



UNITED STATES DEPARTMENT OF EDUCATION

PROGRAM MEMORANDUM OCR AND OCTAE**DATE:** February 6, 2020**TO:** State Directors of Career and Technical Education**CC:** Methods of Administration Coordinators**FROM:** Kenneth Marcus Scott Stump
Assistant Secretary Assistant Secretary
Office for Civil Rights Office of Career Technical and Adult Education**RE:** Updated Procedures for Preparing the Methods of Administration (MOA) Described in the Vocational/Career and Technical Education Guidelines**Purpose**

The U.S. Department of Education’s (Department’s) Office for Civil Rights (OCR) and Office of Career, Technical, and Adult Education (OCTAE) are pleased to jointly issue the attached updated Memorandum of Procedures (MOP) for State agencies responsible for the administration of career and technical education (CTE) to use in developing the “methods of administration and related procedures” they will follow in carrying out their civil rights obligations under the “Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap in Vocational Education Programs” (MOA *Guidelines*) (34 C.F.R. Part 100, Appendix B). This document supersedes and replaces the prior Memorandum of Procedures issued in July 1979, and rescinds prior guidance issued in the form of “Dear Colleague” letters regarding the Methods of Administration (MOA) program.¹ This updated MOP does not affect or alter the 1979 MOA *Guidelines*.

The updated MOP continues the longstanding commitment and ongoing efforts of OCR and OCTAE to ensure that all students, regardless of race, color, national origin, sex, or disability, have equal access and opportunities to succeed in CTE programs. An added goal of this updated MOP is to encourage State agencies to harmonize their civil rights compliance activities under

¹ The original Memorandum of Procedures was issued as, “Procedures for Preparing the Methods of Administration Described in the Vocational Education Guidelines” in July 1979 by the Office of the Secretary, Department of Health, Education, and Welfare. Its terms were amended by the “Revised Procedures for Preparing the Methods of Administration (MOA) Described in the Vocational Education Guidelines,” issued September 26, 1996; a “Dear Colleague” Letter regarding Biennial Compliance Reports to the OCR, issued December 28, 1998; a further “Dear Colleague” Letter regarding Targeting Plan Requirements, issued August 8, 2005; and a final “Dear Colleague” Letter regarding Documentation Requirements for On-Site Reviews in Letters of Findings,” issued January 11, 2012.

the MOA *Guidelines* with their equity and civil rights activities under the 2018 Perkins Act reauthorization.

Other than the cited statutory and regulatory requirements, this updated MOP does not have the force and effect of law and is not meant to bind the public in any way. Instead, this updated MOP is intended to provide clarity to the public regarding existing requirements under the law and agency policies. Also, State agencies have a fair opportunity to argue for lawful approaches to compliance with the MOA *Guidelines* other than those suggested in the updated MOP. For further information, please contact the OPEN Center within the Office for Civil Rights.

Background

Since the issuance of the 1979 MOA *Guidelines* and subsequent MOPs and “Dear Colleague” Letters regarding the MOA program, Congress has made meaningful changes to the equity and civil rights provisions of the Carl D. Perkins Career and Technical Education Act (Perkins Act) as compared to its predecessor legislation. The Perkins Act is a major source of Federal funding for our nation’s CTE (former vocational education) programs.

The Carl D. Perkins Vocational and Applied Technology Amendments of 1998 (Perkins III) and the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) required that States and local recipients describe in their State and local plans, respectively, program strategies for so-called “special populations”, including how students would be provided with equal access to activities and would not be discriminated against on the basis of their status as members of special populations. Both statutes required States to set aside a portion of their State leadership funds, between \$60,000 and \$150,000, for services that prepared individuals for nontraditional training and employment. (The Workforce Investment and Opportunity Act (WIOA) and Every Student Succeeds Acts (ESSA) both have similar provisions requiring State activity in support of many of the same subgroups of people, referenced in those statutes as “underserved populations.”)

In July 2018, Congress enacted the Strengthening Career and Technical Education for the 21st Century Act (Perkins V). In addition to maintaining the above-referenced provisions, Perkins V ushered in a new level of civil rights accountability for CTE programs. The new Perkins V provisions include:

1. Adding homeless individuals, foster care youth, and youth with a parent in active military duty to the definition of “special populations”² and categories for which data need to be gathered and disaggregated for performance reporting (Section 3(48) of Perkins V);

² Perkins V “special populations” include: Individuals with disabilities; individuals from economically disadvantaged families, including low-income youth and adults; individuals preparing for non-traditional fields; single parents, including single pregnant women; out-of-workforce individuals; English learners; homeless individuals described in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a); youth who are in, or have aged out of, the foster care system; and youth with a parent who is a member of the armed forces and is on active duty.

