



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

JAN 11 2012

Dear Colleague:

State Methods of Administration (MOA) Coordinators have asked for clear guidance on how to document the thoroughness of on-site reviews when issuing to subrecipients the letters of findings that are then submitted as part of the state agencies' biennial reports to the Office for Civil Rights (OCR). The enclosed guidance explains that state agencies have a variety of ways to demonstrate the thoroughness of their reviews. It also explains the different documentation requirements when making violation findings, findings that there is no evidence of a violation, and findings related to accessibility.

Partnership and collaboration between the MOA Coordinators and OCR has been an important underpinning of the National MOA program. We value this long-standing partnership, and appreciate your ongoing efforts to help ensure that subrecipients are meeting their federal civil rights obligations. Your work is vital to fulfilling the National MOA program's mission of ensuring equal educational opportunities for all career and technical education students. We thank you for your valuable input on the guidance being issued today.

If you have any questions about this guidance, please contact David Berkowitz by telephone at (202) 453-6026 or by e-mail at david.berkowitz@ed.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Russlynn Ali".

Russlynn Ali
Assistant Secretary for Civil Rights

Enclosure

Documentation Requirements for On-Site Reviews in Letters of Findings

Background

Pursuant to the *Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs* (34 C.F.R. Part 100, Appendix B) (*Guidelines*), state career and technical education (CTE) agencies (formerly referred to as vocational education agencies) are required to conduct civil rights compliance reviews of selected subrecipients, and to report these compliance activities periodically to the Office for Civil Rights (OCR), U.S. Department of Education. OCR's September 1996 Memorandum of Procedures, developed in partnership with state CTE agencies, requires state agencies to conduct on-site compliance reviews of 2.5 percent of their subrecipients each year, and to report to OCR biennially. In a December 1998 "Dear Colleague" letter to all MOA Coordinators, which was also developed in partnership with state CTE agencies, OCR provided additional instructions to state agencies about the format and content of the biennial reports. This guidance is intended to address comments from MOA Coordinators regarding the documentation required to support findings in letters of findings (LOFs) (Item 7 of the biennial report).

Discussion

OCR conducts a cumulative evaluation of the adequacy of each state agency's reviews based on our reading of the entire biennial report. A state agency's biennial report must include LOFs for each review conducted. All LOFs serve two purposes: (1) to inform the subrecipient of the compliance issues addressed, the legal standards, and the need for corrective action; and (2) to permit OCR to assess the adequacy of the review and any resulting corrective actions. As explained in OCR's December 1998 "Dear Colleague" letter, LOFs must demonstrate both the comprehensiveness and the thoroughness of reviews.

The reviews conducted by state agencies must be comprehensive, addressing the requirements of Sections IV through VIII of the *Guidelines* and the related provisions of the regulations implementing Title VI of the Civil Rights Act of 1964 (34 C.F.R. Part 100), Title IX of the Education Amendments of 1972 (34 C.F.R. Part 106), Section 504 of the Rehabilitation Act of 1973 (34 C.F.R. Part 104), and Title II of the Americans with Disabilities Act of 1990 (28 C.F.R. Part 35), which collectively prohibit discrimination on the basis of race, color, national origin, sex,¹ and disability. Issue areas that should be addressed in reviews include: administrative

¹ Title IX also covers sex discrimination based on gender stereotypes.

requirements (including both annual and continuous notice, identification of Title IX and Section 504/Title II coordinators, and grievance procedures); recruitment, admissions, and counseling; accessibility; comparable facilities; services for students with disabilities; financial assistance; work-study, cooperative programs, and job placement; and employment.

Although state agencies must submit an LOF to OCR for each review conducted, state agencies have a variety of ways of demonstrating the thoroughness of the reviews in their biennial reports. While there is no required format for LOFs, they should inform the subrecipient of the compliance standards applied during the review; identify documents, facilities, or other evidence supporting violation findings; and explain any findings resulting in a need for corrective action. A variety of violation findings regarding the required issue areas that are appropriately supported, as discussed below, can be an indicator of thoroughness.

Violation findings in LOFs should include, at a minimum, (1) identification of the appropriate provisions of the *Guidelines* and the Title VI, Title IX, Section 504, and Title II regulations; and (2) a summary of the evidence that supports each finding of noncompliance. Violation findings may be supported in many ways, including:

- Stating the regulatory requirement that is not being met, and providing both a summary of the evidence relating to the violation (e.g., documents, interviews, facilities) and an analysis of that evidence (an explanation of the facts supporting the finding of a violation) (See Attachment A for a sample); or
- Attaching to the LOF a completed checklist of issue areas reviewed, if the checklist includes a summary of the evidence considered. The checklist should also include relevant regulatory citations for each item reviewed (See Attachment B for a sample).²

Findings that there is no evidence of a violation should be supported by an identification of the requirement for compliance, but the LOF need not provide a summary of the evidence considered in making the findings.³ The LOF should avoid blanket statements of compliance. For example, the LOFs should not include findings that a subrecipient's programs or activities are in "full compliance" or "in compliance." The LOFs should instead report that the investigation did not reveal any evidence of a violation (or noncompliance). Where we find a pattern of questionable findings of no evidence of a violation, OCR reserves the right to request additional documentation from the state agency.

