

The seal of the U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights is centered in the background. It features a circular design with a yellow outer ring containing the text 'DEPARTMENT OF JUSTICE' at the top and 'OFFICE OF JUSTICE PROGRAMS' at the bottom. Inside the ring are five yellow stars and a central emblem depicting a scale of justice and a book. The text 'OFFICE OF JUSTICE PROGRAMS' is also written in a smaller font across the middle of the seal.

# U.S. Department of Justice Office of Justice Programs Office for Civil Rights

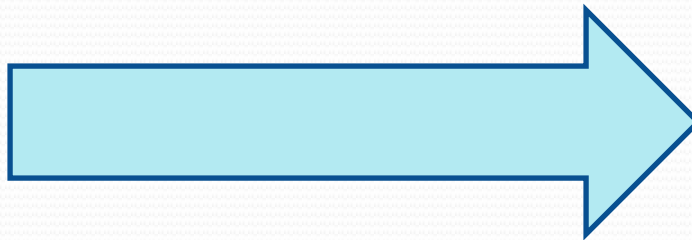
AS PRESENTED BY:

The Minnesota Department of Public Safety

Office of Justice Programs

April 17, 2019

# One Simple Concept...



Civil Rights  
Obligations

Whenever Federal funds are involved, there are civil rights requirements that follow

# The Office for Civil Rights Enforces:

- Title VI of the Civil Rights Act of 1964
- The Omnibus Crime Control & Safe Streets Act of 1968
- Section 504 of the Rehabilitation Act of 1973
- Title II of the Americans with Disabilities Act of 1990
- Age Discrimination Act of 1975
- Title IX of the Education Amendments of 1972
- Section 1407 of the Victims of Crime Act (VOCA)
- Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974
- Violence Against Women Act (VAWA) of 1994

# Title VI, Civil Rights Act of 1964

“No Person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any *program or activity* receiving Federal financial assistance.”

## Title VI, Civil Rights Act of 1964

# To Whom do the Provisions Apply?

Generally, the entire department or office within a state or local government is identified as the “*program or activity*.”

- Example: If a project of a county fire department receives Federal funds, the entire fire department is covered, but not the other departments in the county.

## Title VI, Civil Rights Act of 1964

# Title VI Regulations Prohibit:

- Providing different services to individuals
- Denying the opportunity to participate as a member of planning or advisory body
- Selecting the location of a facility with the purpose or effect of excluding individuals

# Omnibus Crime Control and Safe Streets Act of 1968

“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, or be subjected to discrimination under or be denied *employment* in connection with any programs or activity funded in whole or in part with funds made available under this chapter.”

# Victims of Crime Act of 1984 Nondiscrimination Provision

“No person shall on the ground of **race, color, religion, national origin, handicap, or sex** be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this subchapter.”

34 U.S.C. § 20110(e)

# VAWA Reauthorization Act of 2013

“No person in the United States shall, on the basis of **actual or perceived** race, color, religion, national origin, sex, **gender identity** (as defined in paragraph 249(c)(4) of title 18, United States Code), **sexual orientation**, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under [VAWA], and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women.”

# VAWA Reauthorization Act of 2013 (continued)

“If sex segregation or sex-specific programming is **necessary to the essential operation of a program**, nothing in this paragraph shall prevent any such program or activity from consideration of an individual’s sex. In such circumstances, grantees may meet the requirements of this paragraph by providing **comparable services** to individuals who cannot be provided with the sex-segregated or sex-specific programming.”

34 U.S.C. § 12291(b)(13)

OCR has posted FAQs on the [VAWA nondiscrimination provision](#).

# VAWA Reauthorization Act of 2013

## *(continued)*

- Sex-Segregated Programming-
  - When males and females receive services in separate settings
- Sex-Specific Programming-
  - When a recipient designs programming differently for males and females

Beneficiaries choose the appropriate program based upon gender identity

# VAWA Reauthorization Act of 2013 (continued)

## Necessary to the Essential Operation of a Program –

Fact-specific inquiry, consider:

- Nature of the service
- Consequences to beneficiaries of making sex-segregated or sex-specific
- Literature on efficacy
- Impact on transgender clients

Reasons may not be trivial, based solely on convenience, or  
rooted in stereotypes

# VAWA Reauthorization Act of 2013 *(continued)*

## Comparable Services-

Fact-specific inquiry, consider:

- Nature, quality, and duration of the services
- Relative benefits of different therapeutic modalities
- Geographic location

