



# Department of Corrections

*PRIDE: Professionalism, Respect, Integrity, Dignity, and Excellence*



<b>GENERAL ORDER NUMBER 10.03</b>		<b>DISTRIBUTION ALL PERSONNEL</b>	<b>PAGE 1 OF 8</b>
<b>ORDER TITLE Civil Rights Compliance Policy</b>	<b>SERIES NO. 10</b>	<b>SERIES TITLE/SUBJECT Employee Regulations and Discipline</b>	
<b>TOPICS/REFERENCE Established Policies and Procedures for the Prevention of Discriminatory Practices or Behavior.</b>		<b>APPENDICES</b>	
<b>ISSUE DATE October 17, 2013</b>	<b>EFFECTIVE DATE October 17, 2013</b>	<b>EXPIRATION DATE This order remains in effect until revised or rescinded</b>	

This Order is comprised of the following numbered section:

- 10.03.01 POLICY**
- 10.03.02 REFERENCES**
- 10.03.03 DEFINITIONS**
- 10.03.04 COMPLAINT PROCEDURES**
- 10.03.05 POLICY DISSIMINATION**
- 10.03.06 TRAINING AND SUBGRANTEE MONITORING**

### **10.03.01 POLICY**

As a recipient of federal financial assistance from the U.S. Department of Justice (DOJ), Residential Substance Abuse Treatment Program for State Prisoners and the Edward Byrne Justice Assistance Grant Program, Adult Correctional Management Information System, the Department of Corrections (DOC) is committed, as a matter of principle, and in compliance with applicable federal laws, to prohibiting discrimination and behaviors, which, if repeated, could constitute discrimination.

Accordingly, this policy establishes written procedures for 1) individuals to follow in filing an employment or services discrimination complaint with the Department of Corrections; and 2) Department of Corrections employees to follow when they receive complaints alleging employment or services discrimination from employees, clients, customers, program participants, applicants, or consumers of the Department of Corrections or of Department of Corrections sub grantees receiving federal financial assistance from DOJ. This policy applies to all employees of the Department of Corrections and all of its contractors and sub grantees.

The Department of Corrections directs that its transactions and the operation of all Department of Corrections-funded sub grantee programs and activities shall not discriminate or retaliate on the basis of race, color, religion, national origin, sex, age, or disability. Harassment on any of the above-stated grounds is a form of prohibited discrimination.

### **10.03.02 REFERENCES**

The Department of Corrections, its contractors, and its sub grantees have the obligation to comply with the following federal civil rights laws:

- 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;
- 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. § 3789d(c)(1)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D;
- 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;
- 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;

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54;
- 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 DOJ implementing regulations at 28 C.F.R. Part 42, Subpart I; and
- 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 federal financial assistance for inherently religious activities (28 C.F.R. Part 38).

### **10.03.03 DEFINITIONS**

- A. "A person with a disability" means any person who: (1) has a physical or mental impairment that substantially limits one or more of such person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having an impairment that is not both transitory and minor.
- B. "Complainant" refers to the person or persons initiating the complaint.
- C. "Harassment" is a form of behavior that is characterized by conduct: (1) based on race, color, national origin, sex, religion, disability, or age; and (2) if sufficiently severe, persistent, or pervasive, could reasonably be expected to create an intimidating, hostile, or offensive working or learning environment.
- D. "Respondent" is the person or persons against whom a complaint has been initiated.
- E. "Retaliation" refers to adverse actions taken by an employer or service provider because an individual engaged in a protected activity, such as opposing a discriminatory practice or participating in a discrimination complaint process.

### **10.03.04 COMPLAINT PROCEDURES**

#### **A. Filing a Complaint**

A person who believes that s/he has been harassed or been subject to discriminatory treatment within the Department of Corrections or by a Department of Corrections sub grantee because of race, color, national origin, sex, age, religion, or disability, or has been retaliated against for engaging in protected activity, is urged to file a complaint through the Department of Corrections Civil Rights Officer.

The current Civil Rights Officers are Dean J. Taitague, dean.taitague@doc.guam.gov, (671) 735-4133; and Linda Marie A. Charfauros, linda.charfauros@doc.guam.gov, (671) 734-2459.

Generally, formal complaints must be filed with the Civil Rights Officer within 180 calendar days of the alleged discrimination. If the complaint is not filed on time, the complainant shall provide the reason for the delay and request a waiver of this filing requirement. The Department of Corrections shall decide whether to grant the waiver. The complaint may be filed in a letter, in an e-mail, in person, or over the phone. In anticipation of filing a complaint, an individual may find it beneficial to contact the Civil Rights Officer to obtain policy clarification, advice, or assistance.

