



DEPARTMENT OF HEALTH & HUMAN SERVICES

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OFFICE OF THE SECRETARY

Office for Civil Rights, Region X
2201 Sixth Avenue, Mail Stop RX-11
Seattle, WA 98121-1831

Lorey Freeman
Attorney at Law
Oregon Law Center
813 S.W. Alder, Suite 500
Portland, OR 97205

AUG 13 2004

Re: Transaction No. 02-01463

Dear Ms. Freeman:

I am pleased to transmit to you a copy of the enclosed Voluntary Compliance Agreement between the U.S. Department of Health and Human Services Office for Civil Rights (OCR) and the Oregon Department of Human Services (DHS).

On November 2, 2001 the Office for Civil Rights received a complaint from Legal Aid Services of Oregon alleging that the DHS was in violation of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. 12131 *et seq.*, its implementing regulations at 28 C.F.R. Part 35; and Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. 794, and its implementing regulations at 45 C.F.R. Part 84. Specifically, the complaint alleged that DHS had discriminated against eight (8) specific individuals on the basis of disability in the operation of its TANF program by failing to provide appropriate assessments, and modifications of work programs, sanctions and time limits to accommodate their disabilities. On April 12, 2002 the Oregon Law Center filed a disability discrimination complaint regarding three (3) additional TANF clients. On April 25, 2002 OCR advised Legal Aid Services of Oregon and Oregon Law Center that all the individual complaints had been closed and the issues combined into a compliance review of the DHS TANF program.

On August 6, 2004, following many months of fact-finding and resolution discussions, DHS and OCR entered into the enclosed Voluntary Compliance Agreement. The Agreement demonstrates the commitment of DHS to afford individuals with disabilities an equal opportunity to participate in the DHS TANF program, and commits DHS to a process that is designed to effectively identify and respond to the needs of individuals with disabilities, ensuring equal opportunity to participate in all aspects of the TANF program and services. The terms of the agreement will be monitored for a period of two years from the date of execution.


If you have any questions about this Agreement, please call Terrill Clements, the Equal Opportunity Specialist who is now handling this matter, or Calvin Low, Branch Chief, at the telephone numbers listed above.

Please note that the execution of this Voluntary Compliance Agreement does not affect the right of any aggrieved person to file a private civil action to remedy alleged discrimination by a covered entity. Also, no covered entity may intimidate, threaten, coerce or discriminate against an individual because he or she has made a complaint, testified, assisted or participated in any manner in an action to secure rights protected by the civil rights statutes enforced by OCR.

Under the Freedom of Information Act, it may be necessary for OCR to release this document and related correspondence and records upon request. In the event OCR received such a request, we will seek to protect, to the extent provided by law, personal information which, if released, would constitute an unwarranted invasion of privacy.

We look forward to continuing the good relationship fostered through this process with DHS to ensure equal opportunity for individuals with disabilities.

Sincerely,



Linda Yuu Connor
Acting Regional Manager
Office for Civil Rights
Region X

Enclosure: Copy of Voluntary Compliance Agreement



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services *Children, Adults and Families*

500 Summer Street NE, E____

Salem, OR 97301-1066

503 945-5600

Fax 503-373-7032

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August 3, 2004

RE: Voluntary Compliance Agreement

Linda Yuu Conner
Acting Regional Manager
U.S. Department of Health and Human Services
Office for Civil Rights, Region X
2201 Sixth Avenue, Mail Stop RX-11
Seattle, WA 98121-1831

RECEIVED

AUG 05 2004

OCR REG X


Dear Linda Yuu Conner,

SUBJECT: SIGNATURE AND RETURN COPY

Please accept the signed copy of the Voluntary Compliance Agreement. Inside there are two copies of the Agreement, which have been signed by Gary Weeks, Director Department of Human Services. After signing please send one of the two copies to me, Patrick J. Ring at the following address:

Department of Human Services
Attn: Patrick J. Ring
Human Services Building
500 Summer Street NE, E-48
Salem, Oregon 97301-1066