# VAWA Reauthorization Act of 2013 (continued)

## What is Gender Identity?

“Actual or perceived gender-related characteristics”  
(from Matthew Shepard - James Bird Hate Crimes  
Prevention Act)

- A person’s internal view of the individual’s gender
- May or may not correspond to sex assigned at birth
- Transgender, male, and female are examples of gender identities

# VAWA Reauthorization Act of 2013 (continued)

## Serving Transgender Clients-

- Assign clients to service which corresponds to the gender with which the client identifies
- Consider transgender victim's health and safety in making housing assignments
- Transgender client's own views regarding personal safety deserve serious consideration
- Do not isolate or segregate
- Do not make burdensome demands for identity documents
- Do not inquire into surgery or other medical interventions

# Protected Classes

Race

Color

National  
Origin

Religion

Sex

Disability

Age

Gender  
Identity\*

Sexual  
Orientation\*

\*- These are only protected for VAWA recipients

# Race

- American Indian or Alaskan Native
- Native Hawaiian or Other Pacific Islander
- Black or African American
- Asian
- White

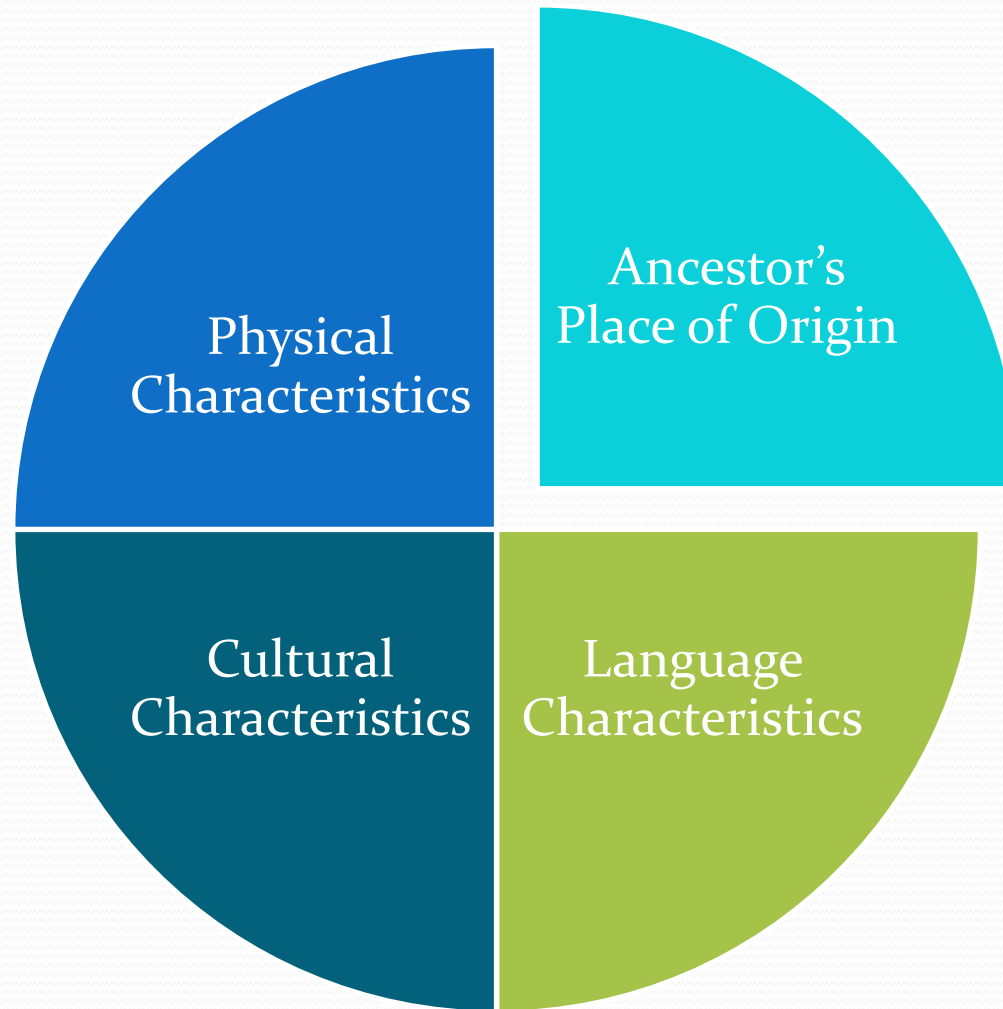
*Hispanic / Latino: Is not a race, it is an ethnicity*

