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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D C 20548

HUMAN RESOURCES
DIVISION

November 27, 1981

Mr Clarence Thomas
Assistant Secretary for Civil Rights
Department of Education

Dear Mr Thomas:

Subject: The Offices for Civil Rights in the Departments of Education and Health and Human Services Have Improved the Management of Their Civil Rights Enforcement Responsibilities (HRD-82-22)

The Departments of Health and Human Services and Education Offices for Civil Rights (OCRs) are responsible for ensuring that recipients of Federal funds administer their respective Departments' programs without discrimination on the basis of race, color, national origin, sex, handicap, or age

On March 30, 1977, we issued a report to Senator Birch Bayh (HRD-77-78) discussing several management problems which were preventing the Department of Health, Education, and Welfare's (HEW's) OCR from fully carrying out its civil rights enforcement responsibilities These problems included the Office's lack of

--interaction with its regional offices,

--uniform policy guidelines and compliance standards,

--a comprehensive and reliable management information system,

--coordination with HEW's program agencies, and

--impact and effectiveness measures

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Public Law 96-88, the Department of Education Organization Act, dated October 17, 1979, consolidated education-related programs into the new Education Department and renamed HEW the Department of Health and Human Services (HHS) Each Department has its own OCR that administers civil rights enforcement responsibilities. Our work indicates that the new OCRs have significantly improved the management of these responsibilities. Although neither Office has completely solved the problems cited in 1977, both have made progress in correcting them.

OBJECTIVE, SCOPE, AND METHODOLOGY

We conducted our review of the OCRs at HHS and Education to determine whether these new organizations had corrected the problems we cited in our earlier report We examined the Offices' appropriations, organization, staffing, complaint processing, and compliance review policies and procedures We also looked at their enforcement activities, data management, compliance workload, and the results or accomplishments of their efforts in these areas. We did not evaluate the outcome of or the decisions made in individual cases. Our concern was whether existing management policies allow the Offices to effectively perform their compliance activities

We interviewed knowledgeable OCR and program agency staff at both Departments in Washington, D.C., and held telephone interviews with officials from the Atlanta, Philadelphia, and Denver field locations We also examined relevant documents.

OCRS' ORGANIZATION, RESPONSIBILITIES, AND RESOURCES

In 1967 HEW consolidated the civil rights enforcement offices scattered throughout its various program agencies and created a central OCR within the Secretary's Office Following the example of their predecessor agency, both new Departments have located their civil rights offices within their Offices of the Secretary.

Both Offices have three major headquarters operating components and 10 regional offices. Headquarters units develop civil rights policy, guidance, and standards; manage intradepartmental and external technical assistance; and manage and monitor the regions' compliance and enforcement activities. Both Offices' field organizations have specialized staffs which provide technical and administrative support for the investigators and allow them to devote most of their time to case work.

Enforcement responsibilities

Both OCRs enforce Federal laws which prohibit discrimination on the basis of race, color, national origin, sex, age, and handicap in programs which their Departments fund. Both OCRs are responsible for enforcing title VI of the Civil Rights Act of 1964 (42 U S C. 2000d); title IX of the Education Amendments of 1972 (20 U S C. 1681, 1684); section 504 of the Rehabilitation Act of 1973 (29 U S.C. 794, et seq), and the Age Discrimination Act of 1975 (42 U S C 6101, et seq).

Education's OCR is also responsible for enforcing the nondiscrimination provisions of the Emergency School Aid Act (20 U.S.C. 1601, et seq). Its work involves monitoring more than 19,000 education agencies, institutions of higher education, rehabilitation agencies, museums, and libraries which the Department funds and which serve about 42 million people. HHS' OCR has additional enforcement responsibilities as well. It must enforce various nondiscrimination provisions and sections of laws dealing with public health, public telecommunications, financing, drug abuse and treatment, and alcohol abuse and treatment. Enforcement requires monitoring about 825,000 hospitals, nursing homes, community mental health centers, day care centers, adoption agencies, family planning centers, welfare offices, and health planning agencies which HHS funds and which serve approximately 164 million people.

Resources and staffing

From 1967 to 1980, HEW's OCR appropriations and authorized staffing levels climbed substantially. Federally legislated nondiscrimination requirements, increased public interest and pressure, and court orders all contributed to that upward trend The Adams court order, 1/ in particular, was probably the largest contributing factor In this 1977 settlement, which was brought by civil rights groups, HEW--now Education--was required to complete various title VI and title IX compliance activities within specified time frames

Although the HEW civil rights enforcement funding and staffing levels increased substantially from 1967 to 1980, the new Offices' appropriations and authorized staffing levels have remained fairly stable. When HHS and Education were established, the civil rights staff was divided between Education and HHS About two-thirds of the staff were assigned to Education and about one-third to HHS.

