



U.S. Department of Justice

Office of Justice Programs

*Office for Civil Rights*

---

Washington, D.C. 20531

December 22, 2009

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Paul J. Coughlin, VOCA Administrator  
North Dakota Division of Adult Services  
North Dakota Department of Corrections and  
Rehabilitation  
3100 Railroad Ave.  
P.O. Box 5521  
Bismarck, ND 58506-5521

Re: Compliance Review of North Dakota Dep't of Corr. and Rehab., Div. of Adult  
Servs. (09-OCR-0066)

Dear Mr. Coughlin:

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 North Dakota Department of Corrections and Rehabilitation (DCR or Department), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the DCR's compliance with applicable federal civil rights laws along with the Department's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the DCR's 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 July 29, 2009, the OCR provided a training program for DCR representatives about the federal civil rights laws that the OCR enforces. On July 30, the OCR conducted an onsite visit with the DCR's Division of Adult Services (DAS or Division) in Bismarck, North Dakota to interview program staff.<sup>1</sup> The OCR would like to thank you for assisting OCR attorney Christopher Zubowicz during his onsite visit.

In regard to the limited scope of this compliance review, the OCR concludes that the DAS 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 Division's (1) guidance to

---

<sup>1</sup> The DAS and the Division of Juvenile Services (DJS) are distinct divisions within the DCR that separately subaward funds through different DOJ programs. The OCR separately evaluated the DAS and the DJS, and issued a different compliance review report to each Division. However, in responding to specific recommendations contained in each report, several of which are similar, the DCR may wish to adopt policies or procedures that apply uniformly throughout the Department, including to both Divisions.

subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) onsite monitoring of subrecipients, (3) training for subrecipients, and (4) complaint procedures for responding to certain discrimination allegations against subrecipients. The following Compliance Review Report includes recommendations for improving the DAS'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 DAS'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 Division'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 DAS's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the Division 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 employment and services discrimination.

##### 1. Standard Assurances

The OCR evaluated the standard assurances that the DAS uses in connection with its administration of the Victims of Crime Act (VOCA) program. The DAS includes the following assurances in its application package:

16. The applicant assures compliance of all applicable nondiscrimination requirements of the Victims of Crime Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Amendment of 1972 [sic]; the Age Discrimination Act of 1975; and the Department of Justice Nondiscrimination Regulations 28 C.F.R. part 42, subparts C, D, E and G.
17. The applicant assures that, in the event of receiving a nondiscrimination finding against the agency/organization,

a copy of the finding will be sent to the VOCA administrator.

\* \* \*

19. The applicant shall provide the name of the Civil Rights contact person who has the responsibility in ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

(Certified Assurances at 14.)

The DAS also requires all applicants for VOCA assistance to sign a federal assurances document, which contains the following language regarding federal civil rights laws:

13. It will comply, and all its contractors will comply, with the non-discrimination requirements in the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(c), 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.
14. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.
15. It will provide an Equal Employment Opportunity Program, if required to maintain one, where the application is for \$500,000 or more.

Mr. Paul Coughlin, VOCA Administrator, Division of Adult Services  
North Dakota Department of Corrections and Rehabilitation  
December 22, 2009  
Page 4 of 11

(Federal Assurances at ¶¶ 13-15.)

In order to receive DOJ funds, a successful applicant must sign a grant agreement, which contains the following language regarding civil rights laws:

#### **XIV. PERSONNEL**

All parties to this agreement shall comply with the provisions of Title VI of the Civil Rights Act of 1964 to the end that no person, shall on the grounds of race, color, or national origin, shall be excluded from participation, be denied benefits of, or be subjected to discrimination under this Agreement;

Furthermore, under the VOCA Act of 1984, no one shall be discriminated against in anyway on the basis of race, color, religion, national origin, handicap, or sex;

And, under section 504 of the Rehabilitation Act of 1973, no one may be discriminated against because of handicap, or, under the Age Discrimination Act of 1975, due to age.

