



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

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October 31, 2017

Attention: Civil Rights Policy Comments
Department of Toxic Substances Control
Executive Office, 25th Floor
1001 I Street
Sacramento, CA 95814

Via email DTSCPolicies@dtsc.ca.gov

Re: Comments on DTSC's draft Civil Rights Policy and draft Language Access Policy

California Rural Legal Assistance, Inc. (CRLA) is a nonprofit legal services provider serving low-income clients and communities throughout California. We submit these comments on the Department of Toxic Substances Control's draft Civil Rights Policy and draft Language Access Policy on behalf of our client El Pueblo Para el Agua y Aire Limpia de Kettleman City.

I. Definition of Discrimination Does Not Comply with Civil Rights Laws

The definition of discrimination in the draft Civil Rights Policy and its use throughout the draft must be at least as broad and protective as the language included in Title VI of the Civil Rights Act of 1964, California Government Code §1135 and their implementing regulations. The definition of discrimination in the draft Civil Rights Policy fails to include the requisite language.

Title VI provides that "no person ... shall, on the ground of [protected characteristic], be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The draft Civil Rights Policy includes protections from exclusion from participation and denial of benefits but fails to include protections from being "subjected to discrimination." This additional protection must be incorporated throughout the draft policy.

The draft Civil Rights Policy must include protections from disparate impact discrimination. Title VI and §1135 implementing regulations prohibit recipients of federal and state funds from enacting or administering programs, policies, and actions that have the effect of subjecting protected individuals to discrimination regardless of intent. If a facially neutral policy has a disparate discriminatory impact on a minority population, it is subject to increased scrutiny and is impermissible unless it meets additional legal requirements. Disparate impact protections must be included in the draft Civil Rights policy.



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Section 1135 includes protections for individuals that are perceived to possess a protected characteristic, as well as individuals who are associated with an individual that possesses or is perceived to possess a protected characteristic. The draft Civil Rights Policy limits civil rights protections to individuals possessing a protected characteristic. To comply with Section 11135, the draft policy must extend these protections to individuals that are perceived to possess a protected characteristic or that are associated with individuals possessing or perceived to be possessing a protected characteristic as well. This additional language must be added to the definitions section (page 4), complaint instructions (page 6), and complaint form (pages 11, 12).

II. There is Insufficient Information for the Public to Identify Civil Rights Violations

The draft Civil Rights Policy should clearly outline what civil rights protections exist for members of protected classes and what forms of discrimination are impermissible under this policy. This should be written in plain language so that members of the public will have a clear understanding of what their rights are and what constitutes impermissible discrimination. It should be clear, for example, that disparate impact is protected under civil rights laws.

III. Discrimination by Beneficiaries of Federal and State Funding that DTSC Administrators Must be Included

On page 6, the draft Civil Rights Policy states that “a Complainant may file a complaint with DTSC if the Complainant believes that *DTSC, including its employees or contractors*, has discriminated against the Complainant.” This explanation of when a complainant may file a complaint limits when a complaint may be filed to actions by DTSC, its employees and contractors. DTSC is obligated to ensure its grantees and subgrantees comply with civil rights laws. The draft Civil Rights Policy must be clear that discriminatory actions by DTSC’s grantees and subgrantees can also be reported to DTSC for investigation through its civil rights complaint process.

IV. Who May File a Civil Rights Complaint Should Not be Restrictive

The draft Civil Rights Policy is too restrictive as to who may file a civil rights complaint. The instructions on how to file a complaint (page 7) require the complainant to “identify the Complainant as a person possessing a protected characteristic who was allegedly discriminated against or a person that is authorized to represent a person or class of people who were allegedly discriminated against.” Similar language is found on page 8 under the subsection “DTSC Review of Civil Rights Complaints.” This language requires that a complainant possess a protected characteristic or be an authorized representative of someone discriminated against. Thus, a third party who witnesses discrimination on behalf of DTSC but does not himself possess a protected characteristic nor represents an individual who was discriminated against cannot file a civil rights complaint.



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To ensure Civil Rights laws are followed, a complainant should not be limited to an individual possessing a protected characteristic or authorized to represent a person who has suffered discrimination. Civil Rights complaints must be allowed from any individual or entity.

V. The Review Process Requires a DFEH Reporting Step and Clear Timelines

The review process for civil rights complaints must be comprehensive, clear and transparent. SB 1442 (Liu) requires a state agency to submit a complaint detailing alleged §11135 violations to the Department of Fair Housing and Employment when the state agency has reasonable cause to believe a contractor, grantee, or local agency has violated §11135. This step is missing in the draft Civil Rights Policy and must be added.

The draft Civil Rights Policy does not state how long DTSC will take to investigate a complaint, reach a determination, and inform Complainant of the determination. Civil Rights complaints must be investigated in a timely manner in order to protect the rights of individuals. Transparency is also important to ensure DTSC is complying with civil rights laws in its review and investigation of complaints.

The review process described in the draft Civil Rights Policy fails to detail the steps after a determination is reached. The policy must list any appeals venues if the complainant disagrees with DTSC's determination. If DTSC determines that there was discrimination, then the next steps to remedy the discrimination should be described as well.

VI. Other Comments on Draft Civil Rights Policy

- On page 5, the policy states that DTSC will “ensure that federal and civil rights requirements are incorporated.” State civil rights requirements should be included as well to comply with §11135.
- On page 6, information about a complainant’s option to file a §11135 Complaint is missing.
- On page 7, subheadings could be used to make it clear there are two separate ways to file a complaint, by a) submitting Form XXXX, or b) submitting a written statement.
- On page 8, the draft Civil Rights Policy defines when a complaint is timely as no later than 365 days. This should be revised to include the additional 90 days that may be available if the Complainant did not discover the discrimination until after the 365 days, as is stated on page 12.
- On page 8, under the section “DTSC review of civil rights complaints,” the policy states that DTSC will determine whether the complaint “identifies the individual that committed the alleged discrimination.” The language should include “entity” or “agency” as well.

VII. Draft Language Access Policy

The draft Language Access Policy gives conflicting definitions of “vital documents and information.” The definition on page 5 focuses on the importance of the document or information to the recipient while the definition on page 7 includes cost as a factor in determining whether a document or information is vital.



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Whether a document or information is vital should be based solely on the former, how important the information is to the recipient. Cost can be used to determine whether a vital document or information will be translated. A document may be vital but prohibitively costly to translate in its entirety, but because it is a vital document, efforts should be made to at least translate an executive summary.

The draft Civil Rights and Language Access policies must be revised to comply with civil rights laws. If you have any questions, please contact Marisol Aguilar at maguilar@crla.org.

Thank you,

Marisol F. Aguilar

CEI Director

California Rural Legal Assistance, Inc.

Cc: Ilene Jacobs, Director of Litigation Advocacy and Training, CRLA Inc.

Maricela Mares Alatorre, El Pueblo Para el Aire y Agua Limpia