




pennsylvania

DEPARTMENT OF HUMAN SERVICES

SPECIAL TRANSMITTAL

SUBJECT: Voluntary Resolution Agreement Requirements – Notices of Nondiscrimination and Grievance Procedure

TO: County Children and Youth Social Services Agencies
Pennsylvania Children and Youth Administrators Association

FROM: Laval Miller-Wilson 
Deputy Secretary for Children, Youth, and Families

DATE: **September 1st, 2023**

PURPOSE

The purpose of this transmittal is to provide guidance on the steps necessary for County Children and Youth Agencies (CCYAs) to comply with the Voluntary Resolution Agreement (VRA) between the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) and the Pennsylvania Department of Human Services (DHS), Office of Children, Youth, and Families (OCYF).

There are several requirements in the VRA that will be implemented in separate phases. This transmittal pertains only to the DHS/OCYF and CCYA Notice of Non-Discrimination and Grievance Procedures. This transmittal does not provide guidance on other requirements, such as training or the Nondiscrimination Policies and Procedures Notice, that will be required. Further guidance will be issued.

BACKGROUND

A complaint was filed against a county within the Commonwealth. The Complainant alleged they were discouraged from applying to be a foster parent because of their use of medically prescribed methadone. OCR investigated potential violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and its implementing regulation, 45 C.F.R. Part 84 (Section 504), and Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., and its implementing regulation, 28 C.F.R. Part 35 (Title II or ADA [Americans with Disabilities]). OCR's investigation identified systemic deficiencies in DHS/OCYF's oversight of CCYAs' Section 504 and Title II policies, practices, and procedures to prevent discrimination against individuals with disabilities in Pennsylvania's child welfare system.

The ADA prohibits discrimination on the basis of disability. Addiction is considered a disability under the ADA because it substantially limits one or more of an individual's

major life activities. The ADA protects persons in recovery from addiction to opioids and other drugs. Under the ADA, an individual's use of prescribed medication, such as that used to treat opioid use disorder (OUD), is not considered an "illegal use of drugs" if the individual uses the medication under the supervision of a licensed health care professional, including primary care or other non-specialty providers. This includes medications for OUD or medication assisted treatment (MAT).

Under Section 504 and Title II, child welfare agencies are required to ensure that individuals with disabilities are afforded an equal opportunity to participate in and benefit from all child welfare programs, activities, and services, including those services aimed at helping children achieve permanency with relatives.

DHS/OCYF receives Title IV-E and Social Services Block Grant funding from the HHS Administration of Children and Families. As the recipient of Federal financial assistance, DHS/OCYF and its program offices are obligated to comply with Federal civil rights laws and is subject to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulations, 45 C.F.R. Part 84. Section 504 prohibits discrimination on the basis of disability in all operations of any program or activity receiving Federal financial assistance.

As a public entity providing state government services, DHS is obligated to comply with Title II of the ADA and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by state and local government agencies, including denying opportunities to benefit from services and failing to reasonably modify policies and procedures.

The VRA resolves a complaint filed by an individual with OUD, who receives MAT.

DISCUSSION

There are several requirements in the VRA that will be implemented in separate phases. This Special Transmittal relates to the Notice of Nondiscrimination and the Grievance Procedure (Attachment A, Attachment B & Attachment C).

For the Notice of Nondiscrimination:

CCYA agencies shall adopt Notices of Nondiscrimination (full and brief). CCYAs shall use Attachment A to create their Full Notice of Nondiscrimination by inserting the CCYA name into the appropriate spaces of Attachment A. CCYAs shall use Attachment B to create their Brief Notice of Nondiscrimination by inserting the CCYA name into the appropriate spaces of Attachment B.

- CCYAs must submit Attachment A and B to OCYF via the ADA Resource Account (RA) (RA-PWOCYF-ADARESOURSE@pa.gov) to ensure that each document is reviewed by OCYF staff to verify that the contents of both Notices of Nondiscrimination meet the language and standards requested by OCR.

- Language in the CCYA Notices of Nondiscrimination must mirror the language in the templates provided.
- CCYAs must submit the Attachment A and B to the RA by **October 3, 2023**.

To be in compliance of the VRA, the Full Notice of Nondiscrimination (Attachment A) shall prominently be displayed in waiting areas and/or lobbies by **January 17, 2024**.

To be in compliance of the VRA, the Brief Notice of Nondiscrimination (Attachment B) must be included in CCYA's brochures, websites, and/or other existing promotional materials, by **January 17, 2024**.

The prominently displayed notices and updated brochures, websites, and/or other existing promotional materials will be verified by OCYF Regional staff upon onsite visits with the CCYA.

The Notices of Nondiscrimination (Full & Brief) must be available to share with OCR if requested.

For the Grievance Procedure:

CCYAs shall adopt a Grievance Procedure to provide for the prompt and equitable resolution of complaints alleging discrimination due to a disability covered by Section 504 and Title II of the ADA. CCYAs shall use Attachment C to create their Grievance Procedure. Each CCYA shall identify a Section 504/ADA Coordinator by inserting their name and contact information into the appropriate spaces in Attachment C. The Section 504/ADA Coordinator will be responsible for ensuring that there is a grievance procedure that provides for the prompt and equitable resolution of complaints alleging discrimination.

Each CCYA will also need to identify an individual who will review appeals that may be filed pursuant to the Section 504/ADA Coordinators decision. The individual responsible for reviewing appeals should be in a higher leadership role than the assigned 504/ADA Coordinator. Each CCYA shall identify the individual responsible for reviewing appeals by inserting their name and contact information into the appropriate spaces in Attachment C.

