

State of Tennessee



**DEPARTMENT OF
INTELLECTUAL AND
DEVELOPMENTAL DISABILITIES**

**Investigation Procedures Manual for the
Investigation and Resolution of Complaints
Alleging Violations of**

Title VI of the Civil Rights Act of 1964

February 1, 2005

Commissioner: M. D. Goetz, Jr.

Deputy Commissioner: Stephen H. Norris

Title VI Compliance Director: Brenda Clark

I. COMPLAINT PROCEDURES

Prior to filing a Title VI complaint against a developmental center or service provider, a potential complainant will be encouraged to review the regional office, developmental center or service provider's grievance process and use that process to have the complaint resolved. A complainant is not required by law to use an internal grievance process before filing a complaint. If a complainant uses an internal grievance process and also chooses to file a complaint, the complaint must be filed within 60 days after the last act of the internal grievance process.

Any family member, service recipient or legally authorized representative on behalf of such service recipient may file a complaint of discrimination on the basis of race, color, national origin. The individual or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. All complaints of alleged discrimination will be investigated. It is the policy of DIDD to encourage the informal resolution of all complaints with the participation of all affected parties. Attempts will be made to resolve the complaint at the lowest level possible. A complaint alleging discrimination against a service provider or any entity of the Department of Intellectual and Developmental Disabilities may be filed with the local Title VI Coordinator, DIDD Title VI Coordinator, Deputy Commissioner of DIDD or the Commissioner of Finance and Administration. A complaint may also be filed externally with the Tennessee Title VI Compliance Commission or the Department of Health and Human Services Office for Civil Rights, Region IV, in Atlanta, GA.

Anyone wishing to file a formal complaint of alleged discrimination against DIDD or any DIDD service provider may submit in writing to the Title VI Coordinator the following information in a letter or on the Discrimination Complaint Form available from DIDD Title VI compliance office:

- Name and address (a telephone number where the complainant can be contacted during business hours is helpful, but not required);
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required);
- The name and location of the service provider or developmental center that committed the alleged discriminatory act(s); and
- A description of the alleged discriminatory act(s) in sufficient detail to enable DIDD to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, color, national origin, disability, or age).

Upon receiving a Title VI complaint, the Title VI Coordinator will send a letter acknowledging receipt of the complaint within fifteen (15) days of receipt. The Title VI Coordinator will review the complaint to determine whether DIDD has jurisdiction to investigate the complaint. The complaint must meet the following basic criteria to be accepted for investigation:

- It must allege discrimination on a basis prohibited by Title VI of the Civil Rights Act of 1964.

- It must allege that discrimination is occurring in a program or activity that receives financial assistance from DIDD.
- The subject matter (i.e., issues) addressed by the complaint must be covered by Title VI of the Civil Rights Act of 1964.
- It must be timely filed, within 180 of the alleged violation, unless the requirement is waived.

If there is insufficient information to determine whether the complaint meets these four criteria, the complainant will be contacted to get this information. The following are examples of items that will not constitute a complaint, unless the item contains a signed cover letter specifically asking DIDD to take action concerning the allegations:

- an anonymous complaint;
- inquiries seeking advice or information;
- courtesy copies of court pleadings;
- courtesy copies of complaints addressed to other local, state, or federal agencies;
- newspaper articles;
- courtesy copies of internal grievances; or
- oral complaints.

All complaints will be reviewed. If the complaint is rejected, the complainant will be notified in writing and the complaint may be forwarded to another section within DIDD, a federal/ state agency or to a local organization (e.g., National Association for the Advancement of Colored People, Mexican American Legal Defense and Education Fund, Urban League, National Organization for Women, etc.) to explore whether further action is warranted.

Once a complaint (formal and informal) is accepted for processing, the regional or local Title VI Coordinator will immediately contact the DIDD Title VI Compliance Director who will contact the Tennessee Title VI Compliance Commission. The Title VI Compliance Coordinator will assign a tracking number and develop an Investigative Case File. A log will be maintained of all complaints and appeals. The complaint will be noted in the log by case number based on region, fiscal year, month and sequence in which complaint was received (e.g. A complaint received from East TN Region in July, 2004 and is the second complaint received in 2004 will be case number E (region) 04 (year) 07 (month)-002 (sequence).

The Investigative Case File is a structured compilation and repository of all documents and information pertaining to the case. An Investigative Case File will be established for each complaint that is accepted for investigation. A six-section folder will be used for this purpose. A case file will not be maintained on those complaints that are administratively closed for lack of jurisdiction, because they are untimely filed, for failure to exhaust local remedies, or for failure to state a claim over which DIDD has jurisdiction.