Because the Department of Corrections is a Government of Guam Line Agency, employees are subject to the Department of Administration's Personnel Rules and Regulations, specifically Appendix F, Equal Employment Opportunity, and Chapter 11 Adverse Action Procedures.

#### **B. Referral of Complaint to Civil Rights Officer**

If an employee of the Department of Corrections other than the Civil Rights Officer receives a discrimination complaint from an employee, client, customer, program participant, applicant, or consumer of the Department of Corrections or of a Department of Corrections sub grantee, s/he shall submit the complaint to the Civil Rights Officer within five (5) business days of receiving the complaint. Furthermore, the Department of Corrections shall provide the complainant with a written notice acknowledging receipt of the complaint and explaining that the complaint will be resolved within forty-five (45) calendar days of the Department of Correction's receipt of the complaint.

A Department of Corrections sub grantee shall advise the Civil Rights Officer of an employment or services discrimination complaint filed against it within ten (10) business days of receiving the complaint.

#### **C. External Agencies**

While the Department of Corrections encourages individuals to file any employment or services discrimination complaint with the Department of Corrections, the agency's policies and procedures are not intended to impair or limit the rights of anyone to seek a remedy available under territorial or federal law. As an alternative or in addition to filing a complaint with the Department of Corrections, an individual may wish to file a complaint with an external agency for investigation, such as a local human rights commission, or an appropriate federal agency. For instance, if a complainant alleges a violation of a federal employment discrimination law that is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), the Department of Corrections acknowledgement letter will inform the complainant that s/he may file a complaint directly with the EEOC and provide the following contact information:

U.S. Equal Employment Opportunity Commission  
Los Angeles District Office  
Roybal Federal Building

225 East Temple St., 4th Floor  
Los Angeles, CA 90012  
Telephone: 1.800.669.4000  
TTY: 1.800.669.6820  
<http://www.eeoc.gov/field/losangeles/charge.cfm>

If a complainant alleges a violation of a federal civil rights law that is enforced by the Office for Civil Rights (OCR), Office of Justice Programs, DOJ, the Department of Corrections acknowledgement letter will inform the complainant that s/he may file a complaint directly with the OCR and provide the following contact information:

Office for Civil Rights  
Office of Justice Programs  
U.S. Department of Justice  
810 7th Street NW  
Washington, DC 20531  
Telephone: 202.307.0690  
TDD/TTY: 202.307.2027  
<http://www.ojp.usdoj.gov/about/ocr/complaint.htm>

#### D. Complaint Evaluation, Investigation, and Resolution Proceedings

##### I. Evaluation of the Complaint

The Department of Corrections evaluates each complaint it receives to determine whether it can investigate the complaint. The Department of Corrections makes this determination with respect to each allegation in the complaint. The Department of Corrections shall dismiss the complaint if the following is determined:

- The Department of Corrections lacks jurisdiction over the complaint;
- The complaint was not filed timely and a waiver will not be granted;
- The complaint is unclear or incomplete and the complainant does not provide the information the Department of Corrections requests within twenty (20) calendar days of the request; or
- The allegations raised by the complaint have been resolved.

If a complaint cannot be resolved within sixty (60) calendar days of the Department of Correction's receipt of it or the respondent remains unwilling to negotiate an agreement, the Civil Rights Officer will refer the matter to the EEOC, if the complaint involves employment discrimination, or to the OCR, if the complaint involves services discrimination, for investigation and resolution. The Department of Corrections shall notify the EEOC or the OCR in writing of any referral within ninety (90) calendar days of its receipt of the complaint. If the Department of Corrections refers the complaint to an

external agency, the Civil Rights Officer will provide a written notice to the complainant stating that the complaint was referred to an external agency, notifying the complainant of that external agency's contact information, and identifying the civil rights provision(s) involved.

If the Department of Corrections determines that it will investigate the complaint, it shall issue letters of notification to the complainant and the respondent. Opening a complaint for investigation in no way implies that the Department of Corrections has made a determination with regard to the merits of the complaint. During the investigation, the Department of Corrections is a neutral fact-finder. The Department of Corrections shall collect and analyze relevant information and evidence from the complainant, the respondent, and other sources as appropriate. The Department of Corrections shall ensure that the investigations are legally sufficient and address the allegations raised in the complaint.

If the Department of Corrections elects to investigate a complaint that involves a federal civil rights law over which the OCR has jurisdiction, the OCR retains authority (1) to conduct supplementary or *de novo* investigations; (2) to approve, modify, or reject recommended findings; (3) to approve, modify or reject proposed voluntary resolutions; and (4) to initiate formal enforcement action.

## II. Investigation of the Complaint

The Department of Corrections 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, respondent's personnel, and other witnesses; and conducting site visits. At the conclusion of its investigation, the Department of Corrections shall determine with regard to each allegation whether a preponderance of the evidence supports a conclusion that the respondent failed to comply with the law.

