

# Civil Rights Training

# Office for Civil Rights Enforces

**Title VI of the Civil Rights Act of 1964** (*race, color, national origin*)

**Section 504 of the Rehabilitation Act of 1973** (*disability*)

**Title II of the Americans with Disabilities Act of 1990** (*disability*)

**Age Discrimination Act of 1975** (*age*)

**Title IX of the Education Amendments of 1972** (*sex in educational programs*)

**Program Statutes (e.g. Safe Streets Act, VOCA, JJDPA, VAWA)** (*race, color, national origin, sex, religion, disability, sexual orientation, gender identity*)

# Who is Subject to these Laws?

Any “PROGRAM OR ACTIVITY” that receives  
financial assistance from the DOJ.

Defining PROGRAM OR ACTIVITY:

ALL of the operations of an organization receiving federal financial assistance,  
such as the entire department or office within a state or local government.

# Nondiscrimination Provision for Victims of Crime Act

No person shall on the ground of **race, color, religion, national origin, handicap, or sex** be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter.

34 U.S.C. § 20110(e). xt

# Protected Classes



- Race
- Color
- National Origin
- Religion
- Sex
- Disability
- Age
- \*Sexual Orientation
- \*Gender Identity
- \*Sexual Orientation and Gender Identity

\*are only protected under VAWA

# Violence Against Women Act Reauthorization Act of 2013

No person in the United States shall, on the basis of **actual or perceived** race, color, religion, national origin, sex, **gender identity** (as defined in paragraph 249(c)(4) of title 18, United States Code), **sexual orientation**, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under [VAWA], and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women.

*FAQs on the VAWA nondiscrimination provision:*

<https://www.justice.gov/ovw/resources-and-faqs-grantees>

# VAWA Reauthorization Act of 2013

If sex segregation or sex-specific programming is **necessary to the essential operation of a program**, nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex. In such circumstances, grantees may meet the requirements of this paragraph by providing **comparable services** to individuals who cannot be provided with the sex-segregated or sex-specific programming. Beneficiaries choose the appropriate program based upon gender identity

34 U.S.C. § 12291(b)(13)

## Sex-Segregated Programming

When males and females receive services in separate settings

## Sex-Specific Programming

When a recipient designs programming differently for males and females

# VAWA Reauthorization Act of 2013

## Fact Specific Items to Consider for the Essential Operation of a Program

- Nature of the service
- Consequences to beneficiaries of making sex-segregated or sex-specific
- Literature on efficacy
- Impact on transgender clients

Reasons may not be trivial, based solely on convenience, or rooted in stereotypes



# VAWA Reauthorization Act of 2013

## What is Gender Identity?

Actual or perceived gender-related characteristics (from Mathew Shepard-James Bird Hate Crimes Prevention Act)

A person's internal view of their gender; which may or may not correspond to sex assigned at birth. Transgender, male, and female are examples of gender identities

# Other Statutes OCR Enforces

## Prohibit Discrimination in:

1. Employment Practices and/or
2. Delivery of Services

### Examples:

- A funded domestic violence clinic has a blanket policy of only providing services to female victims of domestic violence, and not male victims.
- Male employees at a funded detention center sexually harass female occupants.
- A culturally-based sexual assault services program that is primarily designed to provide services to Hispanic individuals turns away a non-Hispanic individual seeking services.

# Disability Acts

## **Section 504 of the Rehabilitation Act of 1973**

Prohibits discrimination on the basis of disability by recipients of federal funding.

## **Title II of the Americans with Disabilities Act of 1990**

Prohibits discrimination on the basis of disability and applies to public entities, whether or not they receive federal funding.

## **American with Disabilities Act Amendment Act of 2008**

An Act to “restore the intent and protections of the ADA of 1990.”  
Congress found that definition of handicapped individual had not been interpreted consistently with Section 504.

# Section 504 & Title II of ADA

Handicapped (disabled) person means any person who:

- 1.) has a physical or mental impairment which substantially limits one or more major life activities
- 2.) has a record of such an impairment, or
- 3.) is regarded as having such an impairment

# Disability Discrimination Analysis

## Defining Analysis

- DOJ funding recipients must provide reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability unless a recipient can demonstrate it would be an undue hardship or would fundamentally alter the service or activity.
- Every case requires *individualized analysis* – individuals with disabilities are not a homogenous group even those with the same disability.

## You Try It

A shelter for abuse victims receives VAWA funds. The shelter has a blanket policy that residents can not be taking any prescribed psychotropic medication while staying at the shelter.

- IS THIS AN ACCEPTABLE POLICY?

# Answer

The answer is NO  
WHY?

By excluding those that take any prescribed psychotropic medication the shelter is discriminating against individuals who may have a mental disability that is managed with medication.