# Color Discrimination



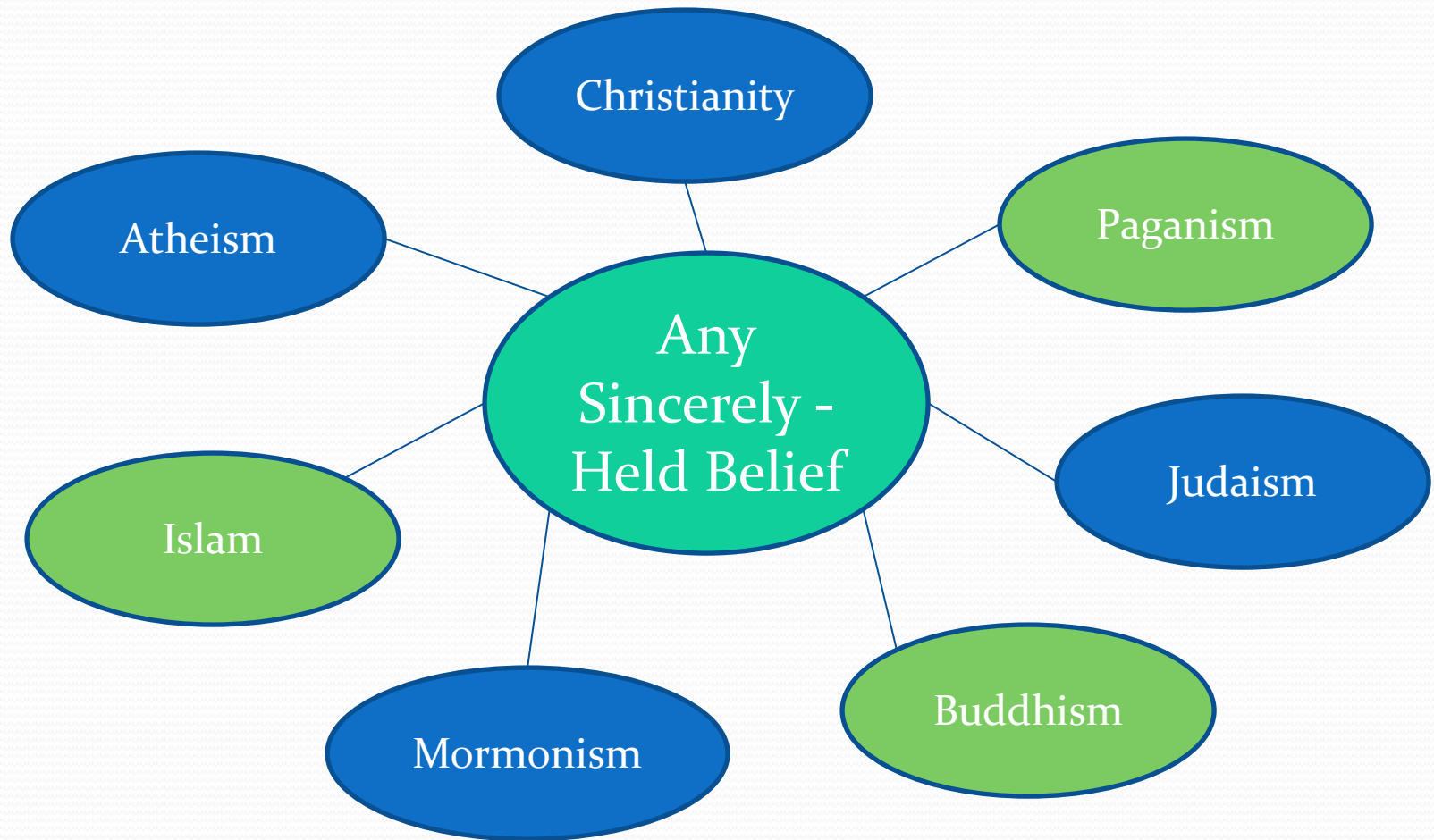
Preference for or aversion to persons of different skin colors, regardless of whether the actor is in the same racial or national origin group

# National Origin



# What is a Religion?

All aspects of religious observance, practice, and belief are protected



# Sex Discrimination Can Occur Between:



# Who is in the “Disability” Class?

Individuals who have, have a record of having, or are regarded as having a *physical or mental impairment* which *substantially limits* one or more *major life activities*.



