

Transcript: “Podcast: Office of Justice Programs’ Administration of the Disproportionate Minority Contact Requirement of a Federal Grant Program,” October 2017

Stephanie Logan (SL): Welcome to the latest podcast from the Department of Justice Office of the Inspector General. My name is Stephanie Logan and I am a Public Affairs Specialist in our office.

Today our office released a report that found the Office of Juvenile Justice and Delinquency Prevention, otherwise known as OJJDP, awarded funding to states, regardless of states’ compliance with regulations requiring them to make efforts to reduce disproportionate minority contact with the juvenile justice system. The report questioned over 1 point 1 million dollars relating to these findings.

I’m here with Karen Rich, an Investigative Counsel in our Oversight and Review Division to discuss the findings of this new report.

Thanks for joining me, Karen.

Karen Rich (KR): Thanks for having me Stephanie. I’m happy to be here with you to discuss this important topic.

SL: So Karen, can you start by talking about the grant program you examined? And what was the scope of your review?

KR: Sure. As you mentioned, the report is related to a grant program in OJJDP, called the Title II Part B Formula Grant Program. This program awards grants to states and territories in the United States to develop programs to improve the juvenile justice system.

Now, there is a concern that minority children have more contact with the juvenile justice system than other children. So, there are regulations requiring states that receive grant funding from this program to show that they are making efforts to reduce disproportionate contact between minorities and the juvenile justice system. This part of the grant program is called Disproportionate Minority Contact or “DMC” and it is one of four “core requirements” of the grant program.

In 2015, a staff member at OJJDP alleged that OJJDP managers were granting states money without requiring the states to comply with the DMC regulations. We looked specifically at this allegation.

SL: Can you provide some more background on the DMC requirements of the grant program?

KR: Yes. In order to receive funding, states are not required to *actually reduce* contact by any particular minorities with the juvenile justice system. Rather, states must report every year that they have made certain *efforts to reduce* disproportionate minority contact, and that they have a plan for continuing those efforts. For example, the regulations require states to identify the scope of the problem. That means that states have to figure out *how much* contact different minorities are having with law enforcement at different stages of the criminal justice process – like arrest and incarceration. The states then have to try to figure out why disproportionate contact is happening, and come up with strategies that aim to reduce it.

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SL: And you said the allegation was that agency managers were not enforcing those requirements? Did you find that that was true?

KR: Yes. We found that OJJDP awarded all states their funding *regardless* of whether those states complied with the DMC regulatory requirements, for each year between fiscal year 2013 and fiscal year 2016.

SL: What should have happened to states who were out of compliance?

KR: Well, a number of different things could have happened, depending on what the states weren’t complying with. But generally OJJDP should have reduced a state’s funding or found a state ineligible for funding altogether, if it found that the state was not complying with the regulations.

SL: Did OJJDP ever enforce these penalties during the years you mentioned?

KR: No, not since fiscal year 2013. OJJDP *has* enforced the regulations and reduced funding for some states for failing to comply with the other three core requirements of the formula grant program. But for the past several years it has not been doing so in connection with the DMC requirement. In fact, employees at OJJDP have referred to this as the “DMC pass.”

SL: Did you determine why OJJDP didn’t enforce the penalties?

KR: We did. The DMC pass began in 2013, when the Coordinator for disproportionate minority contact sent an email that triggered a chain of events. The email was sent to the Office of Justice Program’s Office of the General Counsel. And the attorneys in the General Counsel’s office thought that this email gave the impression that the compliance review process was arbitrary. Essentially, they thought that OJJDP was not applying consistent criteria in assessing compliance with the DMC requirement.

SL: Okay, so what happened as a result of the General Counsel’s interpretation?

KR: Well, the General Counsel attorneys were concerned that they would not be able to defend any decisions to reduce a state’s funding. And they told the Administrator of OJJDP of this concern. So the Administrator of OJJDP decided not to reduce any state’s funding – hence the DMC pass.

SL: Did the agency remedy this issue?

KR: Agency employees have tried to develop better standards, both by working on new regulations and by working on a tool to better assess compliance with regulations regarding disproportionate minority contact. But, to date, they haven’t been able to finish either of these efforts. As a result, management has not approved any reductions of funding for the past several years.

SL: Did you agree that the DMC pass was necessary?

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KR: No. We found that the DMC pass was unnecessary and that OJJDP should have enforced the DMC regulations. In particular, we found that the General Counsel’s guidance was based on an overly restrictive interpretation of the Coordinator’s email. We also found that miscommunications among the General Counsel, the Administrator, and OJJDP staff led management and the General Counsel to believe a pass was necessary, when it actually wasn’t.

We also found that the passage of time increased OJJDP’s obligation to correct any problems in the way it monitored DMC. Especially given the amount of money that was being awarded to states without regard for regulatory requirements.

SL: **Were you able to assess how much money was improperly awarded to states as a result of the DMC pass?**

KR: No, we could not conclude with certainty whether any specific states improperly received funding. But, based on our findings, we questioned over 1 point 1 million dollars in funding awarded to several states between fiscal year 2013 and fiscal year 2016.

SL: **And did you find that the actions by anyone at OJJDP or OJP’s Office of General Counsel were improperly motivated?**

KR: No, we did not find that anyone’s conduct was improperly motivated. But – and this is very important – we did make eight recommendations to address our findings. Most importantly, we recommended that OJJDP make disproportionate minority contact compliance determinations in accordance with statutory and regulatory requirements. And we recommended that the Office of the General Counsel issue legal guidance to clarify how these legal requirements should be applied. We also recommended specific steps to improve recordkeeping and communication within the agency.

SL: **Karen, thank you so much for speaking with me today.**

KR: It was my pleasure, Stephanie.

SL: **That’s it for today. To read the report, please visit our website, oig.justice.gov. Thanks for joining us.**