This is also why it is important that each individual resident is assessed.

# Section 504 Rehabilitation Act of 1973

A recipient with 50 or more employees and receiving federal financial assistance from the Justice Department of \$25,000 or more must:

- a) designate a Section 504 compliance coordinator
- b) adopt grievance procedures
- c) notify program participants, beneficiaries, applicants, employees, unions, organizations with collective bargaining agreements, that recipient does not discriminate on the basis of disability

# Faith Based Organizations

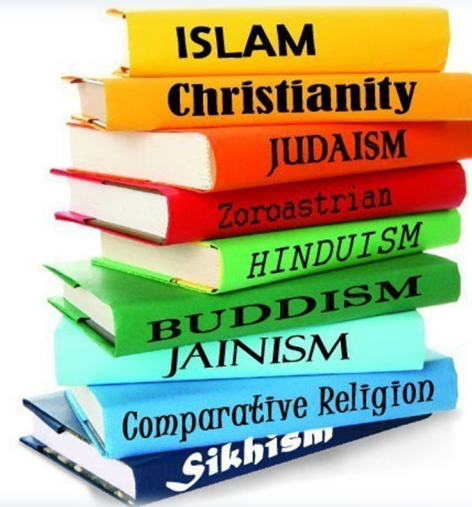
Religion Defined

All aspects of religious practice  
as well as belief

42 USC 2000e(j)

Includes sincerely  
held moral or ethical beliefs

29 CFR 1605.1





# Faith Based Organizations

## Helping FBO's Qualify

- Government agencies must remove barriers for FBOs applying for aid.
- Government agencies providing financial assistance must not discriminate either in favor or against FBOs.

# DOJ Regulations Issued for FBO Guidance Revised April 4, 2016

- FBOs must not use direct federal funding to engage in explicitly religious activities.
- Explicitly religious activities must be separate in time or location from federally-funded activities, and must be voluntary for those participating in the federally-funded activities.
- FBOs may not discriminate against beneficiaries based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice.

# Faith Based Organizations

## New Notice and Referral Requirements

1. FBOs must give written notice to beneficiaries and prospective beneficiaries that:
  - a. FBO will not discriminate on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice;
  - b. FBO may not require beneficiaries to participate in any religious activities;
  - c. FBO will separate in time or location any privately-funded religious activities from federally-funded activities; and
  - d. FBO must provide this written notice prior to the provision of services.
  - e. A sample notice is contained at Appendix A to 28 C.F.R. pt. 38.
  - f. A sample beneficiary referral request is contained at Appendix B to 28 C.F.R. pt. 38.

# Faith Based Organizations

## New Notice and Referral Requirements

2. If a beneficiary objects to the religious character of the FBO, the FBO will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider that is acceptable to the beneficiary.
- a. Alternative provider must be in reasonable geographical proximity to the FBO and offer services comparable in substance and quality.
  - b. FBO must maintain a record of the referral. If the FBO is unable to identify an alternative provider, it shall notify the State Administering Agency or the DOJ.

# Scenarios

## Are they Acceptable FBO Practice?

- 1) An atheist participant in a victims of crime support group run by a funded faith-based organization is required to participate in an opening prayer session before the group begins.
- 2) A woman seeking services at a local nonprofit shelter for battered women is not allowed to pray her rosary in her room while she is a resident of the shelter.

# Acceptable FBO Practice?

# NO

- 1) The first would be an impermissible requirement to participate in religious exercises or program with faith content.
- 2) The second would be denial of access to religious services, pastoral counselor, special dietary needs, or items of a person's faith.

# Certificate of Exemption for FBOs

On a case-by-case basis, the Religious Freedom Restoration Act may allow Grantee FBOs to hire based on religion.

The FBO must certify:

- ✓ It will offer all federally-funded services to all qualified beneficiaries;
- ✓ Explicitly religious activities will be voluntary and kept separate from federally-funded activities; and
- ✓ It is a religious organization that sincerely believes that abandoning its religious hiring practice in order to receive federal funding would substantially burden its religious exercise.

# National Origin Discrimination

This includes discrimination on the basis of Limited English Proficiency (LEP)

LEP Defined: A Limited English Proficient (LEP) person has a first language other than English and a limited ability to read, speak, write, or understand English.



# Special Conditions: Nondiscrimination/Civil Rights

- FCR Form – Federal Civil Rights Form
- LEP – Limited English Proficiency Plan
- EEOP – Equal Employment Opportunity Plan
- EEOP Certification Form
- Anti-Discrimination Policy

# How to Avoid Discrimination Against LEP Individuals

- ✓ Take reasonable steps to ensure meaningful access to the programs, services, and information the recipients provide, free of charge.
- ✓ Establish and implement policies and procedures for language assistance services that provide LEP persons with meaningful access.

