



U.S. Department of Justice

Civil Rights Division


Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 10 2009

MEMORANDUM

TO: Federal Agency Civil Rights Directors and General Counsels

FROM: 
Loretta King
Acting Assistant Attorney General

SUBJECT: Strengthening of Enforcement of Title VI of the Civil Rights Act of 1964

I am writing to you on the occasion of the 45th anniversary of the passage of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance. In recognition of this historic moment, I ask you to join me in a governmentwide initiative to strengthen enforcement of Title VI.

As you may know, under Executive Order 12250 (EO 12250), the Department of Justice (DOJ) is charged with ensuring the consistent and effective implementation of Title VI and other civil rights laws applicable to recipients of federal financial assistance. Exec. Order No. 12250, *Leadership and Coordination of Nondiscrimination Laws*, 45 Fed. Reg. 72,995 (Nov. 4, 1980). In order to fulfill this mandate, the Department, through the Civil Rights Division's Coordination and Review Section (COR), provides assistance and oversight to agency civil rights offices. (The Disability Rights Section provides assistance on section 504 of the Rehabilitation Act of 1973 and other disability-related issues.) Below, I describe the DOJ role in more detail, share some of the first steps we have taken toward strengthening Title VI, and call on you to partner with me in a number of specific ways.

First, to mark the beginning of our renewed commitment to Title VI, DOJ is hosting the *2009 Title VI Conference: Celebrating the 45th Anniversary of the Legislation and Exploring Current Issues in Enforcement* on July 20. The Conference provides an opportunity for DOJ and other federal agencies to listen to and to learn from community advocates, academicians, and others regarding the issues they consider to be the most important for enforcement of Title VI. While our nation has made incredible progress since 1964, the enforcement of federal civil rights laws, including Title VI, continues to play a critical role in protecting and advancing our nation's commitment to equality. I hope that this event will be only the beginning of an ongoing conversation between the agencies and those in the community. I encourage each agency to focus on community outreach as it reviews and enhances its Title VI compliance program.

SUBJECT: Strengthening of Enforcement of Title VI of the Civil Rights Act of 1964

Also on July 20, we will be re-releasing our award-winning Title VI video. The DVD jacket notes two legal updates since we created the video in 2001. It will be released in English and will soon be available also with subtitles in Spanish, Vietnamese, Chinese, and Korean. The video provides agencies with a useful tool for training civil rights staff and recipients about Title VI obligations. To request copies, call the Coordination and Review Section at (202) 307-2222.

Second, DOJ will exercise its clearance authority under EO 12250 in a renewed effort to ensure the consistent and effective enforcement of Title VI. Therefore I remind you that certain federal agency documents concerning civil rights enforcement must be reviewed and cleared by DOJ. The DOJ's clearance role is critical to our responsibility to ensure consistent and effective enforcement of Title VI and other civil rights laws. Therefore, to assist agencies with this process, I am providing some guidance concerning covered documents.

Under EO 12250, federal rules and regulations issued to effectuate Title VI and Title IX of the Education Amendments of 1972 *must* be approved by the Attorney General. 42 U.S.C. § 2000d-1; Exec. Order No. 12,250 at 1-1. This includes the Title VI and Title IX portions of comprehensive regulations that implement other statutes. For example, if a federal agency drafts a rule governing administrative complaints generally, the rule is covered by EO 12250 to the extent it effectuates Title VI or Title IX.

In addition, federal implementing directives (whether in the nature of regulations or policy guidance) that are issued under any of the laws covered by EO 12250 are "subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect." EO 12250 at 1-402. These documents include regulations issued to effectuate any statutes that "provide, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." EO 12250 at 1-201(d). Federal policy guidance documents pertaining to Title VI, Title IX, Section 504 of the Rehabilitation Act of 1973, and the other statutes described above are all also included. The authority to review such guidance documents has been delegated to the Assistant Attorney General for Civil Rights.

In either case, I urge each federal agency to begin the review process as soon as possible by contacting COR during the early stages of any project covered by EO 12250.

Third, I have asked that COR (and the Disability Rights Section for disability-related issues) place a high priority on providing agencies with technical assistance in support of their efforts to strengthen civil rights compliance programs. I urge each federal agency to examine anew all aspects of its compliance program. COR stands ready to assist you with this task.

SUBJECT: Strengthening of Enforcement of Title VI of the Civil Rights Act of 1964

In reviewing and strengthening your federal civil rights compliance program, I urge you to remember that the federal agencies serve an especially critical role in enforcing the Title VI disparate impact regulations. This is because the Supreme Court has held that victims of disparate impact discrimination have no private right of action to enforce these regulations. *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001). Victims can only turn to the administrative complaint process and, therefore, agencies must be particularly vigilant in ensuring strong enforcement in this area.

I also highlight an issue that is cross-cutting and a priority for DOJ and urge federal agencies to work with recipients to address civil rights in emergency preparedness, response, and recovery. The various stages of an emergency involve many federal agencies, recipients, and community partners. Recent disasters and health emergencies have demonstrated the importance of ensuring that emergency-related services and information are available to all people. COR is currently developing detailed guidelines on Title VI compliance in this context to further address this important issue.

We are developing additional guidance concerning best practices in federal compliance program implementation. In the meantime, you may wish to refer to the Memorandum from the Assistant Attorney General to Executive Agency Civil Rights Directors, *Enforcement of Title VI of the Civil Rights Act of 1964 in Block Grant-Type Programs* (Jan. 28, 1999), which can be found at <http://www.usdoj.gov/crt/cor/Pubs/blkgrnt.php>. (Much of the memorandum is relevant to all types of programs, not just block grant programs.) Please do not hesitate to contact COR for assistance in reviewing your program or to offer to partner in identifying and sharing best practices.

Finally, I encourage you to submit to the Civil Rights Division for litigation Title VI and other civil rights cases that cannot be resolved administratively (*i.e.*, when your agency determines that informal resolution or fund termination are not viable solutions). Even when an agency has made every effort to resolve a case administratively, sometimes litigation is necessary.

When the Civil Rights Act of 1964 was enacted, the import of Title VI became clear relatively quickly. The administrative power of Title VI – linking funding to nondiscrimination – proved to be as powerful as litigation, particularly in the area of education desegregation. Why? Because the federal government determined that Title VI had powerful potential and worked boldly to ensure enforcement. Although the context has changed, the need for vigilance and for strong agency action to root out discrimination on the basis of race, color, and national origin have not.

Thank you for your continued support for the vigorous enforcement of Title VI. I look forward to our continued joint efforts in this critical area of our nation's civil rights laws.