# What is a Major Life Activity?

*These are activities that an average person can perform with little or no difficulty, such as:*

- Eating
- Walking
- Breathing
- Seeing
- Hearing
- Speaking
- Learning
- Sitting
- Caring for oneself
- Working
- Performing manual tasks
- Standing
- Lifting
- Reading

# Disability Definitions

**Mental Impairment:** includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

# Disability Definitions

**Physical Impairments:** any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following systems:

- Neurological
- Musculoskeletal
- Special Sense Organs
- Respiratory
- Speech Organs
- Cardiovascular
- Reproductive
- Digestive
- Genito-Urinary
- Hemic
- Lymphatic
- Skin
- Endocrine

# Disability Definitions

**Substantially Limited:** means the individual must be unable to perform, or be significantly limited in the ability to perform an activity compared to an average person in the general population. Courts have looked at *three factors* in determining whether someone is substantially limited:

1. **Extent:** its nature and severity
2. **Duration:** How long it will last or is expected to last
3. **Impact:** Its long term impact or expected impact

# Disability Definitions

## Exclusions:

- A person who currently uses illegal drugs is not protected by the ADA
- Homosexuality and bisexuality are not impairments and are therefore not disabilities covered by the ADA

# Age Discrimination Act of 1975

- Prohibits Federally funded organizations from discriminating against *persons of any age* in its programs and activities
- *Does not cover* discrimination in employment
- EEOC enforces the *Age Discrimination in Employment Act*, which prohibits employment discrimination against persons over the age of 40

# Employment Discrimination

## Five Forms of Employment Discrimination:

1. Disparate Treatment
2. Adverse Impact
3. Harassment
4. Failure to Accommodate
5. Retaliation

# Disparate Treatment

Consists of *intentional discrimination* where an employer deliberately takes an adverse action against an employee based on:

- Race
- Color
- National origin
- Sex
- Religion
- Disability

# How Do You Prove Intentional Discrimination?

- Direct Evidence
- Indirect Evidence, such as:
  - Similarly situated people of a different class were treated differently than the complainant
  - Evidence of bias
  - False explanation for the differential treatment
  - Statistical evidence

# What is Adverse Impact?

**Adverse Impact** occurs when an employer has a neutral policy or practice which has the *effect* of excluding employees of a particular race, color, sex, national origin, religion, or disability.

# Adverse Impact Examples

The following are examples of employment policies which have been found to cause an adverse impact:

1. Minimum height requirements
2. Certain educational requirements
3. Physical agility tests
4. No beard policies

# Adverse Impact

## Evidence of Adverse Impact-

- **The Four-Fifths Rule:** When a policy or procedure has a selection rate for any protected class that is less than 4/5ths (80%) of the rate for the group with the *highest* rate of selection

