

## VOLUNTARY RESOLUTION AGREEMENT

### **I. Introduction**

This Voluntary Resolution Agreement (hereinafter, "the Agreement") is entered into by the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), the Administration for Children and Families (ACF), and the Washington State Department of Social and Health Services (DSHS), to resolve the compliance review of the Office of African American Children's Services (OAACS) (OCR Transaction No. 06-47685). DSHS Children's Administration (CA), Division of Children and Family Services (DCFS), Region 4 included OAACS.

In a letter to DSHS, dated November 16, 2007, OCR identified certain compliance issues related to Title VI of the Civil Rights Act of 1964. Although OCR did not make formal findings, it determined that DSHS used racial classifications as the sole factor in determining which children in CA Region 4 received Child Protective Services (CPS) and Child Welfare Services from OAACS. In December 2007, DSHS voluntarily developed a CA Region 4 Disproportionality Action Plan and provided it and supporting documentation to OCR. By letter dated April 30, 2008, DSHS advised OCR that it had implemented the Disproportionality Action Plan and ended the practice of referring and transferring children to OAACS based on race. Additionally, DSHS advised OCR that OAACS has been renamed the Martin Luther King Jr., (MLK) office and provides CPS and CWS to all children in the 98108, 98118, 98178, and 98124 zip codes, regardless of race, color, or national origin.

To assist DSHS with its on-going compliance efforts, HHS, through the National Child Welfare Resource Center for Adoption (NCWRCA) provided training to all staff members of the MLK office and some administrative staff from CA Region 4, the training academy and CA Headquarters regarding the requirements of Title VI of the Civil Rights Act of 1964, Section 1808(c) of the Small Business Job Protection Act of 1996 and Section 471(a)(18) of the Social Security Act. Participants attended the training on either September 2 or September 3, 2009.

### **II. Parties to this Agreement**

- A. The U.S. Department of Health and Human Services, OCR and ACF (hereinafter, "HHS").
- B. Washington State Department of Social and Health Services (hereinafter, "DSHS" or "Department").

### **III. Jurisdiction**

- A. OCR is the HHS office charged with enforcing civil rights laws as they pertain to programs funded by HHS and has jurisdiction over this compliance review under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and its implementing

regulation at 45 C.F.R. Part 80 (collectively, "Title VI"). Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance.

- B. OCR also has jurisdiction in this matter pursuant to Section 1808(c) of the Small Business Job Protection Act of 1996 (42 U.S.C. § 1996b) (Section 1808(c)). Section 1808(c) prohibits the delay or denial of adoption or foster care placements based on the race, color, or national origin of the child or the prospective adoptive or foster parent(s).
- C. ACF is the HHS agency that oversees state plans for foster care and adoption assistance. Section 471(a)(18) of the Social Security Act (Section 471(a)(18)) provides ACF with jurisdiction over state plans to ensure that the recipients of Federal financial assistance do not use race, color, or national origin as a basis to deny any person the opportunity to become an adoptive or foster parent or as a basis to delay or deny any child's adoptive or foster home placement.
- D. As the state agency in Washington State responsible for foster care and adoption and as a recipient of Federal funding from HHS, DSHS is obligated to comply with Title VI, Section 1808(c), and Section 471(a)(18).

#### IV. General Provisions

- A. **Purpose of Agreement.** To resolve these matters expeditiously and without further burden or expense of investigation or litigation, DSHS agrees to the terms stipulated in this Agreement and affirms its assurance of compliance with all provisions of Title VI, Section 1808(c), Section 471(a)(18), and their implementing regulations. The promises, obligations or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between DSHS and HHS. The actions described in this Agreement fully address the issues described in the compliance review (OCR Transaction No. 06-47685). In consideration of DSHS' full and voluntary implementation of the provisions of this Agreement, OCR agrees to take no further action regarding the issues raised by the compliance review.
- B. **Failure to Comply with the Terms of the Agreement.** In the event that DSHS fails to fully implement any provision of this Agreement, the parties shall confer and attempt to reach agreement as to what steps may be necessary to resolve the compliance issues. If an agreement is not reached, either party may terminate this Agreement with thirty (30) calendar days notice, after which HHS may elect to continue its review to determine DSHS' compliance with Title VI, Section 1808(c), and Section 471(a)(18).
- C. **Effect on Other Compliance Matters.** The terms of this Agreement do not address any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be currently pending before HHS. Any unrelated compliance matters arising from subsequent reviews or