Sincerely,



Patrick J. Ring
TANF/JOBS Program Analyst
Oregon Department of Human Services

Enclosures (2)

pjr





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OFFICE OF THE SECRETARY

Office for Civil Rights, Region X
2201 Sixth Avenue, Mail Stop RX-11
Seattle, WA 98121-1831

August 6, 2004

Mr. Gary Weeks
Director, Oregon Department of Human Services
500 Summer St. NE, E15
Salem, OR 97301-1097

Re: Transaction Number 02-01463

Dear Mr. Weeks:

I am pleased to submit the enclosed Voluntary Resolution Agreement between the U.S. Department of Health and Human Services, Office for Civil Rights (OCR), and the Oregon Department of Human Services (DHS). The Agreement demonstrates the commitment of DHS to afford individuals with disabilities with an equal opportunity to participate in the DHS TANF program. The Agreement reflects measures that are informed not only by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, but by DHS' own policies.

The Agreement commits DHS to a process that is designed to effectively identify and respond to the needs of individuals with disabilities. In the event that DHS identifies methods or procedures that will permit DHS to more effectively serve its clients, including persons with disabilities, and to the extent that modifications to the Agreement may be needed to pursue implementation of such methods or procedures, OCR will work with DHS pursuant to Section V.G. of this Agreement to evaluate whether and to what extent modifications to the Agreement may be incorporated to assist in more effective delivery of services, consistent with DHS' responsibility to ensure that persons with disabilities have equal opportunity to participate in such programs and services.

We look forward to continuing the good relationship fostered through this process with DHS to ensure equal opportunity for individuals with disabilities.

Sincerely,

Linda Yuu Connor
Acting Regional Manager
Office for Civil Rights
Region X

Enclosure

Voluntary Compliance Agreement
Between
The United States Department of Health and Human Services
And
The Oregon Department of Human Services

I. Background

- A. The parties of this Voluntary Compliance Agreement (Agreement) are the State of Oregon, Department of Human Services (DHS), and the United States Department of Health and Human Services, Office for Civil Rights (OCR). DHS is the state entity responsible for administering the federally funded Temporary Assistance to Needy Families (TANF) program. As a recipient of Federal financial assistance, DHS is subject to Section 504 of the Rehabilitation Act of 1973 (Section 504) and the implementing regulation at 45 CFR Part 84. As an instrumentality of the State responsible for administering the TANF program, DHS is also subject to Title II of the Americans with Disabilities Act of 1990 (ADA) and the implementing regulations at 28 CFR Part 35.
- B. On November 2, 2001, HHS/OCR received a joint complaint from the Legal Aid Service of Oregon (LASO) and the Oregon Law Center (Docket Number 10023012) alleging that DHS discriminates against persons with disabilities in its TANF- Job Opportunity and Basic Skills (JOBS - Services and employment or barrier removal activities that promote family self-sufficiency) program by failing to ensure that it provides an equal opportunity for persons with disabilities to participate in all aspects of its program, including assessments, work program modifications, appropriate sanctions and appropriate time limits, in violation of Section 504 and Title II of the ADA. OCR began a compliance review to investigate these allegations and to determine DHS' compliance with Section 504 and Title II of the ADA on June 20, 2002.

- C. All terms used in this Agreement shall be given the meaning, and construed in accordance with, those terms under federal law applicable to Title II or Section 504. The parties further understand and agree that this Agreement is applicable to DHS' TANF/JOBS program and does not impose additional obligations, as a consequence of this Agreement, on any other DHS program, service or activity. Any obligations that arise under this Agreement that extend to DHS contractors for the TANF/JOBS program shall be limited solely to those contractors' obligations that arise under their contract with DHS for the TANF/JOBS program.

