

# NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

OPERATING INSTRUCTION  
NUMBER 42

March 30, 2015

## PROCEDURES FOR RESPONDING TO DISCRIMINATION COMPLAINTS

**PURPOSE:** To establish written procedures for the Nebraska Commission on Law Enforcement and Criminal Justice (NCC) employees to follow when they receive a complaint alleging:

- A. Employment discrimination from an employee or applicant of a sub-recipient organization of the NCC; or
- B. Discrimination in services from clients, customers, program participants, or consumers of a sub-recipient organization of the NCC.

1. **SCOPE:** Applicable to all Commission members and staff members.
2. **POLICY:** All employees and beneficiaries of the Nebraska Crime Commission's sub-recipients shall be treated equally regardless of race, color, national origin, sex, religion, and disability. The Nebraska Crime Commission will ensure that sub-recipients comply with all applicable civil rights laws, including the following:
  - A. 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; see *also* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002);
  - B. The Omnibus Crime Control and Safe Streets 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 (42 U.S.C. § 3789(c)(1)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D;
  - C. 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 U.S.C. § 794), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart G;
  - D. 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;

- E. 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;
- F. 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 implementing regulations at 28 C.F.R. Part 42, Subpart I; and
- G. The DOJ regulations on the Equal Treatment for Faith-Based Organizations, which prohibit discrimination on the basis of religion in the delivery of services and prohibit organizations from using DOJ funding on inherently religious activities (28 C.F.R. Part 38).

3. **COMPLAINT PROCEDURES:** A person who believes they have been harassed or been subject to discriminatory treatment within the NCC or by a DOJ-funded sub-recipient because of race, color, national origin, sex, age, religion, or disability, or have been retaliated against for engaging in protected activity, should follow the below procedures.

**A. Filing a Complaint**

The Grants Division Chief is responsible for coordinating the series of actions described in these procedures and will act as the *Complaint Coordinator for all DOJ-funded sub-recipient complaints*. The current Complaint Coordinator is the Grants Division Chief, 402-471-2194. **All Nebraska Crime Commission employee complaints** should be directed to the Personnel Officer, 402-471-2194.

Generally, formal complaints should be filed with the Complaint Coordinator or Personnel Officer within 90 calendar days of the alleged act of discrimination. The complaint may be filed in a letter, in an email, in person, or over the phone. In anticipation of filing a complaint, an individual may find it beneficial to contact the Complaint Coordinator to obtain policy clarification, advice, or assistance.

**B. Referral of Complaint**

If an employee of the NCC other than the Complaint Coordinator receives a discrimination complaint from a client, customer, program participant, applicant, DOJ-funded sub-recipient, or consumer, they must submit the complaint to the Complaint Coordinator within 10 business days of receiving the complaint.

Furthermore, the NCC will provide the client, customer, program participant, applicant, DOJ-funded sub-recipient, or consumer with a written notice acknowledging receipt of the complaint and explaining that the complaint will be resolved within 45 calendar days of receipt of the complaint.

### **C. External Agencies**

While the NCC encourages individuals to file any employment or services discrimination complaint with the NCC, the agency's policies and procedures are not intended to impair or limit the rights of anyone to seek a remedy available under state or federal law. As an alternative or in addition to filing a complaint with the NCC, an individual may wish to file a complaint with an external agency for investigation, such as the U.S. Equal Employment Opportunity Commission (EEOC) or the appropriate state or local fair employment practices agency or human rights commission. For instance, if a complaint alleges violation of a federal civil rights law that is enforced by the Office for Civil Rights (OCR), Office of Justice Programs, DOJ, the Nebraska Crime Commission acknowledgment letter will inform the complainant that they may file a complaint directly with the OCR at the following address:

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

If appropriate, the Complaint Coordinator or Personnel Officer also may elect to refer a complaint to an external agency for investigation and resolution. The NCC will notify the external agency in writing of any referral within 90 calendar days of receipt of the complaint.

### **D. Complaint Evaluation, Investigation, and Resolution Process**

#### **EVALUATION OF THE COMPLAINT**

The NCC evaluates each complaint that it receives to determine whether it can investigate the complaint. The NCC makes this determination with respect to each allegation in the complaint. The Nebraska Crime Commission must also determine whether the complaint is filed in time.

The Nebraska Crime Commission will dismiss the complaint if the following is determined:

1. The complaint was not filed timely;
2. The complaint is unclear or incomplete and the complaint does not provide the information that the Nebraska Crime Commission requests within 20 calendar days of the request; or
3. The allegations raised by the complaint have been resolved.