investigations may be resolved separately, including OCR Transaction No. 09-92258. Nothing in this Agreement shall be construed to limit or restrict HHS' statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to DSHS and the subject matter of this Agreement. This Agreement does not address or resolve issues involved in any other complaint investigation, compliance review, or administrative action under Federal laws by other Federal agencies, including any action or investigation under Title VI, Section 1808(c), or Section 471(a)(18).

- D. **Non-Waiver Provision.** HHS' failure to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of HHS' right to enforce other deadlines and provisions of this Agreement.
- E. **DSHS' Continuing Obligations.** Nothing in this Agreement relieves DSHS of its obligations to otherwise comply with Title VI, Section 1808(c), Section 471(a)(18) and other applicable non-discrimination statutes and their implementing regulations.
- F. **Publication or Release of Agreement.** Neither party places any restrictions on the publication of the terms of this Agreement. HHS may be required to release the Agreement and related materials to any person, upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 552, and its implementing regulation, 45 C.F.R. Part 5. DSHS may be required to release the Agreement and related materials to any person, upon request, consistent with the requirements of the Washington State Public Records Act, chapter 42.56 RCW.
- G. **Technical Assistance.** HHS agrees to provide appropriate technical assistance to DSHS regarding compliance with this Agreement, as requested and as reasonably necessary and within available resources.
- H. **Entire Agreement.** This Agreement constitutes the entire understanding between DSHS and OCR in resolution of OCR Transaction No. 06-47685. Any statement, promise, or agreement not contained herein shall not be enforceable through this Agreement.
- I. **Modification of Agreement.** This Agreement may be modified by mutual agreement of the parties in writing.
- J. **HHS' Review of DSHS' Compliance with this Agreement.** HHS, may, at any time, and with advance notice to DSHS, review DSHS' compliance with this Agreement. As part of such review, HHS may interview witnesses, examine and copy documents, and require DSHS to provide written reports and permit inspection of DSHS facilities. Throughout the term of the Agreement, DSHS agrees to retain records required by HHS to assess DSHS' compliance with the Agreement and to submit the requested records to HHS.

- K. **Third Party Rights.** This Agreement can only be enforced by the parties specified in this Agreement, their legal representatives, and assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.
- L. **Authority of Signers.** The individuals signing this Agreement represent that they are authorized to legally bind the parties to this Agreement.
- M. **Effective Date and Term of the Agreement.** This Agreement shall become effective as of the date of the last signature by a party to the Agreement (the "Effective Date"). This Agreement shall remain in effect for two (2) years following the Effective Date of this Agreement (the "Term"). At such time, this Agreement shall terminate provided that all Reporting Provisions specified below have been accepted and approved by HHS, and DSHS is in compliance with this Agreement, as determined by HHS in its sole judgment, upon its review of the Compliance Reports and other relevant information. All provisions of this Agreement are effective immediately unless otherwise specified.

