

DEPARTMENT OF EDUCATION  
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
DEPARTMENT OF JUSTICE

52 FR 43385

November 12, 1987

Agreement Between National Aeronautics and Space Administration and Department of Education To Delegate Certain Civil Rights Compliance Responsibilities for Elementary and Secondary Schools and Institutions of Higher Education

TEXT: A. Purpose

Section 1-207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions as required in the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401-42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement the National Aeronautics and Space Administration (NASA) designates the Department of Education (ED) as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to elementary and secondary schools and institutions of higher education. Responsibility for the following covered nondiscrimination provisions are delegated:

1. Title VI of the Civil Rights Act of 1964 (*42 U.S.C. 2000d to 2000d-4*);
2. Title IX of the Education Amendments of 1972, as amended (*20 U.S.C. 1681 to 1686*);  
and
3. Section 504 of the Rehabilitation Act of 1973, as amended (*29 U.S.C. 794*).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance (28 CFR 42.601-42.613, 29 CFR 1691.1-1697.13, and *48 FR 3570* (January 25, 1983)). Complaints covered by that regulation filed with a delegating agency against a recipient of Federal financial assistance alleging solely employment discrimination against an individual are to be referred directly to the Equal Employment Opportunity Commission by the delegating agency.

### C. Duties of Department of Education

NASA assigns the following compliance duties to ED with respect to elementary and secondary schools and institutions of higher education. Specifically, ED shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported annually at the end of every fiscal year to NASA.
2. Develop and use information for the routine, periodic monitoring of compliance by elementary and secondary schools and institutions of higher education with respect to their programs or activities receiving Federal financial assistance subject to this agreement.
3. Perform, upon request by NASA, preapproval reviews for which supplemental information or field reviews are necessary to determine compliance.
4. Conduct an effective program of postapproval reviews or recipients with respect to their program or activities receiving Federal financial assistance subject to this agreement.
5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, attempt to obtain information necessary to make complaints complete, and investigate complete complaints.
6. Issue a written letter of findings of compliance or a letter of findings of noncompliance that (a) advises the recipient and, where appropriate, the complainant of the results of the postapproval review or complaint investigation, (b) provides recommendations, where appropriate, for achieving voluntary compliance, and (c) offers the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state in which the applicant or recipient is located will be notified if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The ED promptly shall provide a copy of its letter of

findings to NASA and a copy of all letters of findings of noncompliance to the Assistant Attorney General for Civil Rights as required by 28 CFR 42.407(d).

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. (a) If compliance cannot be voluntarily achieved, and the ED does not fund the applicant or recipient, but NASA does, refer the matter to NASA for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral.

(b) If compliance cannot be achieved and both ED and NASA fund the applicant or recipient, initiate formal enforcement action. When the ED initiates formal enforcement actions by providing the applicant or recipient with an opportunity for an administrative hearing, provide NASA with an opportunity to participate as a party in a joint administrative hearing. When the ED initiates formal enforcement actions by referring the matter to the Department of Justice for appropriate judicial action, notify NASA of the referral.

9. Notify NASA and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient.

#### D. Duties of the National Aeronautics and Space Administration

NASA shall: 1. Issue and provide to the ED all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the ED to administer its responsibilities under this agreement.

2. Provide the ED with information, technical assistance, and training necessary for ED to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from NASA, the types of assistance provided, compliance information solely in NASA's possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the ED. If NASA requests the ED to undertake an onsite review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an application, NASA shall supply information necessary for the ED to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with NASA against a recipient subject to this delegation and determine, if

possible, whether or not the program involved receives Federal financial assistance from the delegating agency.

5. Where the ED has notified the applicant or recipient in writing that compliance cannot be achieved by voluntary means and the ED has referred the matter to NASA, make the final compliance determination and: (a) If NASA wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the ED if NASA will either join as a party in the ED's administrative hearing or will conduct its own administrative hearing; (b) when NASA initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify ED of the referral; (c) if NASA conducts its own hearing, notify the ED and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient. NASA may request the ED to act as counsel in its administrative hearing; and (d) if NASA neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, notify the ED and the Assistant Attorney General for Civil Rights, in writing, within 15 days after notification from the ED that voluntary compliance cannot be achieved.

#### E. Redelelegation

Duties delegated herein to the ED may be redelegated to the Department of Health and Human Services or the Veterans Administration. The ED shall notify the NASA of any such redelegation prior to its effective date.

#### F. Effect on Prior Delegations

This agreement supersedes and replaces the delegation agreement between the NASA and the Department of Health, Education, and Welfare with respect to institutions of higher education published in the Code of Federal Regulations at 14 CFR 1204.508.

#### G. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. In addition it shall be signed by both parties, the Administrator of NASA and the Secretary of Education and become effective 30 days from publication in the Federal Register.

#### H. Termination

This agreement may be terminated by either agency 60 days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Date: December 15, 1986.

James C. Fletcher,

NASA Administrator.

Date: April 2, 1987.

W.J. Bennett,

Secretary of Education.

Date: September 27, 1987.

William Bradford Reynolds,

Assistant Attorney General for Civil Rights, Department of Justice.