



Policy and Procedure for Receiving and Responding to Discrimination Complaints from Subrecipients' Employees, Clients, Customers or Program Participants

Purpose

The purpose of this document is to describe the policy and procedure whereby the employees, clients, customers and program participants of subrecipients of funding from the U.S. Department of Justice (DOJ) may file a discrimination complaint with the New York State Division of Criminal Justice Services (hereinafter "DCJS") and DCJS' procedures to respond to such discrimination complaints.

Federal law requires that state agencies that are administering DOJ funds maintain written methods of administration for ensuring that subrecipients comply with applicable federal civil rights laws. This includes ensuring that subrecipients do not discriminate in services or employment practices.

Policy and Relevant Laws

DCJS adheres to the policy that program qualified individuals have the right to participate in DOJ-funded programs and activities regardless of actual or perceived race, color, national origin, sex, religion, physical or mental disability, age, sexual orientation¹ and/or gender identity², and that subrecipients may not engage in employment discrimination on these bases. To that end, DCJS will require that federally-funded subrecipients are in compliance with the following statutes and regulations:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in the delivery of services (42 U.S.C. § 2000d), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart C.
- The Omnibus Crime Control and Safe Streets of Act of 1968, which prohibits discrimination on the basis of race, color, national origin, religion, or sex in the delivery of services and employment practices (34 U.S.C. §§ 10228(c)(1), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D.)
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (29

¹ Only applies to recipients of grants authorized by the Violence Against Women Act.

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U.S.C. § 794), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart G.

- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (42 U.S.C. § 12132), and the DOJ implementing regulations at 28 C.F.R. Part 35.
- Title IX of the Education Amendments of 1972, which prohibit discrimination on the basis of sex in educational programs (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54.
- The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services (42 U.S.C. § 6102), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart I.
- The DOJ regulations on the Partnership with Faith-Based and Other Neighborhood Organizations, which prohibit discrimination on the basis of religion in the delivery of services and prohibits organizations from using DOJ funding on inherently religious activities (28 C.F.R. Part 38 and Executive Order 13279).
- The Violence Against Women Act (VAWA) of 1994, as amended, which prohibits discrimination by recipients of certain DOJ funding based upon actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation or disability (34 U.S.C. § 12291(b)(13)).
- Juvenile Justice and Delinquency Prevention Act (JJJPA) of 1974, as amended, 34 U.S.C. § 11182(b), and the DOJ implementing regulations, 28 C.F.R. §§ 31.202, .403 & pt.42, subpt. D (prohibiting discrimination in programs funded under the statute, both in employment and in the delivery of services or benefits, based on race, color, national origin, sex, and religion)

Definitions

For purposes of the DCJS discrimination complaint policy and procedure, the following term shall have the meanings listed below.

1. The term “affirmative action officer” (hereinafter “AAO”) shall mean the person designated by DCJS to ensure that complaints received are acted upon in a timely manner.
2. The term “discrimination” shall mean an unlawful act of unfair treatment of a person based on actual or perceived race, color, sex, religion, national origin, age, physical or mental disability, sexual orientation and/or gender identity.
3. The term “retaliation” shall mean the act of harassing, threatening, demoting, firing or

otherwise negatively targeting a complainant as a direct result of the complainant opposing unlawful discrimination.

Eligibility to File a Discrimination Complaint with DCJS

Any person who believes that he/she has been excluded from participation in, denied benefits or services of, subjected to discrimination under, or denied employment in connection with, any federally funded programs or activity administered by DCJS' subrecipients because of actual or perceived race, color, sex, religion, national origin, age, physical or mental disability, sexual orientation and/or gender identity may file a discrimination complaint with DCJS in accordance with the policy and procedures described herein. Generally, complaints must be filed within 180 days or 1 year from the date of the alleged discrimination, depending on the terms of the statute.

Content of Discrimination Complaint

The complainant must submit the complaint in writing to DCJS. The complaint must be signed when submitted through any means other than email, and contain the following information:

- Complainant's name and contact information
- Name of the entity against whom the complaint is made
- Contact information for the entity, including name of contact person (if possible)
- Basis for the complaint (actual or perceived race, color, sex, religion, national origin, age, physical or mental disability, sexual orientation and/or gender identity)
- Date(s) discrimination occurred
- Description of events or circumstances that caused complainant to believe that he/she was discriminated against
- Remedy sought by complainant

This Policy and Procedure and the complaint discrimination forms may be downloaded at the following links: <http://www.criminaljustice.ny.gov/crimnet/mail.htm> or <http://www.criminaljustice.ny.gov/ofpa/contact.htm>

A complaint may be submitted via email at the following email address: civilrights@dcjs.ny.gov. The complaint forms do not need to be signed when submitted by email because submission by email represents a signature.

