

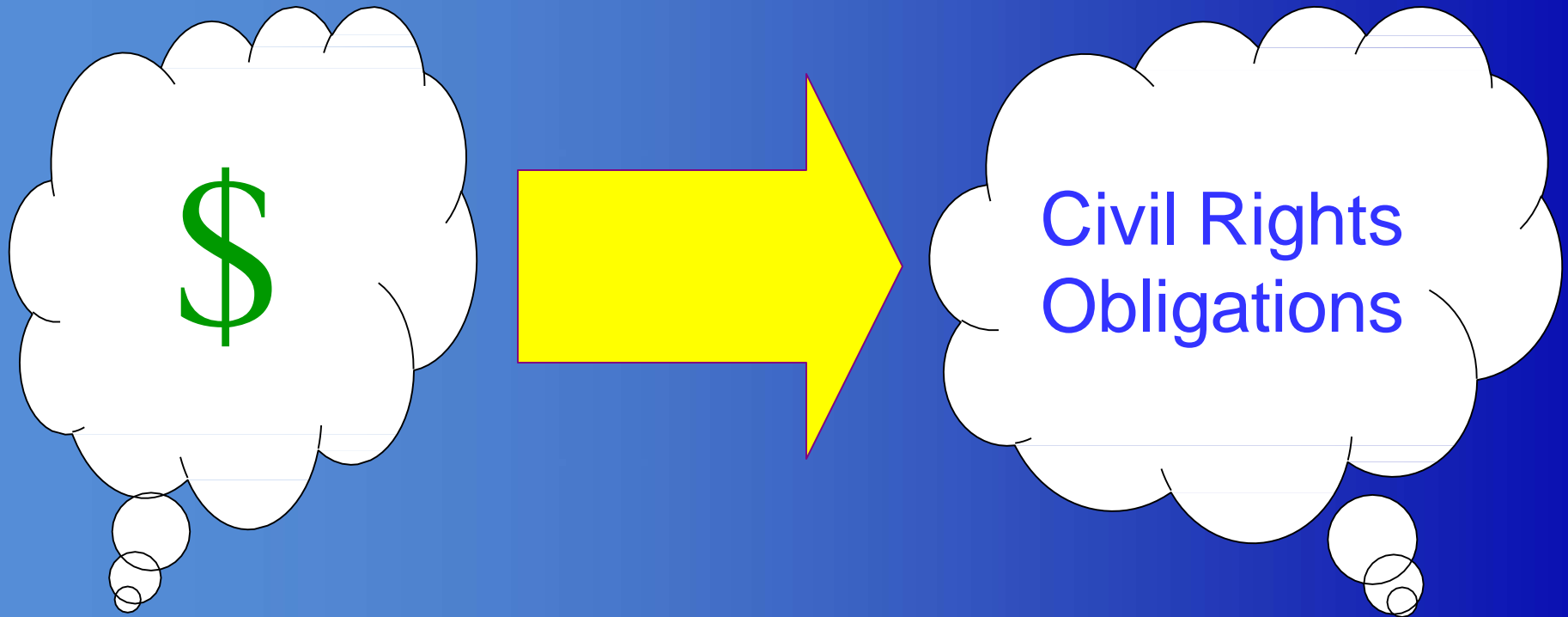
Virginia Department of Criminal Justice Services

Civil Rights & Grants

Grateful Acknowledgement:

This presentation was adapted from materials developed by Oregon Department of Justice, Victims' Services Division. See <https://www.doj.state.or.us/crime-victims/>

Whenever federal funding is involved, there is always a civil rights requirement that accompanies the funding



When an agency accepts federal funding, it agrees to abide by certain federal civil rights laws as a condition of receiving grant funds.

DCJS Grantees

Consistent with civil rights laws and regulations, DCJS grant awards require grantees to: comply with (and when required cause its subgrantees to comply with) all applicable federal, state, and local laws, regulations, executive orders and ordinances related to expenditure of the Grant funds and the activities financed with the Grant funds.

Federal Statutes Enforced by OCR

- ◆ **Title VI of the Civil Rights Act of 1964** (*race, color, national origin*)
- ◆ **Program Statutes: VAWA, VOCA, Safe Streets Act** (*race, color, national origin, sex, religion, sexual orientation, gender identity, disability*)
- ◆ **Section 504 of the Rehabilitation Act of 1973** (*disability*)
- ◆ **Title II of the Americans with Disabilities Act of 1990** (*disability*)
- ◆ **Age Discrimination Act of 1975** (*age*)
- ◆ **Title IX of the Education Amendments of 1972** (*sex in educational programs*)
- ◆ **U.S. DOJ regs. Equal Treatment for Faith- Based Organizations** (*religion – prohibits use of funding for inherently religious activities (28 C.F.R. Part 38)*).

Two important terms

Recipient

An organization or agency that receives federal financial assistance.

Examples:

- ❖ State administering agencies
- ❖ State & local courts
- ❖ Law enforcement agencies
- ❖ City and county departments
- ❖ Nonprofit agencies
- ❖ Faith-based organizations

Beneficiary

The person who ultimately received federally funded services or benefits.

Examples:

- ❖ A victim of crime receiving VW or SADVGP services
- ❖ A DV survivor in a funded shelter.
- ❖ The people of a community served by a funded agency.