II. General Provisions

- A. DHS' willingness to enter into this Agreement shall not be construed as an admission of liability or as evidence that it has not complied with Section 504 or Title II of the ADA, and further shall not constitute a waiver of any defense the state may assert in any judicial or administrative proceedings.
- B. DHS voluntarily enters into this agreement in consideration of OCR agreeing to forego the completion of its compliance review or issuing formal findings resulting from an investigation.
- C. The parties agree that the resolution of this issue addressed in this agreement is intended to be without prejudice to any other compliance review or complaint investigation that may be pending before OCR, now or in the future.
- D. When requested by DHS, OCR will provide technical assistance to assist DHS in implementing its obligations under this Agreement; provided, however, that this provision shall not operate to relieve DHS of its responsibility to comply with the requirements of this Agreement.
- E. OCR agrees to bring to the attention of DHS any complaints against DHS received by OCR within 1 year of the signing of this Agreement

which involve matters addressed herein, and to attempt resolution of such matters before initiating an investigation.

- F. DHS shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, or participated in any manner in the matters addressed in this Agreement.
- G. OCR places no restriction on the publication of the terms of this Agreement. In addition, OCR may be required to release the Agreement and all related materials to any person, upon request, consistent with the requirements of the Freedom of Information Act, 5 USC 552 and its implementing regulation 45 CFR Part 5.

III. Specific Provisions

A. Notification of the Provisions of this Agreement

- 1. Within 60 days of the signing of this Agreement, DHS will provide notification to all Department and contracted TANF/JOBS program staff of the provisions of this Agreement and of client's rights and obligations under the ADA and Section 504.
- 2. Within 90 days of the signing of this Agreement, DHS will provide notification of the provisions of this Agreement, and of client's rights and obligations under the ADA and Section 504 through posting the provisions in all DHS and Contractor TANF/JOBS program offices.

B. Department of Human Services - ADA and Section 504 Coordinator

- 1. Within 30 days of the signing of this Agreement, DHS agrees to designate a Department ADA and Section 504 Coordinator to oversee the Agency's effort to comply with the ADA and Section 504, whose job description shall specify duties that include, at least, responsibility for:

- a. Conducting periodic review of the agency policies and procedures to determine whether reasonable modifications of programs, policies, and procedures are required to ensure compliance with the ADA and Section 504.
 - b. Overseeing the ADA and Section 504 Grievance process and ensuring appropriate and timely resolution of ADA and Section 504 complaints.
 - c. Maintaining records of all ADA and Section 504 complaints filed with DHS in relationship to the TANF Program along with records showing resolution of those complaints.
 - d. Assisting in the development and coordination of training of Department and Contract TANF/JOBS staff, who have direct client contact, regarding the requirements of the ADA and Section 504 in the administration of the TANF program.
 - e. Monitoring the Department's compliance with the provisions of the ADA and Section 504.
2. Within 30 days from the signing of this Agreement, DHS will also designate a TANF/JOBS program ADA and Section 504 Coordinator. Duties of this position will include, at least the following:
- a. Assisting the Department ADA and Section 504 Coordinator in performing program specific portions of the duties and responsibilities listed in the ADA and Section 504 Coordinator job descriptions.
 - b. Ensuring that all TANF/JOBS program staff are informed of the changes to the policies and procedures arising out of this Agreement.
 - c. Monitoring the TANF Program's compliance with the terms of this Agreement between OCR and DHS.

C. Department of Human Services - ADA and Section 504 Grievance Procedure

1. Within 180 days of the signing of this Agreement, DHS will develop an ADA and Section 504 Grievance Procedure. The Grievance Procedure will at least:
 - a. Meet the standards set forth in the ADA and Section 504 HHS regulations.
 - b. Be made available to clients to ensure that they are aware of their right to contest denials of reasonable accommodations.