The purpose of the Investigative Case File is to establish a methodology for the systematic compilation and structured storage of all documents, records, and information associated with the case. This is done in such a manner that the Case File:

- (a) provides the basis and supporting documentation for the coordinators' draft report, and
- (b) allows a reader of that report to easily verify the facts upon which it is based.

Format for the Investigative Case File

Investigative Case File will include the following:

Section I - Contents/Log - This section has two types of entries, and is attached to the inside left-hand of the file folder.

- *Table of Contents.* This entry describes each section in the case file and identifies each entry under that section. The Table of Contents is attached as the top page of Section I.
- *Case File Log.* The purpose of the case file log is to record all contacts and activities relevant to processing the complaint for which there is no paper trail. The log is to be as a reference of the actions taken by the coordinator on the case, including the date, summary of actions, and the name of the individual annotating the actions. Under "Action," a brief description of the activity, including any outcome and future action required, will be recorded.

Section II - External Correspondence - All external correspondence will be included under this section, and will be attached immediately opposite Section I on the first page of the file folder. External correspondence will be filed chronologically (*i.e.*, most recent first), assigning sequential letters of the alphabet, *i.e.*, A, B, C, D) to identify each exhibit

Section III - Determination/Settlement Agreement - This section will contain copies of the coordinator's determination and, where appropriate, a conciliation agreement.

Section IV - Investigator's Documents - This section will contain copies of all documents generated by and pertinent to the coordinator's handling of the complaint including any analysis made by the coordinator (*e.g.*, statistical tabulations, application of statistical techniques to a body of data, etc.) which will later become a part of the investigative report.

Section V - Evidence - This section will contain all documentary evidence relating to the case -- records, interview statements, etc. Where the recipient or complainant submitted a document being used as an exhibit, the letter transmitting the document will be filed in Section II - External Correspondence; (with a copy of the cover letter), and its accompanying Analysis Form, will be filed in this section.

Section VI - Internal Correspondence Exhibits - All internal correspondence will be included under this section. Internal correspondence exhibits will be entered chronologically so that the most current exhibit is on top, assigning sequential letters of the alphabet to identify each exhibit.

The Title VI Compliance Coordinator will initiate the investigation by first contacting the complainant by telephone, within three working days of receiving the complaint. The

complainant will be informed that they have a right to have a witness or representative present during the interview and can submit any documentation he/she perceives as relevant to proving his/her complaint. The alleged discriminatory service or program official will be given the opportunity to respond to all aspects of the complainant's allegations.

In order to identify the specific practice or service involved in the alleged discrimination the Title VI Compliance Coordinator will assess the following with regards to race, color, national origin:

- Any difference in the quality, quantity, or manner in which a service or benefit is provided;
- Segregation in any part of a program or separate treatment in any manner;
- Restriction in the enjoyment of any advantages, privileges, or other benefits that are provided by the program;
- Different standards or requirements for participation or entry;
- Separate treatment in any manner related to receipt of services or benefits;
- Restriction of the membership of advisory or planning councils that are an integral part of federally-funded programs;
- Failure to provide information or services in languages other than English where a significant number or proportion of potential beneficiaries are of limited English-speaking ability;
- Failure to adequately advise person(s) in the eligible population of the existence of services or benefits;
- Use of criteria or methods of administration that would defeat or substantially impair the accomplishment of program objectives or would impact more heavily on members of a protected group; or

If, based on the investigation, the Title VI Compliance Coordinator concludes that there is no discrimination the complaint will be dismissed.

Under appropriate circumstances, the Title VI Compliance Coordinator may seek comment(s) from the recipient, and/or complainant(s) on preliminary data analyses before making an initial finding concerning disparate impact.

A finding of disparate impact provides the recipient the opportunity to rebut the Title VI Compliance Coordinator's finding, propose a plan for mitigating the disparate impact, or to "justify" the disparate impact. If the recipient successfully rebuts the Title VI Compliance Coordinator's finding, or if the recipient elects to submit a plan for mitigating the disparate impact, and based on the review, the Title VI Compliance Coordinator agrees that the disparate impact will be mitigated sufficiently pursuant to the plan, the parties will be so notified. Assuming that assurances are provided regarding

implementation of such a mitigation plan, no further action on the complaint will be required.

If the recipient can neither rebut the finding of the disparate impact nor develop an acceptable mitigation plan, then the recipient may seek to demonstrate that it has a substantial, legitimate interest that justifies the decision to proceed with the action notwithstanding the disparate impact. Even where a substantial, legitimate justification is offered, the Title VI Compliance Director will consider whether it can be shown that there is an alternative that would satisfy the State's interest while eliminating or mitigating the disparate impact.