² Attachments A and B are examples of the ways that violation findings may be supported. These are two formats used by state agencies. OCR recognizes that state agencies may utilize a variety of appropriate formats.

³ For example, if a state agency reviews a subrecipient's recruitment practices and finds that "there is no evidence of a violation," the LOF should nonetheless cite the applicable sections of the *Guidelines* and any applicable regulatory requirements -- which, in this example, would be Sections V.A, V.C, and V.E of the *Guidelines* and 34 C.F.R. 106.23 of the Title IX regulations.

In order to demonstrate thoroughness, the accessibility analysis in a state agency's LOFs requires a level of detail that is different from other areas of analysis. The accessibility analysis, which addresses the requirements of 34 C.F.R. §§ 104.21-104.23 of the Section 504 regulation and 28 C.F.R. §§ 35.149-35.151 of the Title II regulation, concerns the right of persons with physical disabilities to participate fully in a subrecipient's program regardless of any physical barriers that may be present in the subrecipient's facilities. Accessibility-related information submitted to OCR under item 7 (LOF section) of the biennial report should include a list or chart that identifies each facility reviewed, specifying construction and alteration dates, portions of any facility that were altered, standards used, and any accessibility problems found. Each violation with respect to accessibility should include the specific location of the violation, an actual measurement or other observation that served as the basis for the violation finding,⁴ the specification that is required for compliance, and, if different, the specification that is required for corrective action.⁵ Cumulative summaries encompassing multiple facilities are insufficient.⁶

Conclusion

In sum, this guidance document, consistent with OCR's commitment to flexibility, explains that state agencies have a variety of ways of demonstrating the thoroughness of their reviews in their biennial reports. Violation findings in LOFs should be supported at least by an identification of the requirement for compliance, a summary of the evidence supporting each finding of noncompliance, and an analysis of that evidence. Findings stating that there is no evidence of a violation should be supported by an identification of the requirement for compliance, but the LOF need not provide a summary of the evidence considered in making the findings. As discussed above, the accessibility analysis in a state agency's LOFs requires a level of detail that is different from other areas of analysis.

⁴ A concise explanation of why a program in an existing facility is inaccessible to persons with disabilities is an example of how an observation could be appropriately presented in an LOF.

⁵ For example, if there is a violation of the American National Standards Institute (ANSI) Standards A117.1 – 1961 (R 1971), the LOF should indicate the specific provision(s) of ANSI required for compliance, as well as the specific provision(s) of the Uniform Federal Accessibility Standards (UFAS), the 1991 Americans with Disabilities Act Standards for Accessible Design (1991 ADA Standards), or the 2010 Americans with Disabilities Act Standards for Accessible Design (2010 ADA Standards) that must be met in order to constitute appropriate corrective action.

⁶ For example, a state agency's accessibility analysis should not simply state that several buildings were visited during the on-site review and then generally describe accessibility violations found in restrooms (which are referred to as "toilet rooms" in ANSI, UFAS, the 1991 ADA Standards, and the 2010 ADA Standards) throughout all the buildings. Such a broad-stroke analysis is insufficient and does not demonstrate the necessary degree of thoroughness for an accessibility analysis. The LOF should instead identify the specific locations of any restrooms found in violation, as well as the specific violations found in each of those restrooms.

ATTACHMENT A - Sample Finding of a Violation in a Letter of Findings (ABC School District)

I. CONTINUOUS NOTICE OF NONDISCRIMINATION

Requirements:

Recipients are required to provide notification of nondiscrimination policies on a continuous basis. Title VI: 34 C.F.R. § 100.6(d); Title IX: 34 C.F.R. §§ 106.9(a), 106.9(b); Section 504: 34 C.F.R. §§ 104.8(a), 104.8(b); Title II: 28 C.F.R. § 35.106

Summary of Findings and Analysis:

ABC school district administrators and officials provided this agency with several documents and publications to review and analyze in determining whether ABC provides the notice of nondiscrimination on a continuous basis in compliance with the regulatory provisions cited above. During our on-site review, we found that ABC publishes the notice of nondiscrimination on its website and in many of its publications (*e.g.*, announcements, codes of conduct, student handbook, employee handbook, application forms, recruitment materials, CTE pamphlets, and policy manuals), but did not publish such a notice in its catalogs, as required per the Title IX and Section 504 regulations cited above. However, even where the notice of nondiscrimination appeared in district publications, the notice was missing telephone numbers for designated persons to whom Title IX and Section 504 inquiries should be made.

