

Title VI Compliance 101

Metropolitan Nashville-Davidson County

Title VI Coordinators



Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

42 U.S.C. § 2000d

» U.S. Department of Justice is main federal enforcement agency for Title VI





- “**Simple justice** requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination....
- **But indirect discrimination, through the use of Federal funds is as invidious;** and it should not be necessary to resort to the courts to prevent each individual violation.”

METRO ORDINANCE BL2004-352

An Ordinance requiring all departments, boards and commissions to develop an implementation plan pursuant to Title VI of the Civil Rights Act of 1964 and requiring annual compliance reports by such departments, boards and commissions.

~Full Report due June 30



Title VI Compliance Program

Title VI applies to Metro functions, facilities, operations, programs and projects that receive federal funding as well as to services provided by subrecipients that receive federal financial assistance through contracts or grants from Metro.



Title VI Compliance Program

Why is this program important?

- It's the right thing to do. Our city has a goal to ensure that services are provided in a nondiscriminatory manner.
- Ensures consistency across departments citywide.
- Provides risk management to prevent loss of federal funding for noncompliance.



Sanctions for Non-Compliance

- Withholding of payments to recipient under the grant/contract until entity complies and/or
- Cancellation, termination, or suspension of grant/contract, in whole or in part.
- **Voluntary Compliance** is the goal



What Does Title VI Really Require?



The Basics

Who is required to comply with Title VI?

- Any entity which receives federal financial assistance must comply with the provisions of Titles VI
- Including direct recipients and pass-through sub-recipients



The Basics

What does compliance entail?

- Ensuring that the method by which programs or activities are delivered are such that no person is denied benefit of or access to those programs or activities because of their race, color or national origin



Definitions and Terms



Protected Classes

I. Race

- American Indian or Alaska Native
- Asian
- Black or African American
- Hispanic or Latino
- Native Hawaiian or Other Pacific Islander
- White



Protected Classes

Racial Discrimination Can Encompass:

- Ethnicity or Ancestry
- Physical Characteristics
- Culture
- Perception
- Association
- Advocacy



Protected Classes

II. Color

Courts have read color to mean:

- Pigmentation
- Complexion
- Skin Shade
- Tone



Protected Classes

Color Discrimination Can Occur:

- Based on lightness, darkness or other color characteristic of person
- By persons of different races or ethnicities
- By persons of the same race or ethnicity



Protected Classes

III. National Origin

- Place of origin – person (or ancestors) comes from particular country or region
- National origin group – group of people sharing common language, culture, ancestry, and/or similar social characteristics



Protected Classes

National Origin Discrimination Can
Be Based On:

- Ethnicity
- Physical, linguistic, or cultural traits
- Perception
- Association
- Advocacy



Protected Classes

Who are “persons” under the Act?

- Courts have not expressly addressed the scope of “person” as used under Title VI
- Cases under Fifth and Fourteenth Amendments have found that the term is not limited to citizens but includes undocumented persons



Federal Financial Assistance

What is Federal financial assistance (FFA)?

- Award or grant of money
- Loans, below fair market value or subsidies
- Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance
- Surplus property
- Training
- Detail (assignment) of federal personnel



FFA, cont

Not considered FFA:

- Licenses
- Procurement
- Direct unconditional assistance to private citizens receiving Federal financial assistance (i.e. Supplemental Security Income or SSI)
- Employment, unless intent of grant, award, or assistance

Recipients & Beneficiaries

- Recipients
 1. Primary Recipient – receives FFA directly from a federal entity and may transfer or distribute assistance to a subrecipient.
 2. Subrecipient—receives FFA from a primary recipient and distributes assistance to an ultimate beneficiary. Subrecipients may be contractors, subcontractors or grantees.
- Beneficiaries – means individuals and/or entities that directly or indirectly receive an advantage through the operation of a Federal program (e.g. scholarship, tuition, etc..).



Discriminatory Practices



Disparate Treatment

Three basic theories of liability:

- Disparate Treatment
(intentional discrimination)
- Disparate Impact
(facially neutral policy; lacks substantial justification)
- Retaliation



Disparate Treatment

- Similarly situated persons are treated differently (i.e., less favorably) than others based, at least in part, on their race, color and/or national origin.
- Motivated by an intent to discriminate



Disparate Impact

- Discrimination that occurs as a result of a neutral policy which appears on the surface to apply to all people equally, but negatively or disproportionately affects a group of people. Policy must also lack substantial legitimate justification.
- Not intentional, but the *effect* is discriminatory



Discriminatory Practices

- Denying an individual any program services, financial aid, or benefits;
- Providing a different service, aid, or benefit, or providing them in a manner different than they are provided to others; or,
- Segregating or treating individuals separately in any matter related to receiving any program service, aid, or benefit.