Both the appointed Section 504/ADA Coordinator and the individual responsible for reviewing appeals, should have baseline knowledge of the ADA and Section 504 of the Rehabilitation Act and how it affects the individuals served by the CCYA.

CCYAs shall implement the Grievance Procedure approved by OCR which outlines that:

- Grievances must be submitted to the [Section 504/ADA Coordinator Title], within sixty (60) calendar days of the date the person filing the grievance becomes aware of the alleged discriminatory action.

- A complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.
- The Section 504/ADA Coordinator (or their designee) shall conduct an investigation of the complaint. This investigation may be informal, but it will be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The Section 504/ADA Coordinator will maintain the files and records to such grievances. To the extent possible, and in accordance with applicable law, the Section 504/ADA Coordinator will take appropriate steps to preserve the confidentiality of files and records relating to grievances and will share them only with those who have a need to know.
- The Section 504/ADA Coordinator will issue a written decision on the grievance, based on a preponderance of the evidence, no later than thirty (30) calendar days after its filing, including a notice to the complainant of their right to pursue further administrative or legal remedies. The person filing the grievance may appeal the decision of the Section 504/ADA Coordinator by writing to the individual identified to review appeals within fifteen (15) calendar days of receiving the Section 504/ADA Coordinator's decision. The individual identified to review appeals shall issue a written decision in response to the appeal no later than thirty (30) calendar days after its filing.

The CCYAs shall have a Grievance Procedure that makes clear that the CCYA provides prompt and equitable resolution of complaints alleging discrimination due to a disability covered by Section 504 and Title II of the ADA.

- CCYAs must submit Attachment C to OCYF via the ADA RA (RA-PWOCYF-ADARESOURCE@pa.gov) to ensure that the document is reviewed by OCYF staff to verify that the contents of the Grievance Procedure meets the language and standards requested by OCR.
 - Language in the CCYA Grievance Procedure must mirror the language in the template provided.
 - CCYAs must submit Attachment C to the RA by **November 18, 2023**.

To be in compliance of the VRA, the Grievance Procedure (Attachment C) shall become effective **January 17, 2024**.

The Grievance Procedure must be available to share with OCR if requested.

(Attachment A)

Notice of Nondiscrimination Policy

(insert CCYA) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by (insert CCYA) directly or through a contractor or any other entity with which (insert CCYA) _arranges to carry out its programs and activities. If you have questions or need assistance, contact the (insert CCYA) Section 504/ADA Coordinator, (insert CCYA Coordinator name).

If you believe that (insert CCYA) has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a grievance with the:

(Insert CCYA Section 504/ADA Coordinator's name/address/phone number/email address)

You can file a grievance in person or by mail, email, or in person. If you need help filing a grievance, the Section 504/ADA Coordinator, (insert CCYA Coordinator name), is available to help you.

You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at:

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
1-800-368-1019, 800-537-7697 (TDD)

Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.

(Attachment B)

Notice of Nondiscrimination Policy (short-form for 1 page documents)

[For pamphlets, brochures and purchased advertising where space is limited, the CCYAs may use the following short-form Nondiscrimination Policy:]

(insert CCYA) complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.

(Attachment C)

Grievance Procedure

(insert CCYA) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by (insert CCYA) directly or through a contractor or any other entity with which (insert CCYA) arranges to carry out its programs and activities.

Any person who believes someone has been subjected to discrimination on the basis of race, color, national origin, sex, age, or disability may file a grievance under this procedure. It is against the law for (insert CCYA) to retaliate against anyone who opposes discrimination, files a grievance, or participates in the investigation of a grievance.

If you have questions or need assistance, contact the Section 504/ADA Coordinator, (insert CCYA Coordinator name).

If you believe that (insert CCYA) has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a grievance with:

(Insert CCYA 504/ADA Coordinator's name/address/phone number/email address)

Procedure:

- Grievances must be submitted to (insert CCYA Section 504/ADA Coordinator name), Section 504/ADA Coordinator, within sixty (60) calendar days of the date the person filing the grievance becomes aware of the alleged discriminatory action.
- A complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.
- The Section 504/ADA Coordinator or the designee shall investigate the complaint. This investigation may be informal, but it will be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The Section 504/ADA Coordinator will maintain the files and records of (insert CCYA) relating to such grievances. To the extent possible, and in accordance with applicable law, the Section 504/ADA Coordinator will take appropriate steps to preserve the confidentiality of files and records relating to grievances and will share them only with those who have a need to know.

- The Section 504/ADA Coordinator will issue a written decision on the grievance, based on a preponderance of the evidence, no later than thirty (30) calendar days after its filing, including a notice to the complainant of his or her right to pursue further administrative or legal remedies. If the Section 504/ADA Coordinator documents exigent circumstances requiring additional time to issue a decision, the Section 504/ADA Coordinator will notify the complainant and advise them of his or her right to pursue further administrative or legal parties at that time while the decision is pending.
- The person filing the grievance may appeal the decision of the Section 504/ADA Coordinator by writing to (insert name of individual reviewing appeals), within fifteen (15) calendar days of receiving the Section 504/ADA Coordinator's decision. (insert name of individual reviewing appeals), shall issue a written decision in response to the appeal no later than thirty (30) calendar days after its filing.

The availability and use of this grievance procedure does not prevent a person from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, sex, age, or disability in court or with the U.S. Department of Health and Human Services, Office for Civil Rights. A person can file a complaint of discrimination electronically through the Office for Civil Rights Complaint Portal, which is available at: <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at:

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
1-800-368-1019, 800-537-7697 (TDD)

Complaint forms are available at: <http://www.hhs.gov/ocr/office/file/index.html>. Such complaints must be filed within one hundred eighty (180) calendar days of the date of the alleged discrimination.