The Department of Correction's determination shall be explained in a letter of findings sent to the complainant and the respondent. 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. The Department of Correction's formal policy statements are approved by a duly-authorized Department of Corrections official and made available to the public.

## III. Resolution of the Complaint after a Determination of Noncompliance

If the Department of Corrections determines that a respondent failed to comply with one of the civil rights laws the OCR enforces, the Department of Corrections will contact the respondent and will attempt to secure the respondent's willingness to negotiate a voluntary resolution agreement. If the respondent agrees to resolve the complaint, the respondent will negotiate and sign a written resolution agreement describing the specific remedial actions that the respondent will undertake to address the area(s) of

noncompliance identified by the Department of Corrections. The terms of the resolution agreement, if fully performed, will remedy the identified violation(s) in compliance with applicable civil rights laws. The Department of Corrections shall monitor the respondent's implementation of the terms of the resolution agreement to verify that (1) the remedial actions agreed to by the respondent have been implemented consistent with the terms of the agreement and (2) the area(s) of noncompliance identified were resolved consistent with applicable civil rights laws.

If the respondent refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, the Department of Corrections will inform the respondent it has thirty (30) calendar days to indicate its willingness to engage in negotiations to voluntarily resolve identified areas of noncompliance, or the Department of Corrections shall forward the case to either the EEOC, if the complaint alleges employment discrimination within that agency's jurisdiction, or the OCR, if the complaint alleges services discrimination within that agency's jurisdiction.

#### IV. Request for Reconsideration or Appeal of Department of Correction's Determination

The Department of Corrections is committed to a high-quality resolution of every case. The Department of Corrections affords an opportunity to the complainant to submit a request for reconsideration or an appeal of a Department of Corrections determination that is not in the complainant's favor. If the complainant disagrees with the Department of Correction's decision to dismiss or administratively close a complaint for any reason (e.g., jurisdiction, timeliness, or other administrative reasons), s/he may send a written request for reconsideration to the Civil Rights Officer within sixty (60) calendar days of the date of the Department of Correction's administrative closure letter. If the complainant disagrees with the Department of Corrections decision finding insufficient evidence to support the complaint allegation(s) after investigation, s/he may send a written appeal to the Civil Rights Officer within sixty (60) calendar days of the date of the Department of Correction's letter of findings. Requests for reconsideration and appeals shall be sent to:

Civil Rights Officer  
Department of Corrections  
P.O. Box 3236  
Hagåtña, Guam 96932

The review process provides an opportunity for complainants to bring information to the Department of Correction's attention that may change the Department of Correction's decision. For both requests for reconsideration and appeals, the complainant must explain why s/he believes the factual information was incomplete, the analysis of facts were incorrect, and/or the appropriate legal standard was not applied, and how those would change the Department of Correction's determination in the 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 (i.e., the Department of Corrections shall not review the matter as if no previous decision has been rendered) of the Department of Correction's decision.

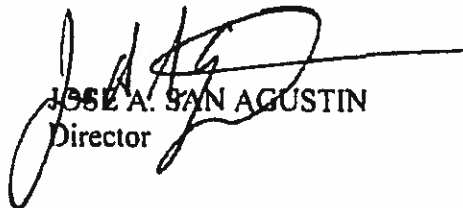
### **10.03.05 POLICY DISSEMINATION**

The Department of Corrections Civil Rights Compliance Policy will be made available to all employees, clients, customers, program participants, applicants, sub grantees, and consumers. This Policy shall be included with orientation materials given to all new employees, available on shared computer access, and available on the Department of Correction's website (doc.guam.gov), and given to employees during training on the policy. Non-discrimination clauses shall also be incorporated in all agreements, award packets, and contracts with vendors who contract with the Department of Corrections. Furthermore, all sub grantees of the Department of Corrections must acknowledge reviewing the policy by initialing a special condition before receipt of their award.

### **10.03.06 TRAINING AND SUBGRANTEE MONITORING**

The Department of Corrections shall provide training for agency employees on the Civil Rights Compliance Policy periodically. The training shall include an overview of complaint policies and procedures, including an employee's responsibility to refer potential discrimination issues and discrimination complaints from employees, clients, customers, program participants, applicants, sub grantees, and consumers to the Civil Rights Officer.

Through its compliance monitoring process, the Department of Corrections ensures that sub grantees have procedures in place for responding to discrimination complaints that employees, clients, customers, program participants, applicants, and consumers file directly with the sub grantee. The Department of Corrections also ensures that sub grantees notify their employees, clients, customers, program participants, applicants, and consumers of prohibited discrimination and the procedures for filing an employment or services discrimination complaint.

  
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Director