All parties also agree to abide by the Department of Justice Non-discrimination regulations.

The Provider agrees to maintain information on victim services provided by race, national origin, sex, age, and handicap. Furthermore, the Provider agrees to send a copy of any finding relating to discrimination to the VOCA administrator.

(VOCA Agreement to Provide Assistance at 3-4.) The DAS also requires an applicant to certify that it either has an EEOP on file or is exempt from the EEOP requirement so that the Division can monitor its subrecipients' compliance with the DOJ's EEOP regulations at 28 C.F.R. §§ 42.301 – .309.<sup>2</sup>

While the OCR commends the DAS for seeking to ensure that all subrecipients are notified of their federal civil rights obligations, the assurances and grant agreement documents do not consistently represent those obligations regarding applicable federal civil rights laws or reporting findings of discrimination, which may confuse subgrantees. Moreover, the Division fails to

---

<sup>2</sup> The EEOP certification form is available on the DCR Web site. Victim Services, <http://www.nd.gov/doctr/programs/victims/vocagrants.html> (last visited Nov. 12, 2009).

Mr. Paul Coughlin, VOCA Administrator, Division of Adult Services  
North Dakota Department of Corrections and Rehabilitation  
December 22, 2009  
Page 5 of 11

comprehensively address certain applicable civil rights requirements. Specifically, it does not but should:

- reference the DOJ's Equal Treatment Regulations; and
- notify subrecipients that they must submit to the OCR either an EEOP or the OJP's Certification Form stating that they are eligible for a full or partial exemption from the EEOP requirement. *See* 28 C.F.R. § 42.305.

## 2. Onsite Visits and Other Monitoring Methods

In response to the OCR's data request, the DAS noted that it conducts periodic onsite visits of subrecipients, although it does not maintain a site visit schedule. The Division seeks to visit each subrecipient once every three years, which results in annual site visits to approximately one third of its subgrantees. Before each onsite review, the DAS asks the subrecipient to complete a questionnaire, the responses to which the Division reviews with the Executive Director and program staff during the visit itself. The questionnaire materials, which consist of two separate forms, seek to evaluate subrecipient compliance with applicable federal civil rights and EEOP requirements. The first assessment document elicits information about whether (1) equal employment and nondiscrimination requirements are being met, (2) a formal nondiscrimination policy has been adopted, and (3) someone is designated to oversee civil rights compliance. In the second document, entitled Civil Rights Monitoring Checklist, the DAS asks whether the subrecipient: (1) has, during the last three years, been the subject of a federal or state court or federal or state administrative finding of discrimination after a due process hearing on the basis of race, color, national origin, age, sex, religion, or disability; (2) is required to prepare an EEOP; (3) has submitted an EEOP certification form to the DAS; and (4) needs any civil rights training or technical assistance regarding its duties to comply with applicable federal civil rights laws. The civil rights compliance checklist also asks each subrecipient to identify the person responsible for submitting any findings of discrimination to the OCR. Using these monitoring tools, the DAS seeks to identify and address any specific deficiencies during each site visit, and follows up with the subrecipient to ensure it takes appropriate corrective action.

## 3. Training and Technical Assistance

The DAS has not provided training to subrecipients about their federal civil rights obligations. However, the Division periodically is invited to attend meetings sponsored by two victim's advocate coalitions. The meetings, which are held every two months, typically include most of the Division's VOCA subrecipients. During the OCR's site visit, a representative of the Division suggested that it may be feasible to provide civil rights training during one of those meetings, and invite the subrecipients that are not regular participants to attend as well. The DAS provides

Mr. Paul Coughlin, VOCA Administrator, Division of Adult Services  
North Dakota Department of Corrections and Rehabilitation  
December 22, 2009  
Page 6 of 11

regular, ongoing technical assistance to subrecipients during site visits, through its Web site, and by telephone and e-mail.