The complaint will be forwarded to an external agency if the following is determined:

1. A complaint is filed against the member of the agency or the Nebraska Crime Commission's Executive Director;
2. A complaint cannot be resolved within 60 calendar days of recipient; or
3. The recipient remains unwilling to negotiate an agreement.

### **OPENING THE COMPLAINT FOR INVESTIGATION**

If the Nebraska Crime Commission determines that it will investigate the complaint, it will issue letters of notification to the complainant and the recipient. Opening a complaint for investigation in no way implies that the Nebraska Crime Commission has made a determination with regard to the merits of the complaint. During the investigation; the Nebraska Crime Commission is a neutral fact-finder. The Nebraska Crime Commission will collect and analyze relevant evidence from the complainant, the recipient, and other sources as appropriate. The NCC will address the allegations raised in the complaint.

### **INVESTIGATION OF THE COMPLAINT**

The NCC may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties; conducting interviews with the complainant, recipient's personnel, and other witnesses; and conducting site visits. At the conclusion of its investigation, the NCC will determine with regard to each allegation whether:

1. There is insufficient evidence to support a conclusion that the recipient failed to comply with the law; or
2. The evidence supports a conclusion that the recipient failed to comply with the law.

The NCC's determination will be explained in a letter of findings sent to the complainant and recipient. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such.

#### **RESOLUTION IF THE COMPLAINT AFTER A DETERMINATION OF NONCOMPLAINEE**

If the NCC determines that a recipient failed to comply with one of the civil rights laws that the OCR enforces, the NCC will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, the recipient will negotiate and sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by the NCC. The terms of the resolution agreement, if fully performed, will remedy the identified violation (s) in compliance with applicable civil rights laws. The NCC will monitor the recipient's implementation of the terms if the resolution has been implemented consistent with the terms of the agreement and that the area(s) of noncompliance identified were resolved consistent with applicable civil rights laws.

If the recipient refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, the NCC will inform the recipient that it has 30 calendar days to indicate its willingness to engage in negotiations to voluntarily resolve identified areas of noncompliance, or the NCC will forward the case to an external agency.

#### **REQUEST FOR RECONSIDERATION OR APPEAL OF NCC'S DETERMINATIONS**

The NCC affords an opportunity to the complainant to submit a request for reconsideration or an appeal of NCC determinations that are not in the complainant's favor. If the complainant disagrees with the NCC's decision to dismiss or administratively close a complaint for any reason, s/he may send a written request for reconsideration to the Complaint Coordinator within 60 calendar days of the date of the NCC's dismissal or administrative closure letter. If the complainant disagrees with the NCC decision finding insufficient evidence to support the compliant allegation(s) after investigation, they may send a written

appeal to the Complaint Coordinator within 60 calendar days of the date of the NCC's letter of finding(s). Requests for reconsideration and appeals should be sent to:

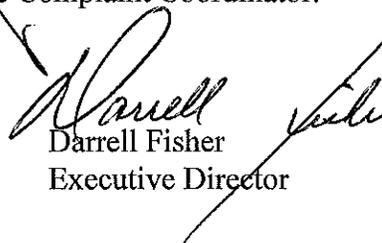
Nebraska Crime Commission  
P.O. Box 94946  
Lincoln, NE 68509-4946

This review process provides an opportunity for complainants to bring information to the NCC's attention that may change the NCC's decision. For both requests for reconsideration and appeals, the complainant must explain why they believe the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change the NCC's determination in this case. Failure to do so may result in the denial of the request for reconsideration or appeal. The review process will not be a de novo review (the NCC will not review the matter as if no previous decision had been rendered) of the NCC's decision.

**E. Policy Dissemination**

The NCC Non-Discrimination Policy will be made available to all employees, clients, customers, program participants, applicants, DOJ-funded sub-recipients, and consumers. This Policy will be included with information materials given to all new employees, posted in common areas of the agency's building, and available on the NCC website. In addition, all sub-recipients of the NCC must acknowledge reviewing the policy by initialing a special condition before receipt of their award.

5. **TRAINING:** The NCC will provide training for agency employees on the Non-Discrimination Policy on a yearly basis. The training will include an overview of compliant policies and procedures, including an employee's responsibility to refer discrimination complaints from clients, customers, program participants, applicants, DOJ-funded sub-recipients, and consumers to the Complaint Coordinator.



Darrell Fisher  
Executive Director