Title VI, Civil Rights Act of 1964

Title VI Protection

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.

What does Program or Activity Mean?

- Program or Activity means all of the operations of an organization receiving federal financial assistance.
- Examples:
 - If a state Department (DCJS) receives federal funding and subawards the funding to local community based organizations (CBO), all of the operations of the state Department are covered, along with the operations of the CBOs.
 - If a DV shelter receives federal funds and uses the funds to operate particular programs, all of the activities of the shelter are covered, not just the federally-funded programs.
 - If a project of a city police department receives federal funds, the entire police department is covered, but not the other departments in the city.

Title VI Prohibitions



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

Definition of Discrimination: The act of distinguishing one person or group of persons from others, either intentionally, by neglect, or by effect of actions or lack of actions, based on their protected class.

OJP PROGRAM STATUTES

Omnibus Crime Control and Safe Streets Act

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 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

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 chapter.

Violence Against Women Act

No person in the United States shall, on the basis of actual or perceived **race, color, religion, national origin, sex, gender identity, 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 the Violence Against Women Act...and any other program or activity funded in whole or in part with funds appropriated...by the Office on Violence Against Women.

Violence Against Women Act

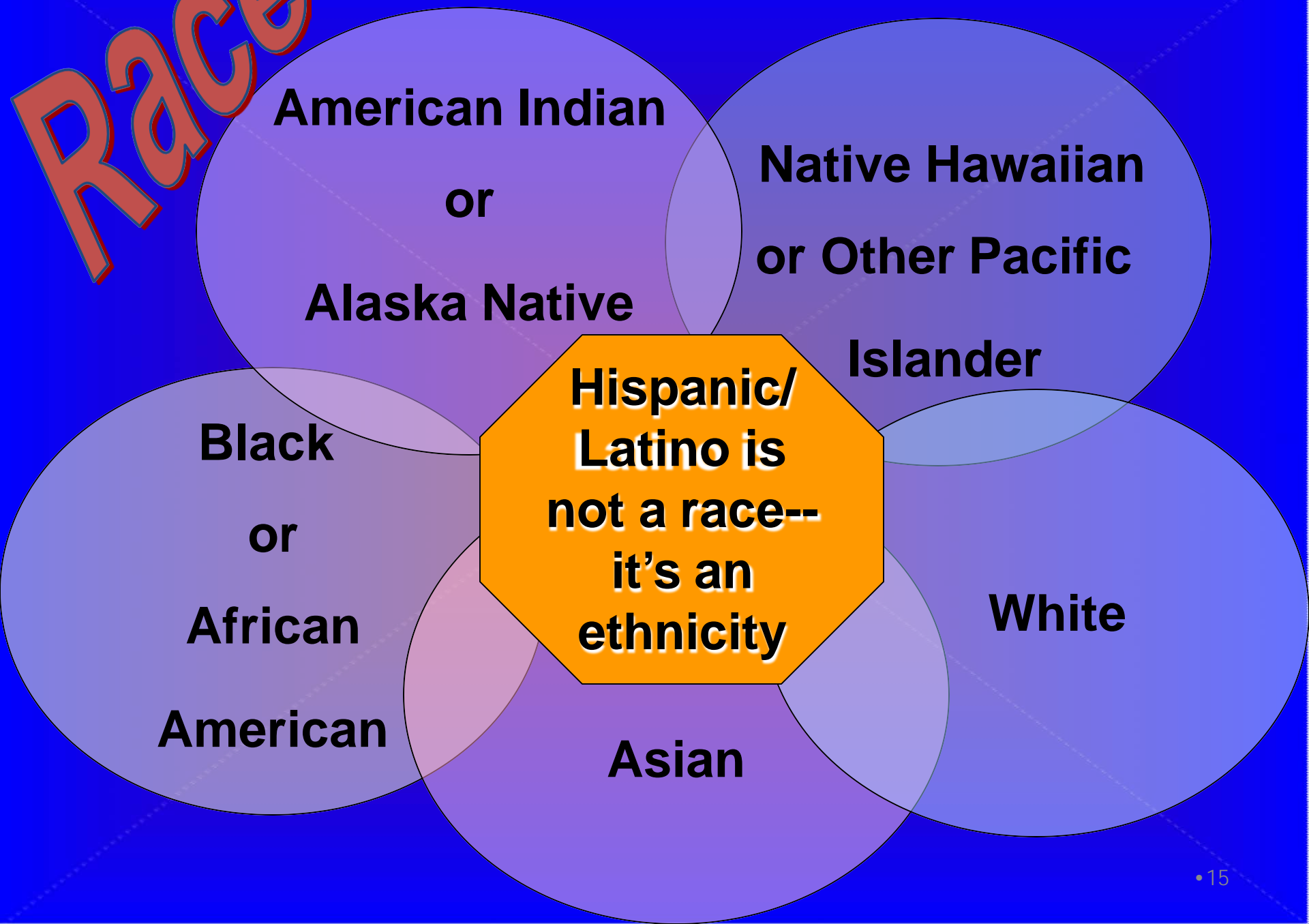
EXCEPTION:

