

OCR Changes in Policies, Practices and Guidance: Understanding and Adapting to the New Approach



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What is OCR?

- U.S. Department of Education, Office of Civil Rights
- Responsible for enforcing federal civil rights laws
 - Title IV and Title VI of the Civil Rights Act of 1964 (race, color, national origin)
 - Title IX of the Education Amendments of 1972 (sex)
 - 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)
- 12 Regional Enforcement Offices – responsible for investigating complaints, conducting compliance reviews, monitoring corrective actions

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How does OCR get involved?

- Technical Assistance
- Compliance Reviews
 - No cause necessary; OCR decides who to investigate
 - Hot Button Issues – for example, restraint and seclusion
- Directed Investigations
 - Web accessibility
- Complaint Investigations
 - Anyone can file a complaint; does not have to be a victim of discrimination
 - Complaints are on the rise
 - OCR investigator caseload has gone from 15 to 41 between 2005 and 2016
- Civil Rights Data Collection
 - Could trigger compliance review or directed investigation

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Issues Investigated

- Student Recruitment and Admissions
 - Access and outreach
- Discipline
 - Disparities by race, disability, sex
- Disability Discrimination
 - Provision of FAPE/appropriate services
 - Accessibility – buildings and activities
 - Bullying/harassment
- English Language Learners
 - Access to appropriate alternative language programs
 - Language access
- Race Discrimination
 - Student assignment policies
 - ability grouping, access to advanced programs, disproportionate representation in remedial courses
 - Resource allocation
 - Admissions/desegregation
- Title IX
 - Single Sex Schools/Classrooms
 - Sexual harassment/violence
 - Equal opportunity in athletics
 - Treatment of pregnant students

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OCR Complaint Investigations

- OCR approach has changed from Obama administration to Trump administration
- Case Processing Manual
 - 2015
 - March 2018
 - “[OCR] has undertaken a routine revision of its CPM to improve efficiency, effectiveness, and clarity ... Case processing procedures in the new CPM allow OCR to ... improv[e] OCR’s management of its docket, investigations, and case resolutions.”
 - Lots of criticism and even a lawsuit by civil rights groups
 - November 2018
 - After receiving “important and constructive feedback” on the March 2018 revisions, “[w]e have determined that additional revisions will help improve our work and allow us to be more responsive to students, stakeholders and our staff.”

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OCR Investigations

- Schools should engage counsel when notified of a complaint or OCR investigation/compliance review
- Evaluate Complaint/Determine Whether to Open Investigation
- Resolution Options
- Data Request/Investigation
- Letter of Findings
- Resolution Agreement
- Enforcement Action

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Opening Investigation

- Jurisdiction
- 180 day “statute of limitations,” unless limited exceptions apply
- Generally, statistical data alone are not sufficient to warrant opening an investigation, but can serve to support the opening of an investigation when presented in conjunction with other facts and circumstances
 - This is a change from March 2018 - Written information that relies exclusively on statistical data, media reports, journals/studies, and/or other published articles as the basis for the alleged discrimination
- Copy of complaint now available to school
 - 2015 - No right to obtain complaint outside of FOIA process
 - March 2018 – copy of complaint provided upon request

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Systemic Violations

- 2015
 - OCR had authority to expand scope of investigation for systemic violations and was reluctant to close complaints or allow for resolution when there were potential systemic issues
 - Data requests/investigation were very broad – wanted information about all students who were similarly situated
- 2018
 - No reference to systemic violations – focus is on actual allegations in the complaint
 - data request/investigations more narrow

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Dismissal of Allegations

- OCR has discretion to dismiss allegations at any point
- 2018 revisions provide for more dismissal options
 - 3 causes for dismissal in 2015; 18 now (21 in March 2018)
 - Fail to state a violation of law
 - Allegation lacks sufficient detail or is so speculative, conclusory⁸ or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring
 - Statute of limitations
 - Same or similar allegation has been made with another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings
 - allegations have been resolved
 - mootness

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Resolution Options

- Rapid Resolution Process
 - Expanded in 2018 to include any statutory area enforced by OCR
- Facilitated Resolution Process
 - No longer just “early resolution” process – can be used at any time
 - OCR can suspend investigation for up to 30 days
- Resolution agreement reached during investigation (302 Agreement/Voluntary Resolution Agreement)
- Finding of Noncompliance

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Questions? Please contact us.

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