#### 4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluated the processes in place for individuals to pursue complaints of employment and services discrimination against the DAS and its subrecipients. The DCR has an equal employment opportunity policy that specifically prohibits discrimination on the basis of race, color, religion, sex, national origin, age, or any physical or mental disability. The Department also has procedures that provide detailed guidance to employees about filing grievances, including those regarding discrimination. In addition, the State of North Dakota has an appeals process for employment discrimination grievances involving state employment. *See* N.D. Admin. Code 4-07-20.2-01 to -07 (2008). Further, North Dakota, through its Division of Labor (DOL), Human Rights Division, has procedures to respond to complaints of discrimination from DCR and subrecipient employees. The DOL is responsible for enforcing the provisions of North Dakota law that prohibit discrimination in employment on the basis of sex, race, color, national origin, religion, age, disability, marital status, an employee's receipt of public assistance, or an employee's participation in certain lawful, off-duty activity. N.D. Cent. Code §§ 14-02.4-01, -03 (2009). A DCR or subrecipient employee also can file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC).

The DAS has a written policy in place that addresses receiving, investigating, and resolving services discrimination complaints filed against it by adult offenders. In some cases, a Division or subrecipient beneficiary can file a services discrimination complaint with the DOL, which prohibits discrimination in providing public accommodations or public services on the basis of sex, race, color, national origin, religion, age, disability, marital status, or an individual's receipt of public assistance. *Id.* §§ 14-02.4-14, -15.

The Division does not require subrecipients to have a policy or procedure that addresses receiving, investigating, and resolving employment and services discrimination complaints they receive. During onsite monitoring visits, the DAS determines whether beneficiaries filed any recent services discrimination complaints against the subrecipient and expects a subrecipient to notify it of any other similar complaints as they are received. However, the DAS has no mechanism in place to receive timely notice of each employment or services discrimination complaint that may be filed against a subrecipient.

#### 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). 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.*

As mentioned above, the DAS administers the VOCA program, which supports activities serving crime victims. The Division does not require nonprofit applicants to obtain federal tax exempt status in order to participate in this program.<sup>3</sup> In an effort to publicize the availability of VOCA funds, the DAS issues a public service announcement that is aimed at organizations which have not previously applied for funding. It also posts the grant application on its Web site and reaches out to current subrecipients to notify them about new VOCA award opportunities. Once organizations submit their applications, the DAS reviews them to ensure they are complete. If an applicant fails to provide certain information, the Division notifies it of the omission and permits the applicant to correct it. The DAS forwards applications to the Crime Victims Services Board (Board), which consists of five members. After evaluating the applications, the Board makes funding recommendations to the Director of the DAS, who makes the final funding decisions. Usually, the DAS adopts the Board's recommendations. At this point, no faith-based organizations receive VOCA funds through the Division's subaward process.

## **II. Recommendations**

The DAS already has in place a number of procedures for monitoring the civil rights compliance of its subrecipients. To strengthen the Division's monitoring efforts and its inclusion of faith-based organizations in the grant funding process, the OCR offers the following four recommendations: (1) modify the civil rights/nondiscrimination provisions in its grant assurances and agreement, (2) refine its compliance checklist, (3) provide training to subrecipients regarding their obligations to comply with federal civil rights laws, and (4) develop a comprehensive policy for addressing discrimination complaints against subrecipients.

### **A. Modify the Civil Rights/Nondiscrimination Provisions in Grant Assurances and Agreement**

The DAS should ensure that all DOJ subrecipients agree to grant assurances and agreement provisions that accurately reflect their federal civil rights obligations. To that end, the OCR recommends that the Division incorporate the following language or substantially similar language in its grant assurances or agreement materials, which would continue to apply to all applicants for and subrecipients of DOJ funding, regardless of the amount of federal financial assistance at issue:

Recipient will comply (and will require any subgrantees or contractors to comply) with any applicable federal

---

<sup>3</sup> While the DAS recognizes that a nonprofit applicant is not required to have federal tax exempt status in order to receive VOCA funding, its site visit assessment form asks whether nonprofit subrecipients have documentation of their 501(c)(3) status.