2. Requiring States to make funds available for the recruitment of special populations (Section 112(a)(2)(C) of Perkins V);
3. Requiring local recipients to conduct and update not less than every two (2) years a comprehensive local needs assessment, which includes an evaluation of the performance for special populations and subgroups (Section 134(c)(2)(A) of Perkins V), and a description of progress toward implementation of equal access to high-quality CTE courses and programs of study for all students, including strategies to overcome barriers that result in lower rates of access to, or performance gaps in, the courses and programs for special populations (Section 134(c)(2)(E) of Perkins V).

Through these revisions to the Perkins program, equity and civil rights have become key elements of Perkins administration. At the same time, State agencies have continued to run MOA programs containing parallel but different procedures pursuant to the 1979 MOA *Guidelines*, MOA MOP, and “Dear Colleague” Letters. Given the scope and depth of changes that the Perkins statutes have caused in State and local policies and practices to ensure access and success for all students in CTE programs, it is fitting that the Department’s MOP be updated to allow State agencies to align their civil rights work pursuant to both the Perkins and MOA programs.

Accordingly, the attached MOP is based on the following objectives:

- Ensuring the continuing State role in partnership with OCR in protecting the civil rights of all CTE students consistent with the requirements of the MOA program.
- Giving State agencies the opportunity to align their MOA and Perkins management systems, so that Perkins civil rights administration and MOA civil rights administration can be harmonized, better aligned, and more effective overall.
- Improving civil rights technical assistance to CTE subrecipients and State agencies in order to facilitate voluntary compliance.
- Using existing data gathered and reported under the Perkins statute for civil rights oversight and technical assistance.
- Strengthening State use of the OCR enforcement network and complaint resolution resources.

Under the attached MOP, State agencies will, as before, produce a plan documenting their MOA for the civil rights program required by 34 C.F.R. Part 100, Appendix B Sec. II.B. The following document contains recommendations for the contents of each part of the State agency’s MOA plan. Use of the suggested format is recommended, though not required. Any format that covers all essential elements of the State agency’s responsibilities required by the MOA *Guidelines* is acceptable.

Nothing in this document changes the civil rights of any individual or alters any civil rights law or regulation. Additional support for civil rights enforcement is always available to States, districts, educational institutions, students, and families by contacting OCR.

Revised MOA plans should be submitted to the Department for review by OCR by July 1, 2020 via the Perkins V State Plan Portal and will take effect within one year. In accordance with the *Guidelines*, subsequent reports on MOA activities and possible findings will be submitted from each State on a biennial basis.

Memorandum of Procedures (MOP)

The format and substance described below are designed to help State agencies satisfy the requirements of the Methods of Administration *Guidelines* (34 C.F.R. Part 100, Appendix B), and in particular Section II.B of those *Guidelines* outlining the necessary elements of a State agency program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex or disability.

Other than cited statutory and regulatory requirements, this MOP does not have the force and effect of law and is not meant to bind the public in any way. This MOP is intended to provide clarity to the public regarding existing requirements under the law and agency policies. Also, State agencies have a fair opportunity to argue for lawful approaches other than those suggested below to satisfy the requirements of the Methods of Administration *Guidelines*. For further information, please contact the OPEN Center within the Office for Civil Rights.

If at any point a State agency desires to revise their MOA plan, those revisions should be submitted using the same procedures used when submitting a Perkins V State Plan revision.

I. INTRODUCTORY INFORMATION

Describe the process by which the MOA plan was developed. It is recommended that this section respond to the following general questions:

- A. Which State agency was the lead agency (i.e., responsible) for developing this MOA plan?
- B. Which State agencies other than the lead agency participated in the development of this MOA plan?
- C. Which advisory groups or stakeholders were involved and to what extent?

II. PLAN FOR PERFORMING OVERSIGHT RESPONSIBILITIES

This subpart of the MOA plan is intended to set out in sufficient detail the State agency's plans for fulfilling its obligations under *Section II(B) of the Guidelines* to ensure that its subrecipients are complying with the civil rights laws.