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.***

Protected Classes



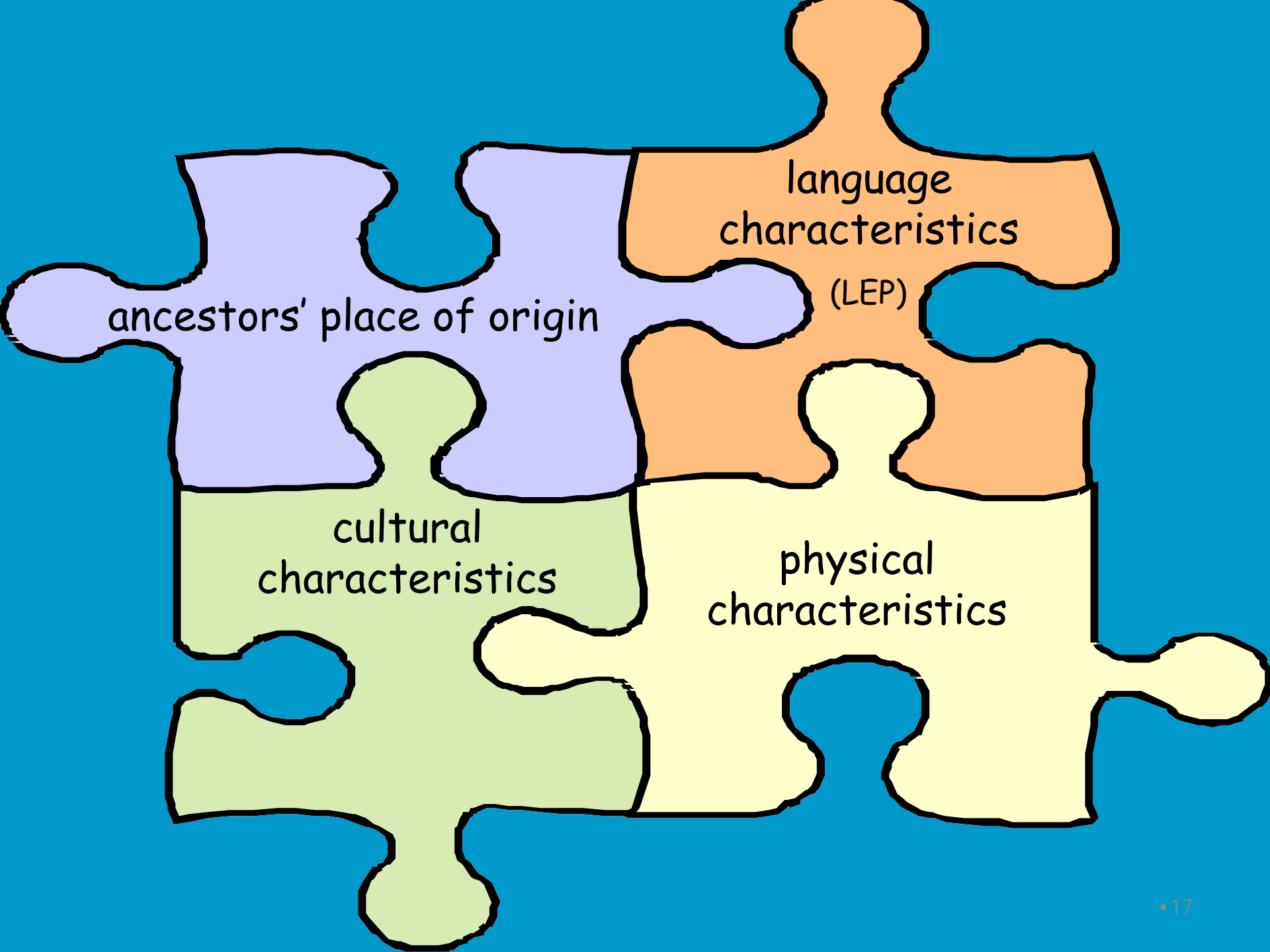
Race



Color Discrimination



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



ancestors' place of origin

language
characteristics

(LEP)

cultural
characteristics

physical
characteristics

National Origin Discrimination

Includes discrimination on the basis of *Limited English Proficiency (LEP)*.

A *Limited English Proficient (LEP)* person has a first language other than English and a limited ability to read, speak, or understand English.

Language Access – Legal Sidebar

Title VI of 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.”*

Section 601 of Title VI, 42 U.S.C. sec. 2000d

Implementation of Title VI

- The U.S. Supreme Court stated that one type of **national origin discrimination** is discrimination based on a person’s inability to speak, read, write or understand English. (*Lau v. Nichols* (1974))
- President Clinton signed **Executive Order 13166** in Aug. 2000: "Improving Access to Services for Persons with Limited English Proficiency." (“...**Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons**”)

To avoid discrimination against LEP persons, recipients must

-  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.

What is Meaningful Access?

“Meaningful access” is defined in the US Department of Justice’s own Language Access Plan as “Language assistance that results in **accurate, timely, and effective communication** at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is **not significantly restricted, delayed or inferior** as compared to programs or activities provided to English proficient individuals.”



What are "Reasonable Steps?"

Cost As A Burden? - NO

Remarks from Assistant Attorney General from Meeting of Federal Interagency Working Group on LEP in 2009:

"I want to point out 2 key areas of guidance... that applies across all agencies and recipients:

- *First, as time goes on, the bar of reasonableness is being raised. The need to show progress in providing all LEP persons with meaningful access increases over time...*
- *The second cross-cutting point is that, even in tough economic times, assertions of lack of resources will not provide carte blanche for failure to provide language access. Language access is essential and is not to be treated as a "frill" when determining what to cut in a budget..."*

How does this apply?