Examples

- Denying an individual any service, financial aid, or benefit because of race, color, or origin
- Providing services or benefits to some individuals that are different or inferior (either in quantity or quality) to those provided to others
- Giving segregated or separate treatment in any manner related to program services or benefits
- Employing different standards or conditions as prerequisites for serving individuals



Examples

- Discouraging minorities from participating on planning or advisory committees
- Federal funds are granted to a city to build a new hospital, and the city issues a contract with a company that discriminates by race, color, or national origin.
- A Public Health department requires clients with limited English abilities to bring interpreters to their appointments.
- A Codes assessor requires different standards to be applied to homes owned by minorities



Examples

- A nursing home places only minority patients in the older wing of their facility
- Old buses only serve minority areas of town
- Laws are enforced differently in minority and non-minority neighborhoods
- Incinerators, landfill, or sewerage plants are constructed only in low-income or minority neighborhoods



Discriminatory Practices

RETALIATION:

intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, or because a person made a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under Title VI.



Limited English Proficiency



Limited English Proficiency (LEP)

Who are LEP persons?

- Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

What is required?

- **Meaningful access**



LEP Guidance

To determine extent of obligation to provide **meaningful access**, apply a four factor analysis:

1. The number or proportion of LEP persons;
2. Frequency of contact with the program;
3. Nature and importance of the program;
and,
4. Resources available.



LEP Guidance

- Determine the languages spoken by clients in your area and by your department
- Hire bilingual employees if sufficient need and assess skills of staff interpreters
- Provide over-the-phone interpreters
- Provide translated written documents and signage



Title VI Coordinator Role and Responsibilities



Title VI Coordinators

Metro Title VI coordination assigned to
Metro Human Relations Commission Staff

However, each department has an
assigned Title VI coordinator with
departmental responsibility lying ultimately
with the Department Head.



Title VI Coordinator Duties

- Collection of statistical data (race, color, and national origin) of participants in, and beneficiaries of department/agency programs (i.e., persons participating, impacted citizens and, affected communities)
- Ensure the provision of services for LEP clients
- Ensure complaint procedure is known
- Disposition of Title VI complaints received by the department, with assistance from MHRC



Title VI Coordinator Duties

- Preparation of the annual Title VI Implementation Plan and Compliance Report
- Conducting training programs on Title VI and related statutes for department staff, program officers, and subrecipients if needed.
- Development of Title VI information for dissemination to the public (including languages other than English when required)
- Ensure the provision of services for LEP clients
- Ensure complaint procedure is known
- Disposition of Title VI complaints received by the department, with assistance from MHRC

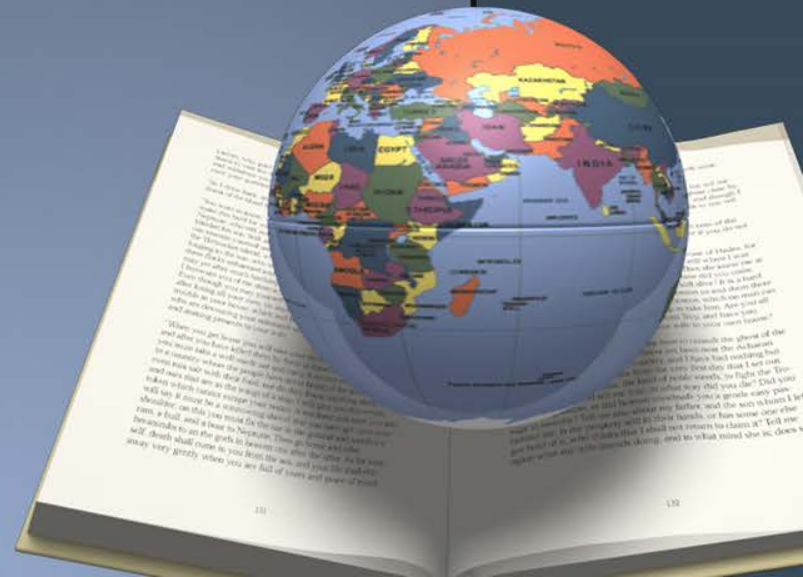


Implementation Plan & Compliance Report Guidelines



Need Help?

- Contact MHRC for assistance with your Implementation Plan or Compliance Report



Complaint Processing and Investigation



If you receive a complaint...

1. Determine if it is possibly a complaint covered by Title VI.
2. Send a copy to MHRC within 10 days.
3. Treat seriously and investigate any and all allegations of discrimination in city, county, state and federally-funded activities. And train your staff (and Director) to do the same!



Investigation Process

- If your department does not currently have an adopted investigation process, MHRC would be happy to assist you in developing one.
- If you would like further training on conducting an effective investigation and crafting a proper remedy, MHRC can provide it.



No Complaints??

- Most departments report ZERO complaints ...
- Properly capturing and responding to complaints, we may avoid costly litigation. We also protect federal funds. Oh, and it's the right thing to do ...