The State agency responsible for the administration of vocational education programs must adopt a compliance program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex or handicap by its subrecipients. (A "subrecipient," in this context, is a local agency or vocational education center that receives financial assistance through a State agency.)

It is recommended that Part II outline a program that includes procedures for identifying potential discrimination through review of data and subrecipient monitoring, if necessary,

as well as procedures for addressing voluntary corrective action with subrecipients who are found to be discriminating.

A. To address *Section II(B)1 of the Guidelines*:

Collecting and analyzing civil rights related data and information that subrecipients compile for their own purposes or that are submitted to State and Federal officials under existing authorities.

Describe the State agency's plans for collecting and analyzing civil rights related data and information that subrecipients compile for their own purposes or that are submitted to State and Federal officials under existing authorities. The material that follows provides suggestions for structuring the various aspects of the State agency's program. It will be up to each individual State agency to determine the details of its program for assisting and monitoring its subrecipients.

It is recommended that States include data collected under Perkins V, Section 113(b)(3)(C) (Accountability – State Report) and Section 134 (Local Application and Comprehensive Needs Assessment), in addition to the data comparing total institutional enrollment to CTE enrollment by race, sex, and disability, to perform these oversight responsibilities.

B. Describe the processes and procedures the State will implement to conduct periodic compliance reviews of selected subrecipients. States are encouraged to build the compliance reviews into existing systems (for example: CTE program approval processes, Consolidated Annual Report preparations and analysis, and Perkins V monitoring), and to target for review those subrecipients with the greatest potential for civil rights noncompliance.

It is recommended that this part of the MOA plan describe the procedures the State agency will follow to comply with the requirements set forth in *Section II(B)2 of the Guidelines*:

Conducting periodic compliance reviews of selected subrecipients (i.e., an investigation of a subrecipient to determine whether it engages in unlawful discrimination in any aspect of its program); upon finding unlawful discrimination, notifying the subrecipient of steps it must take to attain compliance and attempting to obtain voluntary compliance.

C. Describe the processes and procedures that will be followed upon finding unlawful discrimination. This section should include the process for notifying the subrecipient of steps it should take to attain compliance and processes the State agency will follow in attempting to obtain voluntary compliance. In addition, this section should include the process states will use to engage OCR in compliance and enforcement activities.

III. TECHNICAL ASSISTANCE FOR SUBRECIPIENTS

How does the State plan to conduct outreach to subrecipients, offer technical assistance, and provide opportunities for subrecipients to request technical assistance to improve equal access to CTE based on race, color, national origin, sex, or disability? How will the State use Federal (OCR) and other resources to support its technical assistance efforts? It is recommended that this part describe the procedures the State agency will follow to comply with the requirements set forth in *Section II(B)3 of the Guidelines*.

Providing technical assistance upon request to subrecipients. This includes assisting subrecipients identify unlawful discrimination and instructing them in remedies for and prevention of such discrimination.

This subpart of the MOA is intended to highlight the role of the State agency in working with subrecipients to provide technical assistance to prevent, detect, and correct discrimination in career and technical education programs.

IV. REPORTING TO THE DEPARTMENT

While not a required element of a State MOA plan, the *Guidelines* require each State agency to periodically report on its activities. The Department expects each State agency to submit a civil rights compliance report to OCR and OCTAE as a narrative attachment in the State's Consolidated Annual Report for Perkins V every second year – i.e., biennially.

It is recommended that the report include the State agency's compliance activities, the subrecipients that have been found to be in possible noncompliance, and the steps the State agency has taken to bring each subrecipient into compliance. It is recommended that the biennial report contain the following information:

- A. The staff resources allocated by the State agency to the MOA compliance program during each year of the reporting period;
- B. A description of the State agency's compliance with Section II(A) of the *Guidelines* (relating to distribution of funds, admissions and administration, approval of local entity action, and conducting State-run programs).
- C. A list of the subrecipients for which the State conducted compliance reviews
- D. Copies of any written findings or compliance plans issued to any subrecipient; and
- E. A description of the technical assistance services that were offered to subrecipients to address gaps in access and success for CTE students in CTE programs.

An additional element is invited: a statement discussing which Federal civil rights resources were found to be helpful in carrying out the State's MOA work, and comments

on any Federal resources that should be developed, revised, improved, or eliminated for the benefit of State agencies in the administration of CTE.