OJP Programs and Services are “federally conducted activities” and are subject to EO 13166

- * Grant processes
- * Communications to the public
- * Programs and services for the public
- * Publications for the public
- * Conferences and forums
- * Training and technical assistance

OJP grant recipients are “federal financial recipients” and are subject to Title VI and EO 13166

- * Awardee publications and brochures
- * Awardee hotlines
- * Awardee websites and social media
- * Awardee conferences, training, technical assistance, and public engagements

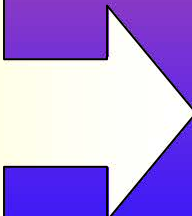
What are reasonable steps?

Four Factor Analysis

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

What Are Language Services?

Provide
oral
language
services

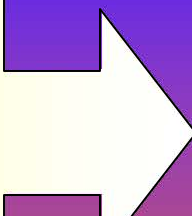


Insure Interpreter Competency

Usually family members, friends, and uncertified co-workers are not appropriate.

and

Provide
translation
of written
materials



Safe Harbor Provision

If 5% or 1,000 (whichever is less) of population is LEP, *vital* documents must be translated. If 5% represents fewer than 50, then written notice of free written translation must be provided upon request.








Vital Documents

- ❖ Applications to participate
- ❖ Complaint and Intake forms
- ❖ Written notices of rights
- ❖ Award or denial notices
- ❖ Content on website

<http://go.usa.gov/ELx>

Language Services Notice

-  Translated Notices
-  Telephone Messages
-  Outreach Materials
-  Website, Social Media
-  Non-English Media

<http://go.usa.gov/fhK>

Components of a Language Access Plan

- ✓ A process for identifying LEP persons who need language assistance
- ✓ Information about the available language assistance resources
- ✓ Monitoring and updating the LEP policy
- ✓ Notification and outreach to LEP persons
- ✓ Training for staff
- ✓ Implementing the Plan

Best Practices

-  Written Policies
-  Staff Recruitment & Training
-  Board Recruitment & Training
-  Volunteer Recruitment & Training
-  Community Education & Outreach
-  Identify Resources