Mr. Paul Coughlin, VOCA Administrator, Division of Adult Services  
North Dakota Department of Corrections and Rehabilitation  
December 22, 2009  
Page 8 of 11

nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (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. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

In the event a Federal or State court or Federal or State 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 Office for Civil Rights, Office of Justice Programs and the North Dakota Department of Corrections and Rehabilitation, Division of Adult Services (DAS).

Recipient will provide an Equal Employment Opportunity Plan (EEO) to the Office for Civil Rights, Office of Justice Programs and the DAS, if required to submit one; otherwise, it will provide a certification to the Office for Civil Rights, Office of Justice Programs and the DAS that it has a current EEO on file, if required to maintain one. For grantee agencies receiving less than \$25,000, or grantee agencies with less 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/>.

The DAS may also consider including in its grant assurances or agreement the following language or substantially similar language regarding language assistance services:

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



Mr. Paul Coughlin, VOCA Administrator, Division of Adult Services  
North Dakota Department of Corrections and Rehabilitation  
December 22, 2009  
Page 9 of 11

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 its 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 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>.

Finally, the Division may wish to add a sentence to the grant assurances or agreement 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. Refine Compliance Checklist**

The DAS is to be commended for its efforts to monitor subrecipients through onsite visits and to use a compliance checklist that seeks to address applicable federal civil rights requirements. Going forward, it should refine its checklist to ensure that it evaluates all of the various civil rights requirements that apply to DOJ-funded subrecipients (e.g., whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; and 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). Additionally, the 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. In an effort to assist the DAS in refining its checklist, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Division's review.

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

The DAS does not appear to provide any training to its subrecipients about their federal 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 and to have procedures in place to receive and evaluate complaints alleging discrimination from employees and beneficiaries, the Division should provide periodic, mandatory training programs for subgrantees. The DAS 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 Division with technical assistance in developing civil rights training

Mr. Paul Coughlin, VOCA Administrator, Division of Adult Services  
North Dakota Department of Corrections and Rehabilitation  
December 22, 2009  
Page 10 of 11

programs. In addition, the DAS should continue to provide ongoing technical assistance to subrecipients regarding their statutory and contractual obligations.

D. Develop Comprehensive Policy for Addressing Discrimination Complaints Against Subrecipients

As previously noted, the DCR has procedures in place for responding to discrimination complaints from its own employees, as well as from adult offenders, and the DOL provides a forum for resolving employment and services discrimination complaints filed by Department and subrecipient employees and beneficiaries. Nonetheless, the DAS has an obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to employment and services discrimination complaints that it receives from subrecipient 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 appropriate DCR employees, as well as subrecipient employees, of prohibited discrimination in funded programs and activities and the Division'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 DOL or the EEOC; or referring the complaint to the OCR, which will review the complaint and work with the DAS to resolve it; and
- training DAS program staff on their responsibility to refer discrimination complaints or potential discrimination issues to the Division's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

In an effort to assist the DAS in developing a comprehensive complaint policy, the OCR has prepared sample procedures for responding to discrimination complaints, which are enclosed for the Division's review. While the DAS'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/about/offices/ocr.htm>.

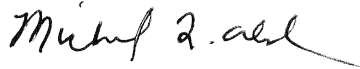
Mr. Paul Coughlin, VOCA Administrator, Division of Adult Services  
North Dakota Department of Corrections and Rehabilitation  
December 22, 2009  
Page 11 of 11

**III. Conclusion**

We find that the DAS 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 Division in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible DAS official contact Attorney Advisor Christopher Zubowicz 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. Zubowicz at [REDACTED]

Sincerely,



Michael L. Alston  
Director

Enclosures