D. Department of Human Services - Policy and Procedures

1. Within 180 days of the signing of this Agreement, DHS will develop policies and procedures to ensure that clients with disabilities, in the TANF program, are provided an equal opportunity to receive benefits and services. The policies will, at least, address the following:
 - a. Initial Assessment/Screening: An initial Assessment/Screening will be offered to all TANF applicants/recipients. Standardized tools will be developed to:
 - i Determine whether a formal assessment is needed in order to identify a specific disability that affects or may affect their participation in the TANF program.
 - ii Provide for equal access to all TANF applicants to receive screening and testing/evaluations for identification of a specific disability that affects or may affect their participation in the TANF program.
 - iii Assist clients in self-identifying when they have a disability that affects or may affect their participation in the TANF program.

- iv Inform clients of their right to receive appropriate accommodations under the provisions of the ADA and Section 504.
- b. Formal Assessment: A formal assessment will be offered to all TANF applicants/recipients who, as a result of the initial assessment and screening process or when issues are identified, have been determined to need further evaluation to determine if they have a specific disability. Provisions will be made to ensure that:
 - i. Clients are not sanctioned for non-participation during the time they are undergoing the formal assessment process when it is discovered that an aspect of their disability caused the non-participation.
 - ii Client's files are appropriately documented if they do not choose to have a formal assessment.
 - iii Client's files are documented if they refuse an offer of accommodation.
 - iv Case Managers receive the applicable results of all formal assessments.
 - v Case Managers coordinate with JOBS Program providers and agency partners to ensure appropriate follow-up and services to clients.
- c. Case Plans
 - i All signed case plans will be placed in the client's case file in accordance with DHS record retention policies.
 - ii Case plans will include activities and accommodations that were made. Inclusion on case plans of information about accommodations is contingent upon scheduled changes to TRACS (TANF Program's narration system).
 - iii The TANF/JOBS program automated narration system (TRACS) will include information about accommodations requested or recommended but

- not made, including information about the reason(s) why the accommodation was not provided.
- iv In the event the TRACS change does not occur or the data is not retrievable, DHS will develop an alternative plan for gathering the data and submit the plan to OCR for review and comment.
- d. Follow-up: Specific procedures will be developed to ensure that the case manager has the necessary tools to provide accommodations to clients with disabilities who have been identified in the Formal Assessment process. Such procedures will include:
- i A contact person with DHS who can provide advice and technical assistance, when needed, to assist the case manager in the provision of an appropriate accommodation.
 - ii Information regarding other resources such as the Job Accommodation Network, which will assist the case manager in providing the appropriate accommodation.
 - iii A requirement that qualified and appropriate professionals provide documentation in the client formal assessment regarding the specific accommodations needed by the client in order to participate in the TANF program.
 - iv A requirement that the case file include documentation, when received, regarding the need for an accommodation and the accommodation provided to meet the need.
- e. Sanctions: Specific policies and procedures will be developed to ensure that disability related issues are considered before sanctions are imposed on clients, to include the following:
- i All non-cooperation will be reviewed, by an appropriate locally determined team, for disability

- related problems which may not have been previously identified.
- ii In cases where disabilities have been previously identified the review will ensure that non-cooperation was not due to failure to provide a reasonable accommodation unless such offer was made but refused by the client.
 - iii Disability shall be included as a reason in the “Good Cause” consideration of non-cooperation in the TANF/JOBS program, consistent with subsection vii of this section.
 - iv Clients will be informed of their rights under the ADA and Section 504, to include their right to file a grievance, alleging discrimination based on disability, when sanctions are imposed.
 - v An independent review of the reasons for the sanctions, by the DHS ADA and Section 504 Coordinator, will be conducted regarding any complaints received by DHS under the ADA and Section 504 Grievance Procedure.
 - vi In the event that an aspect of the client’s disability caused the non-cooperation, the sanction will be removed without penalty, consistent with subsection vii of this section.
 - vii DHS policies and procedures, including those described in this section with respect to the imposition of sanctions and consideration of “good cause” for non-cooperation, shall adequately incorporate and reflect DHS’ obligation to reasonably accommodate clients unless such accommodation would result in a fundamental alteration of DHS’ TANF/JOBS services, programs or activities. The parties acknowledge that current DHS policy and practice (*see, e.g.*, DHS JOBS worker policy manual, Section F, Question 3 – “Who Must Cooperate?”) adequately reflect these requirements as of the

execution of this Agreement.