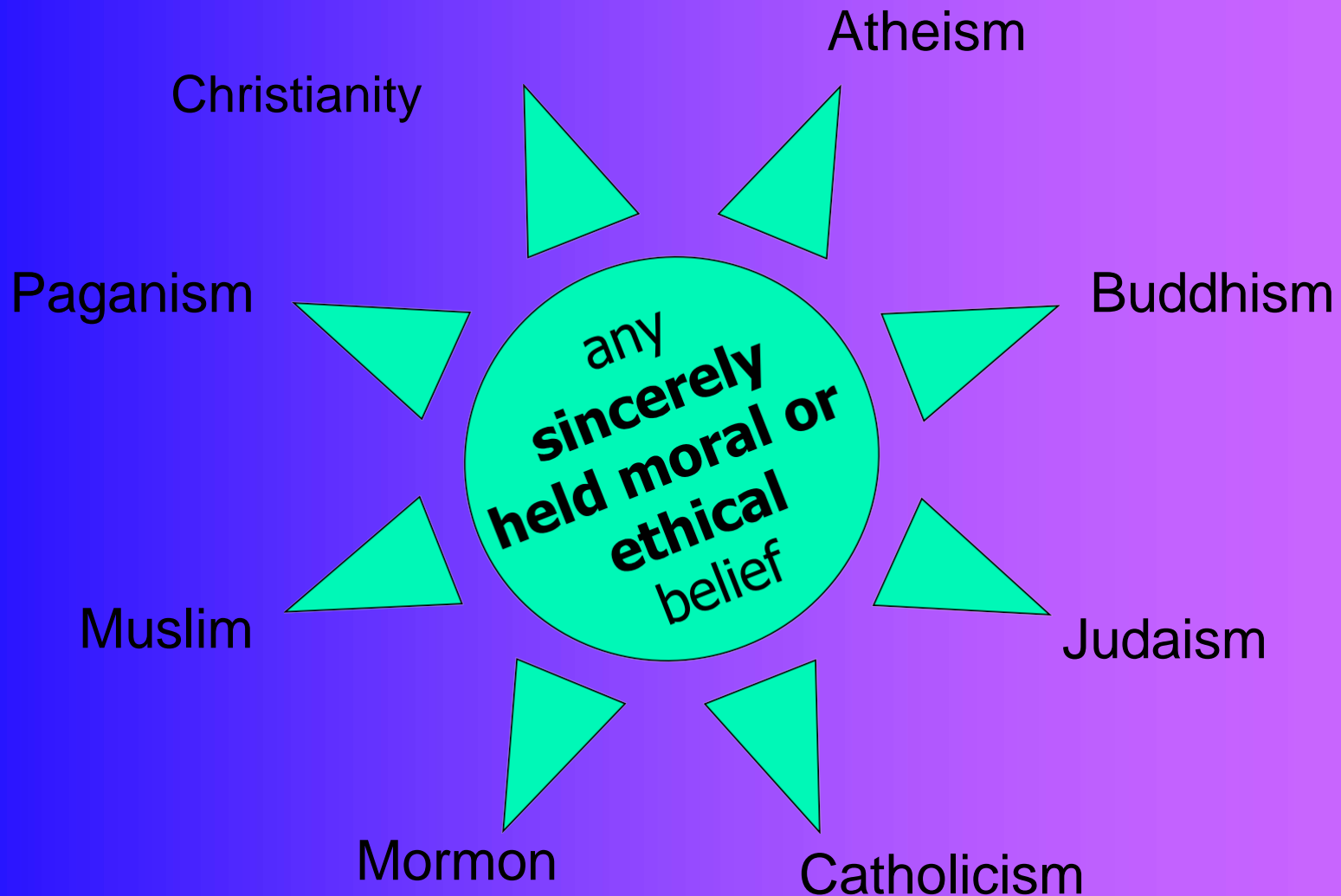
Resources

www.lep.gov

<http://go.usa.gov>

What is a Religion?

All aspects of religious observance, practice and belief are protected



When Faith Based Organizations Provide Services to Beneficiaries

DOJ Regulations state that:

- FBOs must not use Federal funding to advance inherently religious activities; and
- FBOs may not discriminate against beneficiaries based on religion or religious belief.

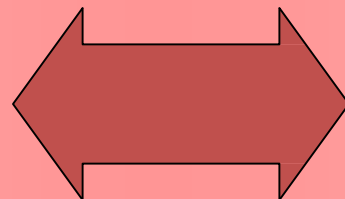
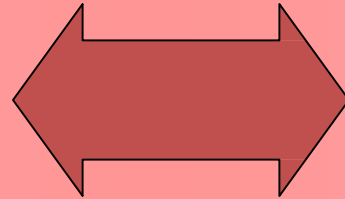
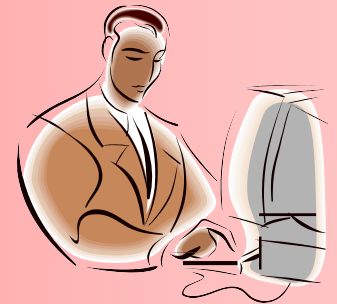
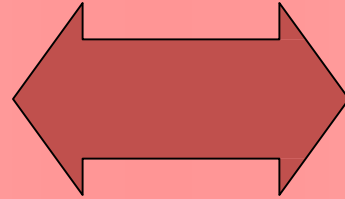
Are these practices acceptable?

- An atheist participant in a life skills training program run by a FBO receiving Federal funds is required to participate in an opening prayer before receiving the skills training.
- A woman seeking services at a shelter is not allowed to pray her rosary in her room.

NO!

- The prayer is an impermissible requirement to participate in religious exercises or program with faith content.
- Not allowing the woman to pray privately would be denial of access to religious services, pastoral counselor, special dietary needs, or items of a person's faith.
- *BOTH practices are unacceptable.*

Sex Discrimination Can Occur Between



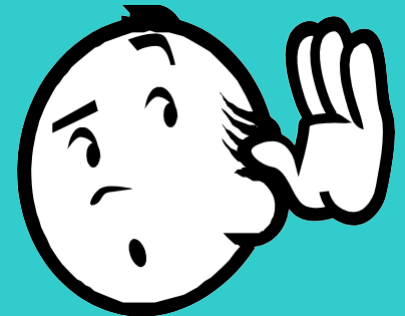
Disability

- ❑ **Section 504 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in recipients of Federal funding.
- ❑ **Americans with Disabilities Act of 1990** prohibits discrimination on the basis of disability and applies to public and private entities whether or not they receive Federal funding.
- ❑ **ADA Amendment Act of 2008**; an act to “restore the intent and protections of the ADA of 1990.” Congress found that the definition of handicapped individual had not been interpreted consistently with Section 504.

Who is in the “Disability” Class?

A person who:

- ✦ Has a physical or mental impairment which **substantially limits** one or more **major life activities**,
- ✦ Has a record of such an impairment, or
- ✦ Is regarded as having such an impairment.



Disability Discrimination Analysis



- ◆ ADA requires recipients to provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability unless it can demonstrate it would be an undue hardship.
- ◆ Every case requires individualized analysis – individuals with disabilities are not a homogenous group even those with the same disability.

Section 504 of the Rehabilitation Act of 1973

Requires a recipient with 50 or more employees & receiving Federal financial assistance from DOJ of \$25,000 or more to:

- Designate a Section 504 compliance coordinator;
- Adopt grievance procedures; and
- Notify program participants, beneficiaries applicants, employees, unions, and organizations with collective bargaining agreements, that recipient does not discriminate on the basis of disability.

Is this an acceptable policy?

-  A shelter receives OJP funds & has a blanket policy that residents cannot be taking psychotropic medication while staying in shelter. Is this acceptable?
-  **NO!** The shelter has discriminated against persons who may have a mental disability that may be controlled by medication. It needs to individually assess potential residents.

Age

- The Age Discrimination Act prohibits federally funded organizations from discriminating against persons of any age in its programs and activities
- The Age Discrimination Act does not cover discrimination in employment

But the EEOC enforces the Age Discrimination in Employment Act, which prohibits employment discrimination against persons over the age of 40

The statutes that OCR enforces prohibit discrimination in:

Delivery
of
Services



Employment
Practices
(except age)

race

color

national
origin

religion

sex

disability

age



Let's Take a Closer Look at Discrimination in the Delivery of Services

race

color

national
origin

religion

sex

disability

age

Preliminary Questions



- Is the funding for the program subject to Federal civil rights requirements?
- Does the delivery of services involve a protected class?
- Is the Protected Class receiving unequal treatment?