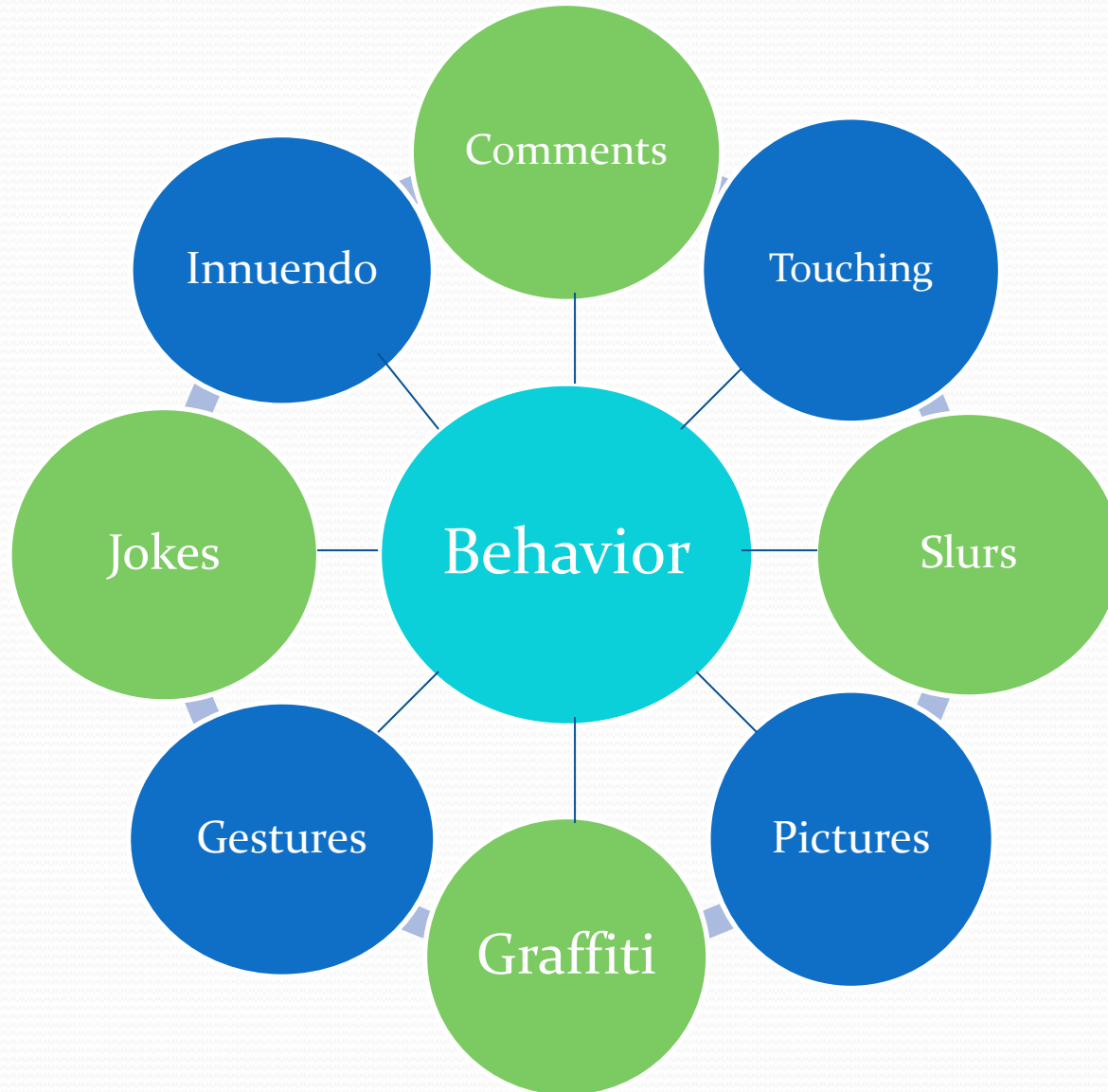
## If a Policy has an Adverse Impact-

- Choose an alternative with less adverse impact
- The policy or practice may still be used if *job related* and consistent with *business necessity*

# What is Harassment?

**Harassment is** behavior which creates a hostile work environment for individuals *because of* their race, sex, color, national origin, religion, or disability

# What is Harassment?



# What Makes a Work Environment Hostile?

- A stray remark is *not enough* to constitute a hostile work environment
- The harassment must be *sufficiently severe or pervasive* to alter the terms and conditions of employment

# Determining Severity or Pervasiveness – Six Factors

Use a *reasonable person standard* to determine the following:

1. Was the conduct verbal or physical or both?
2. How Frequently was the conduct repeated?
3. Was the conduct hostile or merely offensive
4. Was the harasser a co-worker or supervisor?
5. Did others join in the harassment?
6. Was the harassment directed at more than one individual?

# What Can an Employer Do About Unlawful Harassment?

## Take Preventative Action

- Develop an explicit policy regarding harassment
- Regularly train all employees
- Develop effective sanctions
- Develop a complaint procedure designed to:
  - Protect victims and witnesses against retaliation
  - Encourage complaints
  - Ensure confidentiality

# What Can an Employer Do About Unlawful Harassment?

## Take Remedial Action

- Promptly and thoroughly investigate all complaints of harassment
- Take immediate action and appropriate corrective action reflecting the severity of the conduct
- Restore lost employment benefits or opportunities
- Discipline the offending employee or supervisor
- Follow up with the victim to ensure there has been no retaliation

# Accommodation: Religion & Disability

- An employer must make a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability
- An employer must make a reasonable accommodation to the known religious beliefs or practices of an applicant or employee

# Protection for Employees

Retaliation against an employee for opposing an unlawful employment practice or participating in an investigation, proceeding, or hearing under the following statutes is *prohibited*:

- Title VI of the Civil Rights Act
- The Americans With Disabilities Act
- The Omnibus Crime Control and Safe Streets Act
- Title IX of the Education Amendments
- The Rehabilitation Act
- The Age Discrimination Act

# Protection for Employees

- As long as an employee had a reasonable and good faith belief that the employer's conduct was illegal, even if the employee turns out to be wrong, the employee is protected
- However, if the way the individual chooses to protest perceived discrimination is unreasonable or if the opposition is false and malicious, the anti-retaliation provisions will not apply

# Discrimination in Delivery of Services

Whenever a service is provided, there are potential beneficiaries, and those beneficiaries must be treated equally regardless of race, sex, national origin, age, color, disability, or religion

Think of a program in which you are involved that receives federal funding:

- Who are the potential beneficiaries?
- What are the potential civil rights issues?