## V. Specific Provisions

- A. **Substantial Compliance.** The parties acknowledge that prior to entering into this agreement, DSHS and CA Region 4 took voluntary steps to substantially address the compliance issues identified in OCR's letter of November 16, 2007 and worked cooperatively with OCR, HHS, and ACF. This includes the review and reassignment of cases from OAACS to other offices in CA Region 4 as necessary to comply with Title VI, the restructuring of OAACS into a geographically based office covering designated zip code areas, the renaming of OAACS to the Martin Luther King Jr. Office, and the training of former OAACS and current MLK staff on the requirements of Title VI and MEPA/IEP with the assistance of Region 10, ACF. The purpose of this Agreement is to memorialize the voluntary actions of DSHS and CA Region 4 and establish a timeframe for the resolution of the remaining issues identified herein.
- B. **Compliance Coordination.** Primary responsibility for ensuring the compliance of DSHS and CA Region 4 with the terms of this Agreement shall be coordinated through CA's existing quality assurance program. In addition, the CA quality assurance program shall have the following responsibilities:
  - 1. Conduct a follow-up assessment of CA Region 4 to ensure that the changes it has made to date in response to OCR's letter of November 16, 2007 have brought it into compliance with Title VI, Section 1808(c), and Section 471(a)(18). The assessment shall include:
    - a. A review of the policies, procedures, and practices related to the transfer and referral of children based on race, color, national origin or zip code in CA Region 4, including any changes thereto that have occurred during the preceding twelve (12) months;

- b. A review of CA Region 4's previously submitted Region 4 Disproportionality Action Plan to determine if additional action is needed to finalize the transition of OAACS to a geographically based office;
  - c. A determination of whether such policies, procedures, and practices are in compliance with Title VI, Section 1808(c), Section 471(18), and the terms of this Agreement.
  - d. If CA determines that any policies, procedures, or practices are not in compliance with Title VI, Section 1808(c), Section 471(a)(18) or this Agreement, a statement of the steps that CA will take to remedy and prevent any discriminatory policies, procedures, or practices.
2. Taking such additional steps as may be necessary to prevent and remedy any discriminatory policies, procedures, and practices.
  3. In addition, the CA Assistant Secretary or her designee will be responsible for monitoring and maintaining records of all Title VI, Section 1808(c), and Section 471(a)(18) complaints of discrimination filed with DSHS regarding CA Region 4, along with records showing the disposition of any such complaints, and responding to any inquiries concerning CA Region 4's compliance with Title VI, Section 1808(c), and Section 471(a)(18).

C. **Development of Complaint Resolution Procedure.** Within sixty (60) calendar days of the Effective Date of this Agreement, DSHS shall develop and submit to OCR a complaint resolution procedure, which shall apply to CA Region 4. OCR will review and provide comments, as necessary. Within thirty (30) calendar days of receipt of OCR's approval, DSHS shall implement the complaint resolution procedure for CA Region 4. The complaint resolution procedure shall include the following provisions:

1. Allow for the filing of a written complaint by an individual who believes he or she has been subjected to discrimination in violation of Title VI, Section 1808(c), or Section 471(a)(18);
2. Require a timely and thorough investigation of the complaint at the management level;
3. Provide an opportunity for the complainant and other interested parties to submit documentation in support of the complaint;
4. Require issuance of a written response to the complaint;
5. Include a procedure for a complainant to seek an additional review of a disputed written response to the complaint; and
6. Provide notice that use of the complaint resolution procedure does not preclude an individual from filing a complaint with OCR or utilizing any

other grievance procedure provided by DSHS or the Office of Family and Children's Ombudsman (OFCO).

**D. Notice and Dissemination of Information**

1. Within thirty (30) calendar days of the Effective Date of this Agreement, DSHS shall ensure that each CA Region 4 office has prominently posted in its client lobby/waiting area notice of DSHS' current non-discrimination policy in the provision of services and benefits. DSHS shall also ensure that a link to its notice of non-discrimination policy is posted on its website.
2. Within sixty (60) calendar days of the Effective Date of this Agreement, DSHS shall develop and submit to OCR a plan for the further dissemination within CA Region 4's service area of notice of DSHS' current non-discrimination policy and the complaint resolution procedure to be developed pursuant to Part C above to clients, including foster parents and unlicensed caregivers, and workforce members. OCR will review and provide comments, as necessary. Within sixty (60) calendar days of receipt of OCR's approval, CA shall implement the plan and provide OCR with appropriate documentation of implementation of the plan.