1/Kenneth Adams, et al., Plaintiffs v. Joseph Califano, Jr , Secretary of Health, Education, and Welfare, et al., Defendants; 430 F. Supp. 118 (D D C. 1977).

From the split in 1980 to fiscal year 1982, Education's funding has increased from $45.8 million to $49 4 million. Its staff has decreased from 1,181 to 1,070. HHS' funding has dropped from $19 7 million to $18.1 million and its staff has decreased from 590 to 524

COMMUNICATION BETWEEN HEADQUARTERS' OPERATIONS AND REGIONAL OFFICES HAS INCREASED

Since our 1977 report, both OCRs have increased communications between their headquarters and field staffs. In 1977, we reported that there was limited coordination between OCR headquarters and regional offices. The lack of effective communication and information dissemination often resulted in regional office staff learning of headquarters actions and policy development through the news media or community sources. This failure to interact within the HEW organization lessened the agency's credibility and effectiveness with those with whom it worked

Both Offices are now using various kinds of communication methods to increase the sharing of information between headquarters and regional offices These methods include quarterly conferences of regional directors and key Washington staff; less frequent, although regular, conferences of regional division directors and headquarters staff; conference calls to regional directors; regional staff participation in developing policy; and regional offices' informing headquarters about anticipated violations, significant activities, and workload The Offices' headquarters also periodically consolidate and distribute policy information to the regions in policy digests.

THE OFFICES FOR CIVIL RIGHTS NOW USE UNIFORM POLICY GUIDELINES AND COMPLIANCE STANDARDS

In contrast to the 1977 situation when HEW's OCR did not have any central location for policy and compliance standard development, both OCRs now have units which develop this guidance These policy and program units direct policy development and enlist headquarters' and regional advice in developing and reviewing new policy and compliance standards. Resulting policy statements and directives are often incorporated into investigation manuals and specialized procedures manuals which become the standards for assessing the quality of the Offices' investigative work

OFFICES FOR CIVIL RIGHTS WILL BE ABLE TO MONITOR THE QUANTITY AND QUALITY OF THEIR COMPLIANCE ACTIVITIES

In response to our 1977 report, the Adams court order, and its own management needs, HEW's OCR developed an information system which the new OCRs have adopted and are automating. In 1977, we cited the lack of basic management information as severely handicapping our audit work and HEW's management of its enforcement responsibilities. This lack of data, plus the detailed Adams court order case reporting requirements, motivated the OCR to expand its case tracking system into a more comprehensive and reliable management information system. Even though the Adams court order requirements were transferred to Education's OCR, both Education and HHS have continued to refine their information systems and should eventually be able to access and report the data we previously cited as lacking. Both Offices are currently collecting and analyzing much of this data manually. They are automating their systems, however, and plan to have them operational in fiscal year 1982.

THE OFFICES HAVE IMPROVED THEIR WORKING RELATIONSHIPS WITH SOME PROGRAM AGENCIES

Since our 1977 report, the OCRs have improved their coordination with their Departments' program agencies. In the earlier report, we pointed out that the coordination between HEW's OCR and its program agencies was limited at best. Except for parts of the Emergency School Aid program, the Office had not coordinated its civil rights enforcement and compliance activities with the work of the Department's various program agencies. However, later in 1977 and again in 1980, the HEW Secretaries then in office directed each program agency to incorporate civil rights compliance into its program decisionmaking and operations. HEW set up a new unit within its OCR to work exclusively with the agencies. The Office negotiated formal agreements with four of HEW's program agencies to solidify the working relationships between them. These agreements called for conducting joint compliance reviews, joint technical assistance projects, and coordinated data collection efforts. In addition, program agencies were to incorporate civil rights aspects into their program compliance reviews, and civil rights staff were to review program regulations to ensure that they adequately considered civil rights matters.

Although the newly formed OCRs have not kept up the earlier, formal coordination efforts, the OCRs do interact with their respective Departments' program agencies. Each OCR's headquarters staff review proposed program regulations for nondiscrimination requirements. The staff also provide any needed technical help on civil rights issues and notify appropriate program units of any

recipient's civil rights violations Although not all of the Departments' program agencies have done so, some agencies, such as the HHS Children's Bureau and Education's Office of Vocational and Adult Education, are beginning to address nondiscrimination requirements in their program compliance reviews. Also at HHS, the Health Care Financing Administration (HCFA) and OCR have developed a civil rights checklist that may be incorporated in HCFA program evaluations Other program agencies, however, are not yet addressing nondiscrimination requirements in their compliances reviews.