# Civil Rights Laws & American Indians: An Important Distinction

## Recipient

When *Tribes* receive Federal financial assistance, they are *not subject to* the enforcement of *Federal Civil Rights Laws* when they function as an employer; tribes may be responsible as a provider of services.

## Beneficiary

*American Indians*, as employees or as beneficiaries of a non-Tribal organization receiving Federal financial assistance *are protected by Federal Civil Rights Laws.*

# Civil Rights Laws & American Indians

The following protected classes are of particular importance for American Indians and Alaska Natives:

- Race
- National Origin
- Religion

# Civil Rights Laws & American Indians

## Definition of American Indian for Civil Rights protections:

An employee would be entitled to protection of Title VII against employment discrimination regardless of his percentage of Native American ancestry if the employer reasonably believed that the employee was a member of a protected class based on some objective evidence, which may consist of physical appearance, language, cultural activities, or associations. One does not have to prove bloodlines or show tribal membership to be eligible for protection under Federal Civil Rights Laws.

# Civil Rights Laws & American Indians

Discrimination in employment on the basis of membership in a particular Indian tribe (e.g. favoring members of the Navajo Tribe over members of the Hopi Tribe) constitutes national origin discrimination in violation of Title VII

# States & American Indians

- A State may be discriminating against American Indians if the State has implemented a policy of denying funding to Tribes, based on Tribes having received or having direct access to Federal Financial Assistance
- The Safe Streets Act contains a State liability waiver in regard to Indian Tribes
- States do not need to require Indian Tribes to waive sovereign immunity to qualify as subgrantees

# Limited English Proficiency

- A *Limited English Proficient* (LEP) person has a first language other than English and a limited ability to read, speak, or understand English.
- National Origin Discrimination includes discrimination on the basis of LEP
- Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important benefits, rights, programs, information and services.

# Limited English Proficiency

To avoid discrimination against LEP persons, recipients must do the following:

- Take *reasonable steps* to ensure *meaningful access* to the programs, services, and information the recipients provide, *free of charge*.
- Establish and implement *policies and procedures* for language assistance services that provide LEP persons with meaningful access.

# Limited English Proficiency

## Determining Reasonable Steps: Four Factor Analysis –

1. The *number or proportion* of LEP persons served or encountered in the eligible service population
2. The *frequency* with which LEP individuals come in contact with the program
3. The *nature and importance* of the program, activity, or services provided by the program
4. The *resources* available to the recipient

# Limited English Proficiency Language Services

## Oral Language Services

- Bilingual Staff: Direct foreign language communication by fluent personnel
- Interpreters: Ensure interpreter competency. Usually family members, friends, and uncertified co-workers are not appropriate

## Translation

- Safe Harbor Provision:
  - Applies only to translation of written materials
  - Based on number of LEP persons served

# Limited English Proficiency

## Five Elements of a written LEP Policy:

1. A process for identifying LEP persons who need language assistance
2. Identifying ways in which language assistance will be provided
3. Training for staff
4. Monitoring and updating the LEP policy
5. Providing notice to LEP persons

# Assurances

## The Applicant assures and certifies that:

- (11) It will comply, and assure the compliance of all its *subgrantees* and contractors.
- (13) It will comply, and its contractors will comply, with the *Nondiscrimination Requirements* of the Omnibus Crime Control and Safe Streets Act of 1968 [and other Federal civil rights statutes and regulations].
- (14) 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, sex or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.
- (15) It will provide an *Equal Employment Opportunity Program* if they receive a grant of \$25,000 or more.

# The Office of Justice Programs & Civil Rights Enforcement

OJP is responsible for the following areas of Civil Rights Enforcement:

- Complaints
- Compliance Reviews
- Findings of Discrimination
- EEOPs (Equal Employment Opportunity Plans)

# What is an EEOP?

Comprehensive document which analyzes:

- an agency's workforce in comparison to its relevant labor market data
- all agency employment practices to determine their impact on the basis of race, sex, or national origin
- A tool used to identify possible problem areas where discrimination may be occurring

