handling discrimination complaints;

- 3) establishing written procedures for receiving discrimination complaints from the DPS' beneficiaries, and from subrecipient employees and beneficiaries;
- 4) referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the Maine Human Rights Commission; or referring the complaint to the OCR, which will review the complaint and work with the DPS to resolve the complaint;
- 5) notifying the OCR in writing when the DPS refers a discrimination complaint to another agency or when the DPS investigates the complaint internally; and
- 6) training DPS program staff on their responsibility to refer discrimination complaints, or potential discrimination issues, to the DPS' complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

Information about the applicable laws, complaint forms, and the investigative process is available at the OCR's website at www.ojp.usdoj.gov/ocr/crc. Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the DPS.

- B. Ensure that a Reference to the Equal Treatment Regulations is in all of the DPS' Standard Agreements

The DPS should ensure that the Rider D to each of its subgrant Agreements contains a reference to the DOJ's Equal Treatment Regulations, 28 C.F.R. pt. 38. The DPS may also wish to include a discussion of the Equal Treatment Regulations in its RFPs, as it did in the recent RFP for the STOP grant program. Subrecipients that receive funding from DOJ components need to be aware of the obligation to comply with these regulations.

- C. Monitor for Compliance with Additional Federal Civil Rights Laws During Onsite Monitoring Visits

The DPS is taking steps to ensure that DOJ subrecipients are complying with civil rights requirements by asking questions during onsite monitoring visits relating to the EEOP requirements and the requirement to submit findings of discrimination to the OCR, and inquiring whether the subrecipient needs training or technical assistance to comply with applicable civil rights laws. The DPS may wish to expand the civil rights component of its onsite monitoring visits, such as by reviewing whether the subrecipient is complying with the Equal Treatment Regulations by not expending federal funding on inherently religious activities and not discriminating based on religion in the delivery of services, 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 steps to provide meaningful access to its programs and activities to individuals with limited English proficiency (LEP).

D. Provide Comprehensive Training on Federal Civil Rights Laws

The DPS does not currently provide any formal training for its subrecipients about their civil rights obligations, but rather provides training or technical assistance to individual subrecipients on an as-needed basis. To ensure that subrecipients 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 on the basis of race, color, religion, national origin, sex, or disability, the DPS should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The DPS should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the DPS provides the training in person, during a teleconference, or through other means. The OCR is available to provide the DPS with technical assistance in developing civil rights training programs.

E. Allow Subrecipients to Demonstrate Nonprofit Status by Any of the Means Identified in DOJ's Equal Treatment Regulations

As discussed in Section I.B.1 of this Compliance Review Report, the DPS requires nonprofit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible for DOJ funding, although a DPS grant administrator said that she does not believe that this is required under state law. Unless 501(c)(3) status is required under the particular grant program (e.g., programs funded under the federal Juvenile Justice and Delinquency Prevention Act), the DPS should be mindful that applicants can also demonstrate nonprofit status by any of the following means identified in the DOJ's Equal Treatment Regulations: (1) proof that the Internal Revenue Service recognizes the organization as being tax exempt under 501(c)(3) of the Internal Revenue Code; (2) a statement from a state taxing body or state secretary of state certifying that the organization is a nonprofit organization and that no part of the organization's net earnings may benefit any private shareholder or individual; (3) a certified copy of a certificate of incorporation or similar document establishing nonprofit status; and (4) any of the above, if it applies to a state or national parent organization, with a statement by the state or national parent organization that the applicant is a local nonprofit affiliate. 28 C.F.R. § 38.1(g).

Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the DPS has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the DPS in

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addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible DPS official contact Attorney Advisor Shelley Langguth to develop a timeline and goals for implementing the OCR's recommendations.**

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Langguth at (202) 305-2353.

Sincerely,

/s/

Michael L. Alston
Director

cc: Mary Lucia, Senior Planner