Discrimination in Delivery of Services?

- A funded DV clinic has a blanket policy of only providing services to female victims of domestic violence, and not male victims.
- A culturally-based sexual assault services program that is primarily designed to provide services to Hispanic individuals turns away a non-Hispanic individual seeking services.



Let's Take a Closer Look at Discrimination in **Employment**

race

color

national
origin

religion

sex

disability

age

Federal Statutes Enforced by EEOC

- ◆ **Age Discrimination in Employment Act of 1967 (ADEA)**
- ◆ **Title VII of the Civil Rights Act of 1964**
- ◆ **Equal Pay Act of 1963**
- ◆ **Title I and Title V of the Americans with Disabilities Act of 1990**
- ◆ **Sections 501 and 505 of the Rehabilitation act of 1973**
- ◆ **Civil Rights Act of 1991**



Forms of Employment Discrimination

- ✉ **Disparate Treatment**
- ✉ **Adverse Impact**
- ✉ **Harassment**
- ✉ **Failure to Accommodate**
- ✉ **Retaliation**

Disparate Treatment Is . . .

Intentional Discrimination



When an employer **deliberately** takes an adverse action against an employee based on race, color, sex, national origin, religion, or disability.

How Do You Prove Intentional Discrimination?

⊗ Direct Evidence

⊗ Indirect Evidence

- **similarly situated** people of a different class were treated differently than the complainant
- evidence of bias
- false explanation for the differential treatment
- statistical evidence

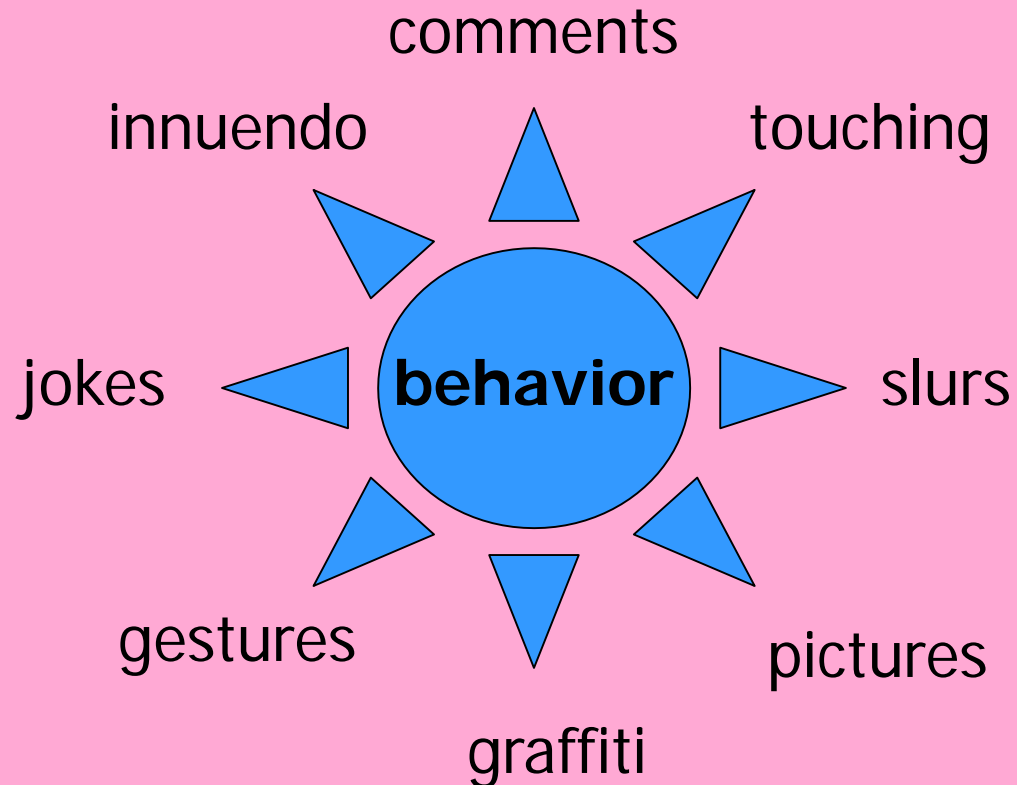
What is Adverse Impact?



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.

What is Harassment?

Behavior which creates a “hostile work environment” for individuals **because of** their race, sex, color, national origin, religion, or disability.



What Makes a Work Environment **Hostile?**



a stray remark
is not enough!

The harassment must be
“sufficiently **severe** or **pervasive**” to
alter the terms and conditions of
employment.

Six Factors Can Show Severity or Pervasiveness

Use a
reasonable
person standard!

- ⇒ Was the conduct verbal or physical or both?
- ⇒ How frequently was the conduct repeated?
- ⇒ Was the conduct hostile or merely offensive?
- ⇒ Was the harasser a co-worker or supervisor?
- ⇒ Did others join in the harassment?
- ⇒ Was the harassment directed at more than one individual?

What Can an Employer Do About Unlawful Harassment?