- f. Training: DHS will provide specific policies and procedures to ensure that all DHS and contracted TANF/JOBS program staff, with direct client contact, receive initial and periodic training regarding the Department's TANF Program's responsibility to provide equal opportunity for TANF clients to receive program services and benefits. The policies will require development of a training plan. The policies will, at least, provide for the following:
- i Commitment to train all new TANF employees, who have direct client contact, within the first one-hundred and eighty (180) days of employment. The new TANF employee training would begin within one-hundred and eighty (180) days from the OCR review of the Department's training plan.
 - ii Information on various disabilities to include but not limited to learning disabilities, mental health disabilities, developmental disabilities, and physical disabilities.
 - iii Information on how to conduct an initial assessment/screening and make appropriate referrals for formal assessments when the screening identifies a potential disability.
 - iv Information on how to provide accommodations to clients with disabilities.
 - v Information on how to conduct an appropriate follow-up for clients who have been identified as persons with disabilities.
 - vi Information on how to document the files when a client is identified as a person with a disability.
 - vii Information on the ADA and Section 504 Grievance Procedures and how to assist a client with filing a complaint.
- g. Monitoring: DHS will develop policies and procedures

to ensure that the Department is appropriately monitoring its compliance with the provisions of the ADA and Section 504 in relationship to the TANF Program and the provisions of this Agreement between DHS and OCR. The policies will, at least, include the following:

- i Designation of an appropriate person to conduct the monitoring. The appointed individual must have the necessary rank and status to ensure that non-compliance issues are addressed and changes are implemented should they be necessary.
- ii Provision for, at least, yearly monitoring, of both Department and contract staff for compliance with the policies and procedures developed as a result of this Agreement.
- iii Provision for a quarterly tracking system that identifies clients with disabilities, accommodations needed and accommodations provided, which is contingent upon scheduled change to TRACS (TANF Program's narration system).
- iv Provisions for a quarterly tracking system that documents the outcomes for persons with disabilities in the JOBS Program, which is contingent upon scheduled changes to TRACS.
- v In the event the TRACS change does not occur or the data is not retrievable, DHS will develop an alternative plan for gathering the data and submit the plan to OCR for review and comment.

E. Department of Human Services - Manuals

1. Within 180 days from the signing of this Agreement, DHS agrees to review and update all TANF program and policy manuals to ensure that they reflect consistent and appropriate information regarding all aspects of the DHS TANF Program's compliance with the requirements of the ADA and Section 504.

IV. Data Collection and Reporting Requirements

A. DHS shall collect and report to OCR the following data on a quarterly basis, for two years beginning with the second quarter following the signing of this Agreement:

1. An unduplicated count of the total number of adults entering the TANF/JOBS Program.
2. An unduplicated count of the total number of persons with disabilities who were served in the TANF/JOBS program, accommodations provided and outcomes in the JOBS Program. The disability reporting is contingent upon scheduled changes to TRACS (TANF Program's narration system). In the event the TRACS change does not occur or the data is not retrievable, DHS will develop an alternative plan for gathering the data and submit the plan to OCR for review and comment.
3. The following information about grievances filed by clients regarding the request for reasonable accommodation in relationship to the TANF/JOBS Program:
 - a. The number of grievances filed.
 - b. The types of accommodations requested.
 - c. The reason(s) the requested accommodation(s) were denied.
 - d. The result of the grievance process.

B. In addition, DHS shall provide the following information to OCR:

1. Within 30 days of the signing of this Agreement, the name, title and job description of the individual designated as the ADA and Section 504 Coordinator, pursuant to Section III.B. of this Agreement.
2. Within 180 days of the signing of this Agreement, the DHS ADA and Section 504 Grievance Procedures developed

pursuant to Section III.C. of this Agreement, for OCR review and comment as it relates to the TANF Program.