# LEP Plan: Four Factor Analysis

- Factor 1: Number or Proportion of LEP Individuals
- Factor 2: Frequency of contact with the Program
- Factor 3: Nature and Importance of the Program
- Factor 4: Resources Available
- Language Access Procedures are the “how-to” for staff

# Language Services

1. Provide oral language services
2. \*Ensure Interpreter Competency
3. Usually family members, friends, and uncertified co-workers are not appropriate.
4. Provide translation of written materials
5. Safe Harbor Provision
  - If 5% or 1,000 (whichever is less) of population is LEP, VITAL documents must be translated
  - However, if % represents fewer than 50, then written translation upon request must be provided.

# LEP Plan

## VITAL

- Critical to access services
- Must be translated into the language of each regularly contacted LEP group served or likely to be served (factor 1 of plan)
- Considerations: Are you taking away or giving a BENEFIT or RIGHT? Are you providing potentially life-saving services or information?

## NON-VITAL

- Not critical to accessing services
- Best practice, but not required
- Examples: advertisements, outreach materials\*, raise awareness of rights or services

\*unless the services provided are not reflective of service area  
(factor 1 of plan)

# LEP Plan

- Translation VS Interpretation
  - Translate: written form of communication
  - Interpret: verbal communication
- When is oral translation necessary?
- When are written translated documents appropriate?

# Your Turn to Determine Meaningful Access

Scenario 1: During intake of a victim services program, an employee interviews a Spanish-speaking LEP victim of abuse using hand gestures and having the individual speak in broken English (without interpretation).

Scenario 2: A police officer attempts to question a victim of domestic violence by using the alleged abuser as an interpreter.

**Was the individual afforded meaningful  
access**

**NO**



# Recipients Rights & Responsibilities

- **Statute**
- **Contract**
- **Regulation**

# OJP's Civil Rights Enforcement

- **EEOPs** (Equal Employment Opportunity Plans)
  - **Complaints**
  - **Findings**
- **Compliance Reviews**

# What is an EEOP?

A comprehensive document which analyzes:

- an agency's workforce in comparison to its relevant labor market data
- all agency employment practices to determine their impact on the basis of race, sex, or national origin
- A tool used to identify possible problem areas where discrimination may be occurring

# Does an agency have to prepare an EEOP?

Depends on . . .

- Funding (Safe Streets Act, VOCA, or JJDPA)
- Status of Organization (e.g., nonprofit)
- Amount of single award
- Number of employees

	Does the recipient need to submit a Certification Form to OCR?	Does the recipient need to submit a Certification Form to OCR?	Must the recipient submit an EEOP Utilization Report to OCR?
Recipient is a Medical or Educational Institution, Indian Tribe, or Nonprofit	YES	NO	NO
Largest individual grant received is less than \$25,000	YES	NO	NO
Recipient has less than 50 employees	YES	NO	NO
None of the above	YES	YES	YES

# Civil Rights

- Civil Rights training needs to be conducted with employees annually
  - OJP OCR does have a video available on website that all federally funded employees need to watch
  - DOCUMENT Date, Attendance, Topic
- Anti-Discrimination Policy – include contact information:

Nebraska Crime Commission  
P.O. Box 94946  
Lincoln, NE 68509-4946

Office for Civil Rights  
Office of Justice Programs  
U.S. Department of Justice  
810 7<sup>th</sup> Street, NW  
Washington, DC 20531

# RESOURCES

- Preparing an EEOP Step-by-step instructions for preparing an EEOP Short Form online at <https://ojp.gov/about/ocr/eeop.htm>
- Completion of EEOP is done at: <https://ocr-eeop.ncjrs.gov/>
  - When requested print either the EEOP Utilization Report or Certification from the website and submit to Grant Manager
- LEP Information: [www.lep.gov](http://www.lep.gov) – Tips and Tools for different types of agencies on how to comply with requirements to provide services to LEP persons.
- Disability Information: [www.ada.gov](http://www.ada.gov) – Disability Rights Section of DOJ's Civil Rights Division has many resources to assist recipients in understanding the requirements of the ADA.
- OCR Online Training: <https://ojp.gov/about/ocr/assistance.htm>.
  - OCR has posted training presentations on the website addressing a variety of civil rights topics.

# Compliant Contacts

## Office for Civil Rights

(202) 307-0690

<https://ojp.gov/about/offices/ocr.htm>

## Nebraska Crime Commission

[DAS.humanresources@Nebraska.gov](mailto:DAS.humanresources@Nebraska.gov)

OR

**Federal Grants and Programs Division Director**