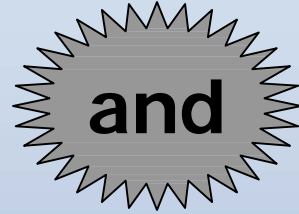
**Take
Preventative
Action**

AND

**Take
Remedial
Action**

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

unless undue hardship

Retaliation

Federal laws bar retaliation against a person for:

- ❖ Bringing a discrimination claim,
- ❖ Participating in the investigation of a discrimination claim, or
- ❖ Opposing discriminatory practices.

A retaliation claim may stand on its own:

- ❖ regardless of the merits of the underlying discrimination claim,
- ❖ even if the underlying discrimination claim fails.

What is an EEOP?

Equal Employment Opportunity Plan (EEOP) is a 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 need to prepare an EEOP?

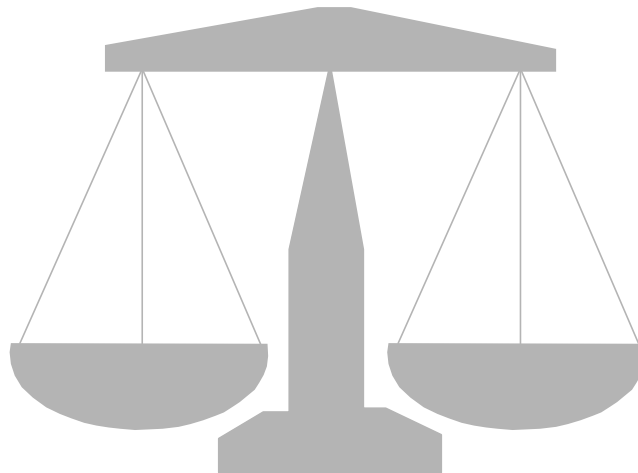
Depends on:

- Funding (e.g., VOCA or VAWA)
- Status of Organization (e.g., nonprofit)
- Amount of single award
- Number of employees

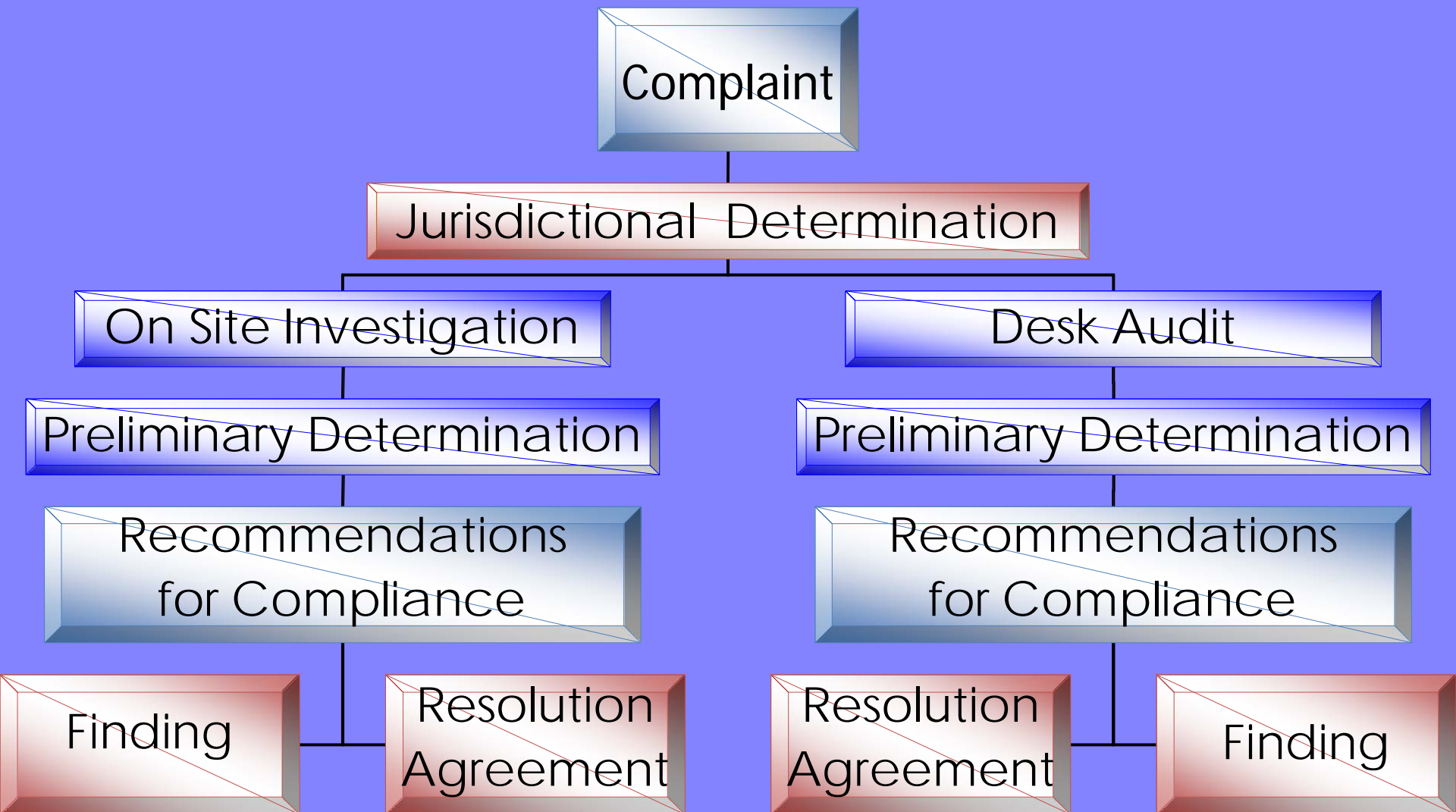
(see handout chart and Exhibit D)