3. Within 180 days of the signing of this Agreement, the DHS policies and procedures developed pursuant to Section III.D. of this Agreement, for OCR review and comment.
4. Within 180 days of the signing of this Agreement, a copy of the training plan and materials developed pursuant to Section III.D.1.f. of this Agreement, for OCR review and comment.
5. Within one year from the date that training commences, verification that all Department and contracted TANF/JOBS program staff, who have direct client contact, have completed training pursuant to Section III.D.1.f. of this Agreement.
6. Within one year from the signing of this Agreement, and again one year thereafter, verification that all new TANF/JOBS employees who were not part of the training reported in III.F. of this Agreement, have been trained pursuant to Section III.D.1.f. of this Agreement.
7. Within 30 days of the signing of this Agreement the name of the individual appointed to monitor DHS' compliance with the terms of this Agreement.
8. Within one year from the signing of this Agreement and one year thereafter a report on the monitoring conducted pursuant to Section III.D.1.g. of this Agreement.
9. Within 180 days of the signing of this Agreement, copies of all changes and corrections to the Department TANF manuals made pursuant to Section III.E. of this Agreement.
10. Unless otherwise provided, DHS' obligation to report data and information to OCR shall terminate two years from the effective date of this Agreement.

V. Compliance

- A. OCR may, at any time, investigate DHS' compliance with the Agreement.
- B. DHS agrees to retain the records and to provide written documentation required under this Agreement. DHS also agrees to provide other information and allow OCR access to resources under its control as may be requested and necessary to assure OCR that the provisions of this Agreement have been fulfilled.
- C. If at any time OCR determines that DHS has materially failed to comply with the terms of this Agreement, OCR will notify DHS in writing. The notice shall include a statement of the basis for OCR's determination and allow DHS 15 business days to explain in writing the reasons for its actions. The time frame allowed for DHS' response may be less than 15 business days whenever OCR determines that a delay would result in irreparable injury to affected parties.
- D. If DHS does not respond to OCR's notice, or if after reviewing DHS' response OCR determines that DHS is not in material compliance with this Agreement, OCR will contact DHS to request an explanation of DHS' response or failure to respond. If OCR is still not satisfied with DHS' response and explanation, OCR will reopen its review of DHS' compliance with Title II of the ADA and Section 504 of the Rehabilitation Act in the TANF program. OCR will incorporate into its reopened compliance review any relevant evidence of material noncompliance with this Agreement, and any relevant evidence gathered by OCR prior to the signing of this Agreement. If OCR's compliance review determines that DHS is in violation of Title II of the ADA and/or Section 504, and the parties are unable to resolve any violations of law, OCR may request the initiation of administrative or judicial proceedings under Title II and/or Section 504 for violations of those Acts.

- E. Failure by OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of OCR's right to enforce other deadlines and provisions of this Agreement.
- F. This Agreement constitutes the entire agreement between DHS and OCR on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, shall be enforceable.
- G. This Agreement may be modified by mutual agreement of the parties in writing.
- H. The signer of this document for DHS represents that he or she is authorized to bind DHS to this Agreement.
- I. This Agreement shall become effective on the date it is executed by OCR ("Effective Date") and shall remain in effect for 2 years after the Effective Date, at which point if DHS is substantially in compliance with this Agreement, OCR's review and monitoring of this Agreement shall terminate. Notwithstanding the time period for terminating the Agreement, DHS acknowledges that it continues to be obligated to comply with Section 504 for as long as it continues to receive Federal financial assistance, and that it continues to be obligated to comply with Title II of the ADA as an entity of State government.

VI. SIGNATURES

Gary Weeks
Gary Weeks
Director
Oregon Department of Human Services

7/29/04
Date

L. Yiu Connor
Linda Yiu Connor
Acting Regional Manager
Office for Civil Rights
Region X

August 6, 2004
Date