**E. Training.** Within sixty (60) calendar days of the Effective Date of this Agreement, DSHS shall submit to HHS for review and approval the names and qualifications of individuals designated by DSHS to provide training to CA Region 4 and draft curriculum for training CA Region 4 workforce members directly responsible for the administration, oversight, and provision of CPS, CWS, intake, foster care, and adoption services regarding Title VI, Section 1808(c), and Section 471(a)(18).

1. The training will be based upon the training previously provided to DSHS by NCWRCA and include, at a minimum, the following information:
  - a. Overview of the requirements of Title VI, Section 1808(c), and Section 471(a)(18) and how the applicable regulations apply to CA's CPS, CWS, intake, foster care, and adoption services;
  - b. Examples of practices prohibited by Title VI, Section 1808(c), and Section 471(a)(18) in the delivery of CA services;
  - c. Information on DSHS' non-discrimination policy and complaint resolution procedure and how to assist any individual with filing a complaint.
2. Within sixty (60) calendar days of receipt of HHS' approval of the DSHS designated trainers and draft training curriculum, DSHS shall provide HHS with a schedule for the initial training of CA Region 4 workforce members and a plan for ongoing training, including, but not limited to, any new

workforce members and workforce members who transferred into CA Region 4, throughout the Term of this Agreement. DSHS shall have discretion to schedule both new and ongoing training in conjunction with other training priorities, provided that any current CA Region 4 workforce members with direct client responsibilities who have not yet received the training receive it within one hundred eighty (180) calendar days of receipt of HHS's approval.

- F. **CA Region 4 Disproportionality Information.** Information and updates regarding the work currently undertaken by DSHS in conjunction with the Washington State Racial Disproportionality Advisory Committee and the Braam Settlement Agreement to address racial disproportionality in CA Region 4 in the provision of child welfare services shall be provided to ACF by CA when CA submits a new Children and Family Services Plan (CFSP) or any related reports.

## VI. **Reporting Provisions**

- A. Throughout the Term of this Agreement, DSHS shall submit to HHS the results of the annual assessments of CA Region 4 pursuant to V.B.
1. The first assessment will be due on or before June 30, 2011.
  2. The second and final assessment will be due on or before sixty (60) days prior to the end of the Term of the Agreement.
- B. Throughout the Term of this Agreement, DSHS shall submit reports to HHS as follows.
1. DSHS will notify HHS within thirty (30) days of the receipt of any complaint filed against CA Region 4 alleging any violation of Title VI, Section 1808(c), or Section 471(a)(18) in the provision of services or benefits. At a minimum, each notice will include the following information: the name of the individual filing the complaint; the date(s) the alleged discriminatory action(s) occurred; the date received; the specific office identified in the complaint; and the specific service(s) or benefit(s) (e.g., CPS, CWS, adoptive placement, etc.) involved in the complaint; brief description of the allegations; and disposition of the complaint and documentation of any corrective action, if closed.
  2. On the dates listed in VII.A. above, or more frequently at its discretion, DSHS will provide HHS with data regarding cases in each CA Region 4 office, as follows:
    - a. By quarter, the number of cases in each CA Region 4 office by race, color, or national origin;
    - b. By quarter, the number of referrals to each CA Region 4 office by zip code, and for each zip code, the number of referrals by race, color or national origin;

- c. By quarter, identification of those referrals within MLK's designated service area/zip codes which were not referred to the MLK office and, for each such referral, identification of the race, color, or national origin and a brief explanation for the referral to an office other than the MLK office.
- d. By quarter, identification of those referrals to the MLK office which were not in MLK's designated service area/zip codes and for each such referral, identification of the race, color, or national origin and provide a explanation for the referral to the MLK office.

Signed:

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5/26/10

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Susan N. Dreyfus, Secretary  
Washington State Department of Social and Health Services

Date

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7/7/10

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Linda Yuu Connor, Regional Manager  
Office for Civil Rights, Region X  
U.S. Department of Health and Human Services

Date

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6/22/10

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Joe Bock, Associate Commissioner  
Children's Bureau  
Administration for Children and Families  
U.S. Department of Health and Human Services

Date