Alternatively, complaints may be filed via land mail. The land mail address is:

NYS Division of Criminal Justice Services
Office of Legal Services
80 South Swan St
Albany, NY 12210

There is no requirement that a complainant use the complaint form to file a complaint with DCJS. A letter or email with the requisite information is sufficient.

Processing of Complaint by DCJS

1. Upon receipt of the complaint, the DCJS AAO, in consultation with DCJS Counsel's Office, will review the complaint to ensure that the relevant information was provided, the complaint is timely and meets jurisdictional requirements for a discrimination complaint, i.e., it must involve a claim of discrimination based upon actual or perceived race, color, sex, religion, national origin, age, physical or mental disability, sexual orientation and/or gender identity against a subrecipient of DOJ funds.
2. Within 15 business days after receipt of the complaint, DCJS will acknowledge receipt and inform the complainant that appropriate action has been taken.
3. DCJS will forward the complaint to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice (hereinafter "OCR") and coordinate with OCR on appropriate steps to be taken.
4. A discrimination complaint may be dismissed by DCJS for the following reasons:
 - The complainant requests the withdrawal of the complaint.
 - The complainant fails to respond to repeated requests for information needed to process the complaint.
 - The complainant cannot be located after reasonable attempts.

General Procedures and Requirements for Filing Discrimination Complaints with Entities Outside of DCJS

In addition to the option of filing a discrimination complaint with DCJS, discrimination complaints may be filed directly with a court, as well as with the following State and Federal administrative agencies whose function it is to enforce state and Federal laws which prohibit discrimination:

- U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights (OCR)
<https://ojp.gov/about/ocr/complaint.htm>
- Equal Employment Opportunity Commission (EEOC)
<http://www.eeoc.gov/employees/charge.cfm>
- New York State Division of Human Rights (DHR)
http://www.dhr.state.ny.us/how_to_file_a_complaint.html

If you wish to file a discrimination complaint, you should consult with the State or Federal administrative agency or court where you intend to file your claim regarding applicable time limitations. Failure to file your claim within the applicable time frames may result dismissal of the claim.

Subrecipient Discrimination Procedure

Federal regulations require subrecipients of federal funds to have policies and procedures in place to address discrimination complaints made by their employees, clients, customers or program participants. Subrecipients should have a step-by-step, written grievance procedure that addresses how members of the public may file a complaint, how the entity investigates a complaint, who is responsible for conducting the investigation, who is responsible for making findings and the timeframe for issuing findings. DCJS staff will audit subrecipients to ensure compliance with this mandate. DCJS will notify the subrecipient of deficiencies and provide recommendations for corrective action. At a minimum, a subrecipient's response to a complaint should include the following:

1. Within 15 business days provide written acknowledgement of receipt of the complaint.
2. Indicate the external agency to which the complaint will be forwarded for investigation (DCJS, DHR, EEOC or OCR).
3. Indicate timeframes for forwarding the complaint to an external entity for investigation.
4. Notify the complainant that discrimination complaints may be filed directly with DCJS, DHR, EEOC, OCR or the courts.
5. Provide a copy of the subrecipient's discrimination complaint procedure.

Subrecipients must notify DCJS in writing within 15 business days of any discrimination complaint not referred for investigation and state the reason for the non-referral.

Training

DCJS will provide periodic training for subrecipients on the obligation not to discriminate in services or employment practices on the basis of actual or perceived race, color, national origin, religion, sex, disability, age, sexual orientation and/or gender identity.

Such training may be arranged at the request of the subrecipient and may be provided in the form of technical assistance as the result of a monitoring visit. Training materials will be made available at the sessions or can be requested from DCJS program staff. All appropriate training records will be maintained as stipulated by applicable laws or regulations.

Subrecipients have an obligation to notify beneficiaries of their civil rights and are responsible for ensuring that all employees, clients, customers and program participants are aware of the existing Discrimination Complaint Process. Subrecipients can disseminate information to employees, clients, customers and program participants by posting procedures on the agency website, providing reference to the discrimination policy in outreach materials to clients, providing a copy of the procedure during training, or distributing procedures to new employees during orientation, or any other appropriate manner.