OJP's Civil Rights Enforcement

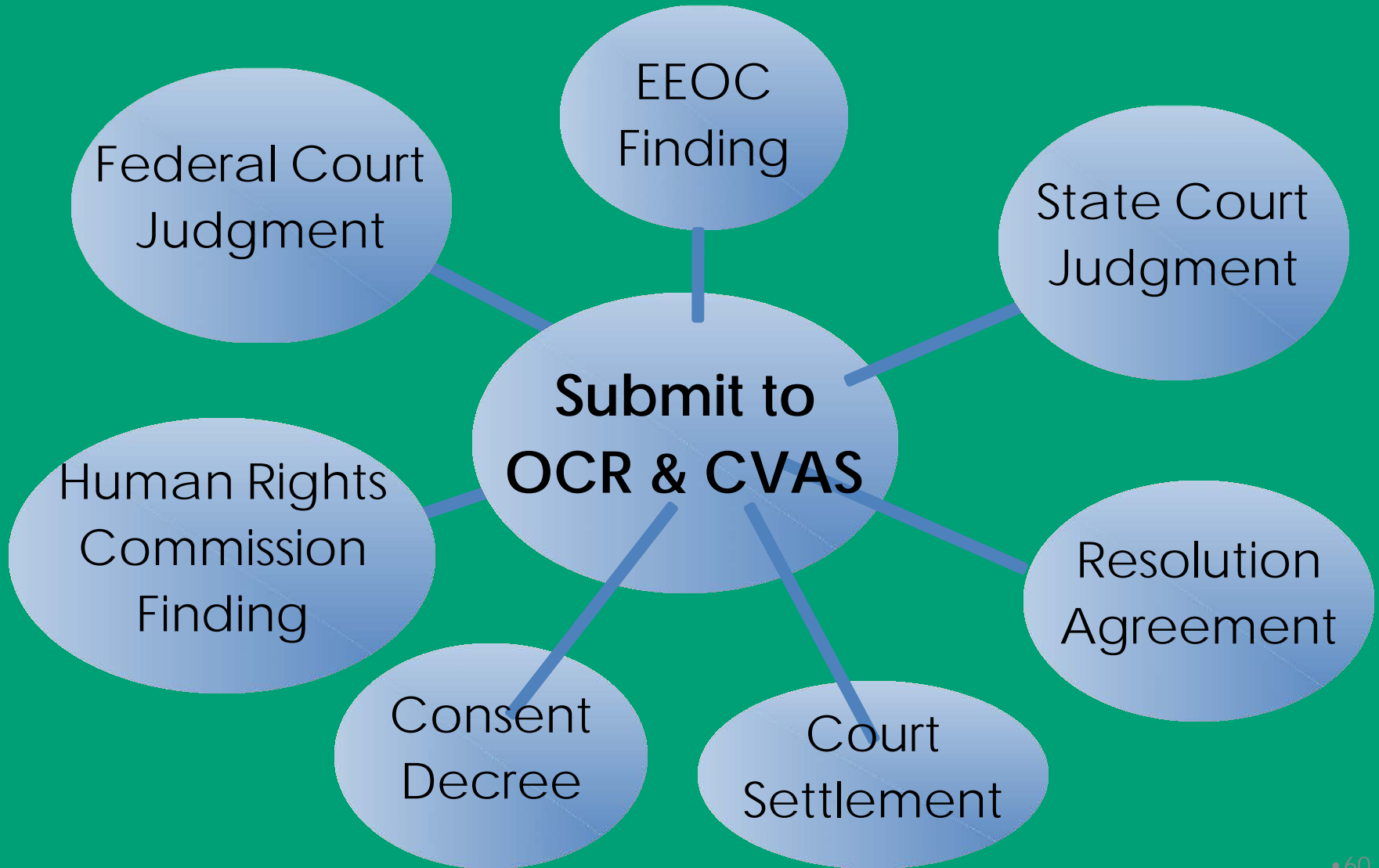
- ▶ **Complaints**
- ▶ **Compliance Reviews**
- ▶ **Findings of Discrimination**
- ▶ **EEOPs** (Equal Employment Opportunity Plans)



The Complaint Process



Findings of Discrimination



Some Useful Resources

- www.ojp.usdoj.gov/ocr/ (Civil Rights online training; LEP guidance and self-assessment; instructions, Q&A, and samples for EEOP; complaint Q&A and filing tips; information in Spanish, Chinese and Vietnamese)
- www.bcm.edu/crowd/ (Baylor disability rights)
- www.lep.gov (Tips and tools for serving LEP persons)
- www.dol.gov/dol/topic/discrimination/index.htm (Employee protections)
- http://www.thetaskforce.org/reports_and_research/trans_ho_meless (Resource for making shelter safe for transgendered people)
- <http://www.apiidv.org/organizing/interpretation-tools-resources.php> (Language Access Resources)