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(r) *Criminal justice council* or *CJC* means the agency designated by a State to perform the functions listed in section 402(b)(1) of the Justice System Improvement Act.

(s) All masculine terms such as *he*, *his*, and *him* should be construed to mean their respective feminine counterparts, *she*, *hers*, and *her*, where appropriate.

[45 FR 28705, Apr. 30, 1980; 45 FR 54037, Aug. 14, 1980]

§ 42.203 Discrimination prohibited.

(a) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act.

(b) A recipient may not, directly or through contractual or other arrangements, on the grounds set forth in paragraph (a) of this section:

(1) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(2) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, or financial aid or benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program;

(7) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program;

(8) Subject any individual to physical abuse or summary punishment, or deny any individual the rights guaranteed by the Constitution to all persons;

(9) Subject any individual to discrimination in its employment practices in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act;

(10) Use any selection device in a manner which is inconsistent with the Department of Justice Uniform on Employee Selection Guidelines, 28 CFR 50.14.

(c) In matters involving employment discrimination, section 815(c)(1) of the JSIA shall be interpreted by the Office consistently with title VII of the Civil Rights Act of 1964, Public Law 88–352, 79 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, Public Law 92–261, 87 Stat. 103, and the Pregnancy Discrimination Act, Public Law 95–555, 92 Stat. 2076.

(d) The use of a minimum height or weight requirement which operates to disproportionately exclude women and persons of certain national origins, such as persons of Hispanic or Asian descent, is a violation of this subpart, unless the recipient is able to demonstrate convincingly, through use of supportive factual data, that the requirement has been validated as set forth in the Department of Justice Guidelines on Employee Selection Procedures, 28 CFR 50.14.

(e) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any program, or the class of individuals to whom, or the situations in which, such will be provided under any program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination under section 815(c)(1) of the JSIA, or have the effect of defeating or substantially impairing accomplishment

of the objectives of the program as respects individuals of a particular race, color, sex, national origin, or religion.

(f) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, subjecting them to discrimination under, or denying them employment in connection with any program or activity to which this subpart applies; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the JSIA, the Juvenile Justice Act, or this subpart.

(g) For the purposes of this section, the disposition, services, financial aid, or benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any portion of any program or function or activity conducted by any recipient of Federal financial assistance which program, function, or activity is directly or indirectly improved, enhanced, enlarged, or benefited by such Federal financial assistance or which makes use of any facility, equipment, or property provided with the aid of Federal financial assistance.

(h) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (g) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(i)(1) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin, or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(2) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, religion, national origin, or sex.

(j) Nothing contained in this subpart shall be construed as requiring any recipient to adopt a percentage ratio, quota system, or other program to achieve racial balance. The use of goals and timetables is not use of a quota prohibited by this section.

[45 FR 28705, Apr. 30, 1980, as amended at 45 FR 54036, Aug. 14, 1980]

§ 42.204 Applicants' obligations.

(a) Every application for Federal financial assistance to which this subpart applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with all applicable nondiscrimination requirements and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(b) Every unit of State or local government and every agency of such unit that applies for a grant of $500,000 or more under the JSIA or the Juvenile Justice Act, must submit a copy of its current Equal Employment Opportunity Program (if required to develop one under 28 CFR 42.301, *et. seq.*) to OJARS at the same time it submits its grant application. No application for $500,000 or more will be approved until OJARS has approved the applicant's EEOP.

(c) Every application for Federal financial assistance from a State or local unit of government or agency thereof shall contain an assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, or sex against the recipient State or local government unit, or agency, the recipient will forward a copy of the finding to the appropriate CJC and to OJARS.

[45 FR 28705, Apr. 30, 1980, as amended at 45 FR 54037, Aug. 14, 1980]

§ 42.205 Complaint investigation.

(a) The Office shall investigate complaints filed by or on behalf of an individual claiming to be aggrieved, that allege a violation of section 815(c)(1) of the JSIA, or this subpart.

(b) No complaint will be investigated if it is received more than one year