Appeal Process

Complainant may appeal a finding made by the Deputy Commissioner to the Commissioner of Finance and Administration. An appeal to the Commissioner constitutes the final level in the department's internal complaint system.

Upon an appeal, the DIDD Title VI Compliance Director and the DIDD General Counsel will assist the Deputy Commissioner of the Department of Intellectual and Developmental Disabilities and the Commissioner of Finance and Administration in reviewing the matter and making determinations. Procedures can include; but are not limited to discussing the complaint with the complainant and/or the alleged offender.

According to federal regulations, a complaint to the U.S. Commission on Civil Rights must be filed no later than 180 calendar days after the alleged discrimination occurred. Thus, to accommodate sequential external complaint filing, should the complainant wish to file a complaint with the federal authority, the following schedule of time limits must be followed in the filing, appeal, and disposition of a complaint.

no later than 30 calendar days after the alleged discrimination occurred— a complainant must file a written complaint within DIDD;

no later than 30 calendar days after the written complaint is filed within DIDD— the Title VI Compliance Coordinator shall review and investigate the complaint and issue a written determination of findings and, if there is a finding of *Title VI* violation, proposed remedial action (information regarding appeal rights shall also be provided at that time);

no later than 20 calendar days after the Title VI Coordinator's written determination—the complainant may file a written appeal, with the Commissioner of Finance and Administration, of the Title VI Compliance Director's finding or proposed remedial action;

no later than 30 calendar days after the appeal is filed with the Commissioner—the Commissioner shall review and investigate the complaint and issue a written determination in the matter.

If a complainant remains unsatisfied with the findings or the proposed remedial action, the complainant will still have time to file externally, with the U.S. Commission on Civil Rights, within the stated time limit of 180 calendar days.

Throughout the complaint process, it shall be the responsibility of the complainant and Title VI Compliance Director to ensure that DIDD General Counsel have copies and a complete record of all documents, proceedings, findings, appeals, and dispositions related to a complaint. The DIDD General Counsel and the Title VI Compliance Director shall have responsibilities as custodians of such information as well as advisors to departmental authorities regarding complaints.

II. LETTERS OF FINDINGS AND RESOLUTIONS

A. Types of Closures

To complete a complaint investigation or compliance review, there are usually three types of letters that can be used.

The first is a *Letter of Resolution*. This letter is issued when the recipient has voluntarily taken actions to come into compliance before a Letter of Findings (LOF) is issued. A Letter of Resolution can simply explain the steps the recipient has taken or promises to take.

The second letter is a *No Violation Letter of Findings*. This letter is issued when the recipient is found to be in compliance.

The third letter is a *Violation Letter of Findings*. This letter is to be issued when the recipient is found to be in noncompliance and pre-findings voluntary compliance cannot be achieved.

All letters are sent both to the complainant or the complainant's representative and the recipient. There may be a combination of letters if, for example, one issue is resolved, no violation is found in another issue, and a violation is found on the last issue.

An additional type of letter that may be issued is a *Letter of Concern(s)*. This type of letter is used when, following an investigation, sufficient evidence is not found to support findings of actual violations but, nevertheless, concerns have been identified that should be shared with the recipient. The purpose is to put the recipient on notice that "all is not well" and steps may need to be taken to rectify a problem or problems that, without corrective steps, may result in a violation at some point in the future. For example, you may be unable to prove a violation because records have not been kept or witnesses cannot be found, but you believe that the alleged discrimination may well have occurred. Rather than issue a No Violation Letter of Findings, a Letter of Concerns may be appropriate.

B. Contents of Closure Letters

1. All Closure Letters should include the following:
 - i. The complaint or compliance review number, the name of the complainant, if revealed, and the date the complaint was received.
 - ii. A statement of the jurisdictional authority, including the recipient status and the statutory basis for the investigation. If the allegation(s) is against a specific part or program of the recipient, this should be mentioned.
 - iii. A statement of each allegation and the applicable regulation.
 - iv. An explanation of the status of any issues that were investigated but are not included in the letter or any issues that were raised but not investigated.
 - v. A paragraph on the prohibition of retaliation by the recipient against the complainant or anyone who has either taken action or participated in an action to secure rights protected by the civil rights statutes.
 - vi. A paragraph on the Freedom of Information Act and the Privacy Act.