BOTH OFFICES ARE TRYING TO DEVISE MEASURES OF THE BENEFITS OF THEIR WORK

In 1977 we reported that HEW's OCR had not developed a way to measure the benefits of its work. Even though both OCRs have had difficulties assessing the effectiveness of their work, both are trying to develop means of measuring their accomplishments. The HHS civil rights staff adopted one impact measure which uses automated case information. Investigators complete case disposition forms showing changes which resulted directly from their work, the anticipated date and cost of the change, and an estimate of the number of people to be served Education's Office has started developing a similar impact assessment form and plans to automate the data in the future.

COMPLAINT WORKLOAD LIMITS OTHER ACTIVITIES

In spite of the improvements both Offices have made in managing their civil rights enforcement responsibilities, both appear to be overburdened by their complaint workloads. With their present staffing levels, both Offices believe that the time that must be devoted to processing complaints detracts from the time which could be spent on what the Offices consider their more effective discretionary activities--compliance reviews and technical assistance.

The Offices believe that compliance reviews are more comprehensive, more likely to reveal discriminatory practices and, therefore, affect larger numbers of people than the more narrowly focused complaint investigations. Both Offices administer questionnaires to program recipients in order to target their compliance reviews. Analysis of the survey results allows the Offices to focus on facilities which serve large numbers of persons. Similarly, the Offices believe their technical assistance efforts benefit large numbers of people.

Even though the Offices would like to do more compliance and technical assistance activities, they have not been able to do

so because of their complaint workload When HHS and Education were established, each agency inherited a portion of HEW's open complaints and this initial workload has steadily grown In fiscal year 1980, HHS and Education received more complaints than their OCR staffs closed. HHS received 1,385 and closed 1,169. Education received 3,318 and closed 2,726. This trend continued in fiscal year 1981.

BOTH OFFICES HAVE STAFFING PROBLEMS

Staffing has been a problem for both Offices The manner in which staff were allocated between the two OCRs created problems for them and various hiring freezes have prevented them from completely solving the problems. As discussed earlier, the HEW civil rights staff was divided between Education and HHS Two-thirds of the staff was assigned to Education and one-third to HHS. The decision on this allocation was based not only on the existing workload, but also on the Departments' anticipated workload. However, the HEW civil rights workload was more than two-thirds education-related. Therefore, the allocation decision immediately put the Education staff at a disadvantage--two-thirds of the former staff had to handle approximately 80 percent of the former workload. The HHS staff had difficulties as well. Even though one-third of the civil rights staff went to HHS to handle the remaining 20 percent of the HEW caseload, many key management, supervisory, and technical staff transferred to Education

Since the Offices' separation, neither has been able to remedy its staffing problems. Both have been subject to various internal and external hiring freezes which have prevented them from filling key positions As an interim measure, the Education Office assessed its staffing needs and reallocated people among its regional offices. HHS has considered a similar action, but has so far only identified its highest priority staffing requirements that must be filled when the freezes are lifted

The two OCRs are working together to alleviate the impact of one specific staffing shortage--regional technical assistance capabilities. At the time of the split, seven of the regional technical assistance staff transferred to Education and three to HHS In those regions where Education has a civil rights technical assistance staff and HHS does not, the Education staff agreed to perform technical assistance activities on behalf of HHS and vice versa.

CONCLUSIONS

Since our March 1977 report, HEW and its successor agencies--HHS and Education--have significantly improved the management of their civil rights enforcement responsibilities.

In the future, the OCRs should be better able to estimate their workload and plan their compliance activities by using data and analyses generated from their new automated information systems, surveys, and impact assessments. The Offices have made limited use of these tools, but their planning capabilities should be enhanced when the mechanisms are fully developed and implemented. Because of limited resources, however, we believe that the OCRs must also enlist the support and assistance of other resources, such as their program agencies

RECOMMENDATIONS

We recommend that the OCRs of HHS and Education:

--Enlist more program agency resources in their civil rights compliance work

--Assist the program agencies in the development of the civil rights portions of their program compliance reviews.

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Thank you for the cooperation and courtesy extended to us by OCR officials during our work. We would appreciate being informed of any actions taken on the recommendations

A similar letter is being sent today to the Director, Office for Civil Rights, Department of Health and Human Services

Sincerely yours,

Franklin A Curtis

Franklin A. Curtis
Associate Director