# Does an agency have to prepare an EEOP?

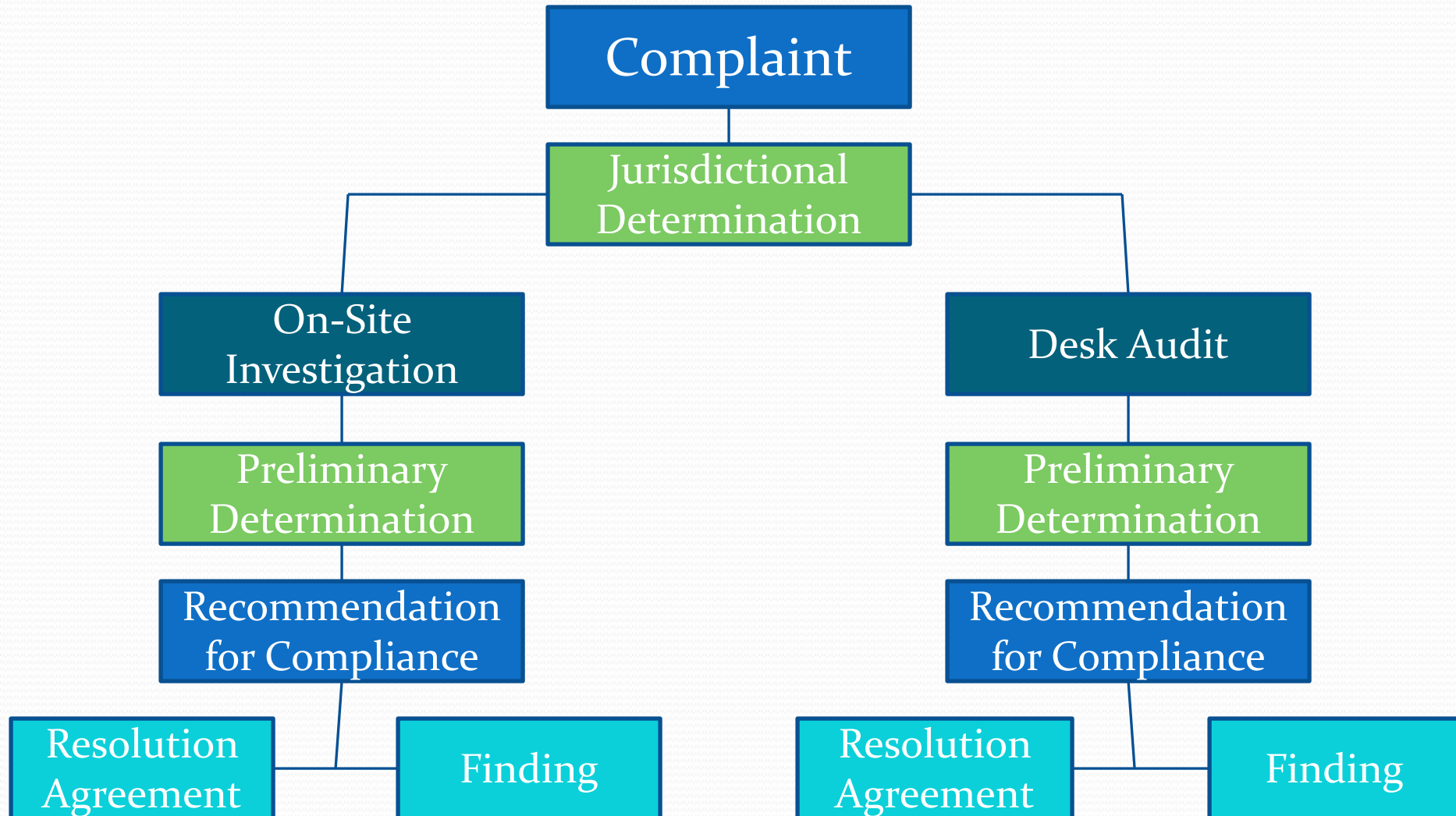
Depends on . . .

- Funding (Safe Streets Act, VOCA, or JJDPA)
- Status of Organization (*e.g.*, nonprofit)
- Amount of single award
- Number of employees