- vii. The name and telephone number of the staff person to contact for additional information.
 - viii. Thanks to the recipient for its cooperation (optional).
2. Letters of Resolution should include, in addition to the items in Part 1, above, the following:
 - i. The steps that the recipient has taken to come into compliance and an explanation of how these actions meet the requirements of the applicable regulation.
 - ii. Notice that failure to continue these actions may result in the finding of a violation and that compliance will be monitored, if necessary.
 - iii. If applicable, the date(s) that any promised action will occur and when monitoring or other reports will be due.
3. Letters of Findings should include in addition to items in Part 1, above, the following:
 - i. If necessary, a brief background and chronological history.
 - ii. A methodology or brief description of how the complaint was investigated or the compliance review conducted, if necessary.
 - iii. A statement of each issue and the findings of fact for each, supported by any necessary explanation or analysis of the information on which the findings are based. Each allegation and the respondent's position should be addressed.
 - iv. A conclusion for each issue that references the relevant facts, the applicable regulation, and the appropriate legal standards.
 - v. Notice that the LOF is not intended and should not be construed to cover any other issue regarding the recipient's compliance status.
4. No Violation Letters of Findings should include, in addition to the items listed in Parts 1 and 2, above:
 - i. An explanation of why the recipient was found in compliance (see Parts 3(iii) and 3(iv), above).
 - ii. Notification of a complainant's appeal rights (Letter to Complainant only), if applicable.
 - iii. Notification of a complainant's right to file a private right of action (Letter to Complainant only).
 - iv. Procedural violations, such as lack of a posted notice, may be mentioned if uncovered during the investigation.
5. Violation Letters of Findings should include, in addition to the items listed in Parts 1 and 3, above, the following:
 - i. Each violation referenced as to the applicable regulations and the specific citations under the regulation.
 - ii. A brief description of proposed remedies. A proposed conciliation agreement setting out what constitutes full injunctive and remedial is generally attached and constitutes the basis for conciliation negotiations.
 - iii. Notice of the time limit on the conciliation process and the consequence of failure to achieve voluntary compliance.
 - iv. An offer of assistance to the recipient in devising a remedial plan for compliance (if a proposed formal agreement is not included), if appropriate.
 - v. If a decision is made to defer final approval of any application by the recipient for additional financial assistance, notice of that deferral will be provided.

C. Important Elements of Every Violation LOF:

- i. The LOF must stand on its own.
- ii. The LOF should present a complete discussion of the facts in a clear, concise, and logical manner. There should be a neutral review of the facts.
- iii. Where the investigation has revealed two different versions of the facts, state both sides.
- iv. The intended reader should be considered to have no knowledge of civil rights laws or the facts of the particular investigation.
- v. The LOF cannot assume facts or the law. These elements must be clearly articulated in the LOF.
- vi. The general prohibition contained in the relevant statute and the particular regulation governing the issues should be cited. Only focus on those parts of the regulations necessary to resolve the complaint.
- vii. The LOF should tell the reader why a particular set of facts demonstrates compliance or noncompliance.
- viii. Where it is necessary to credit one version of the facts and discredit another version, the LOF should state the basis on which the one version was determined to be more credible than the other.
- ix. In the conclusion of the LOF, the determinations of compliance, noncompliance or both should be highlighted.
- x. Most important, your LOF must contain the information necessary to meet your burden of proof. The legal standard for an LOF, as well as any resulting administrative hearing or trial in Federal Court, is the "preponderance of the evidence."

III. RETALIATION

In accordance with Title VI of the Civil Rights Act of 1964 (45 C.F.R. Part 80.7(e)), no DIDD personnel or service provider shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 or the Act, or because the individual has made a complaint, testified, assisted, or participated in any manner in a discrimination investigation, proceeding or hearing.



DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES
DOCUMENTATION OF COMPLAINT *pursuant to Title VI of the Civil Rights Act of 1964.*

NAME (of person making the complaint)

ADDRESS

TELEPHONE (business)

TELEPHONE (home)

DESCRIPTION OF THE COMPLAINT: (describe what happened and who you believe was responsible)

APPARENT BASIS OF THE DESCRIBED SITUATION: (select all that apply and explain)

Race

National origin

Gender

Visual impairment

DATE DESCRIBED SITUATION OCCURRED:

NAME OF ORGANIZATION INVOLVED IN THE COMPLAINT:

ADDRESS

TELEPHONE (business)

TELEPHONE (home)

PERSON INVOLVED (if other than complainant)

ADDRESS

TELEPHONE (business)

TELEPHONE (home)

HAS THE COMPLAINT BEEN FILED THROUGH ANOTHER GRIEVANCE OR COMPLAINT PROCESS? IF SO, EXPLAIN AND PROVIDE CURRENT STATUS OF SUCH:

YES

NO

Signature

Date

- attach any written materials or other information relevant to the complaint

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