Required Corrective Action(s):

1. Include the notice of nondiscrimination in catalogs.
2. Include the name(s)/title(s) and contact information, including telephone number(s), of employee(s) designated to ensure compliance with Title IX and Section 504 in notices of nondiscrimination posted in documents and publications that will be disseminated to the participants, beneficiaries, applicants, parents, and employees. This may be accomplished by revising or reprinting the notice of nondiscrimination. Until revision or reprint of documents and publications occurs, interim steps such as placing a rubber stamp, sticker, or an added errata page in documents and publications with the required language would be sufficient.

ATTACHMENT B - Sample Checklist of Issue Areas Reviewed

| A. Administrative Requirements | | | | | |
|---|--|--|----|--|---|
| <u>Legal Requirements/Citations</u> | <u>Indicators of Compliance</u> | <u>Documentation</u> | | | <u>Status</u> |
| | | YES | NO | | |
| 1. Annual Public Notification | | | | | |
| <p><i>Guidelines IV-O</i></p> <p>(a) Prior to the beginning of each school year, recipients must advise students, parents, employees and the general public that all CTE programs will be offered regardless of race, color, national origin, sex, or disability.</p> <p>(b) The notice must include a brief summary of program offerings and admission criteria and the name, office address, and telephone number of persons designated to coordinate Title IX and Section 504 compliance activity.</p> <p>(c) If a recipient's service area contains a community of national origin minority persons with limited English language skills, public notification materials</p> | <p>To be in compliance, recipients must:</p> <p>(1) Issue annual public notice of non-discrimination.</p> <p>(2) Include a brief summary of program offerings and admission criteria in the annual notice.</p> <p>(3) List Title IX and Section 504 Coordinators with their name/title, address, and telephone number in the annual notice.</p> <p>and</p> <p>(4) Disseminate notice in the language of any national origin minority community with limited English language skills in the service area and state that the recipient will take steps to assure that the lack of English language skills will not be a barrier to</p> | <p>(1a) Prior to the beginning of each school year, is the notice provided in:</p> <p>Local newspapers?</p> <p>Recipient newspapers or newsletters?</p> <p>Recipient bulletins?</p> <p>Public service announcements on radio?</p> <p>Public service announcements on television?</p> <p>Recipient website?</p> <p>Any other publications or media? (List each.)¹</p> <p>(1b) Prior to the beginning of each school year, do publications with notice reach students, parents, employees, and the public?</p> <p style="margin-left: 20px;">- Describe how distributed.</p> <p style="margin-left: 20px;">- Ask administrators how this process is handled.</p> <p>(2) Does the notice have a brief description of program offerings and admissions criteria?</p> <p>(3) Does the notice list Title IX and Section 504 Coordinators with their name/title, address, and telephone number?</p> <p>(4) Does the recipient's service area contain a community (or communities) of national origin minority individuals with</p> | | | <p><input type="checkbox"/> No evidence of a violation (or non-compliance)</p> <p><input type="checkbox"/> Violation (or noncompliance)</p> |

¹ Consistent with *Guidelines IV-O*, the specific methods of dissemination required for a particular subrecipient are based on a totality of the circumstances regarding the individual subrecipient. A subrecipient is not necessarily required to provide notice through all of the means referenced in (1a).

A. Administrative Requirements

| <u>Legal Requirements/Citations</u> | <u>Indicators of Compliance</u> | <u>Documentation</u> | | <u>Status</u> | | |
|--|--|---|----|---------------|--|--|
| | | YES | NO | | | |
| 1. Annual Public Notification | | | | | | |
| <p>must be disseminated to that community in its language and must state that recipients will take steps to assure that the lack of English language skills will not be a barrier to admission and participation in vocational education programs.</p> | <p>admission and participation in vocational education programs.</p> | <p>limited English language skills? (Check census data and ask administrators, faculty, and students.)</p> <ul style="list-style-type: none"> - If yes, describe the specific communities. - If yes, is notice available to the community(ies) of national origin minority individuals with limited English language skills in the language(s) of the community(ies)? - How does notice get disseminated to the national origin minority community(ies)? (Ask administrators and faculty about this process.) - If yes, does the notice state that the recipient will take steps to assure that the lack of English language skills will not be a barrier to admissions and participation in vocational education programs? | | | | |