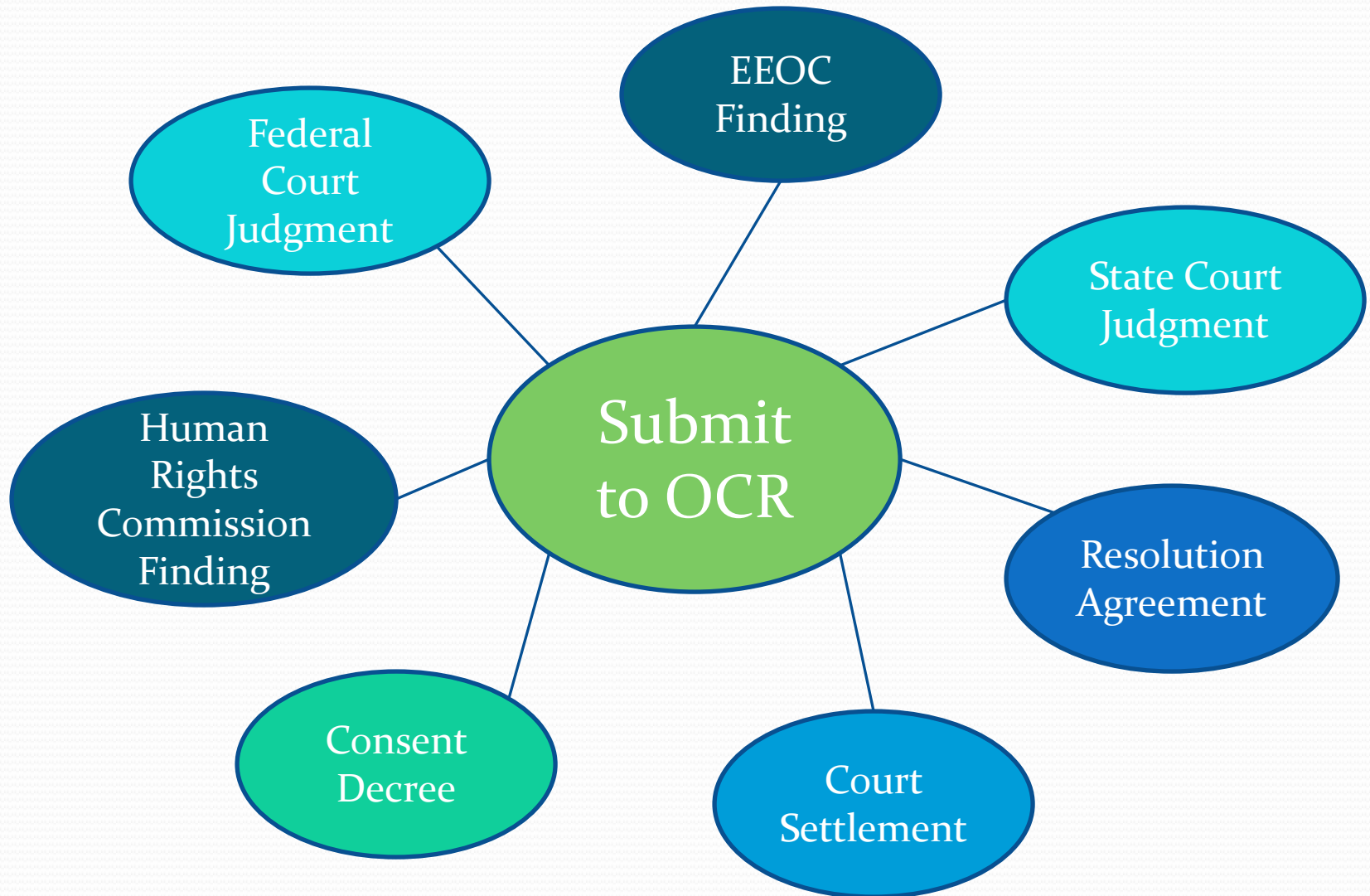
If Then	Does the recipient need to submit a Certification Form to OCR?	Does the recipient need to develop an EEOP?	Must the recipient submit an EEOP Utilization Report to OCR?
Recipient is a Medical or Educational Institution, Indian Tribe, or Nonprofit	YES	NO	NO
Largest individual grant received is less than \$25,000	YES	NO	NO
Recipient has less than 50 employees	YES	NO	NO
None of the above	YES	YES	YES

Click to [Prepare and Submit EEOP and Certification](#)

# The Complaint Process



# Findings of Discrimination



# RESOURCES

- **Preparing an EEOP** Step-by-step instructions for preparing an EEOP Short Form [online](#) at
- **[LEP Information](#)**: Tips and Tools for different types of agencies on how to comply with requirements to provide services to LEP persons.
- **[Disability Information](#)**: Disability Rights Section of DOJ's Civil Rights Division has many resources to assist recipients in understanding the requirements of the ADA.
- **OCR [Online Training](#)**: OCR has posted training presentations on our website addressing a variety of civil rights topics.

# Questions?

Contact your Grant Manager or:

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[dps.mn.gov/divisions/ojp/](http://dps.mn.gov/divisions/ojp/)