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# THE OCR TODAY: CHANGES IN PRIORITIES AND PROCEDURES

**MO-CASE 2018 Fall Conference  
Law Seminar**

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*Date:*  
**September 23, 2018**

**DIFFERENT**  
BY DESIGN

# OCR: THE BASICS

*The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.*

# OCR: THE BASICS

- Functions:
  - Resolving complaints of discrimination
  - Compliance reviews
  - Technical assistance
- Structure:
  - 12 enforcement offices
  - 2 Enforcement Directors
  - Administrative office in Washington, D.C.

# OCR: THE LAWS

- Title VI of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Section 504 of the Rehabilitation Act of 1973
- Title II of the Americans with Disabilities Act
- Age Discrimination Act of 1975
- Boy Scouts of America Equal Access Act

# OCR: THE LAWS

- Section 504 and Title II of the ADA
  - Prohibit discrimination on the basis of disability
  - Areas of complaint:
    - FAPE
    - Discrimination in discipline
    - Accessibility of facilities, programs, and resources
    - Bullying and harassment

# OCR: GUIDANCE

- Rights of Students with Disabilities in Charter Schools (December 2016)
- Restraint & Seclusion (December 2016)
- Parent & Educator Resource Guide to Section 504 (December 2016)
- Prevention of Racial Discrimination in Special Education (December 2016)

# OCR: GUIDANCE

- Guidance on Helping Students with Diabetes (October 2016)
- ADHD Guidance (July 2016)
- Guidance Addressing the Risk of Measles while Protecting Rights of Students with Disabilities (March 2015)
- Guidance on Effective Communication for Students with Hearing, Vision, or Speech Disabilities (November 2014)
- Guidance on Bullying of Students with Disabilities (October 2014)

# OCR: REQUIREMENTS

- Notice of Nondiscrimination
  - Required under each law
  - Can combine into one notice – OCR’s preference
  - Title IX and Section 504 require designation of compliance coordinator
    - If two separate compliance coordinators, identify BOTH in the notice
  - Many include contact information for OCR – make sure the address is current!
  - Publish in handbooks, online, newsletters, etc.



# OCR: REQUIREMENTS

- Notice of Nondiscrimination (con't.)

- Sample:

- The [NAME OF RECIPIENT] does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person [OR INDIVIDUALS] has [HAVE] been designated to handle inquiries regarding the non-discrimination policies: [NAME AND/OR TITLE, ADDRESS, TELEPHONE]
- Any person who is unable to resolve a problem or grievance arising under any of the laws and regulations cited above may contact the Office for Civil Rights, Region VII, One Petticoat Lane, 1010 Walnut Street, 3rd floor, Suite 320, Kansas City, MO 64106; telephone (816) 268-0550.

# OCR: REQUIREMENTS

- Nondiscrimination policies
  - Ensure compliance coordinator is designated and identified
  - Identify grievance procedure
  - Identify a separate process for Section 504 complaints regarding FAPE – independent hearing officer
  - Review timelines
  - Publication

# OCR: REQUIREMENTS

- Nondiscrimination policies

- Training!!

- Does your compliance coordinator know that he/she is the compliance coordinator?
    - Consider training for the compliance coordinator
    - At a minimum, review nondiscrimination policies each year with both staff and students
    - Training should include examples of prohibited conduct & information about what to do if become aware of a complaint

# OCR: RECENT DEVELOPMENTS

- June 2017 – Internal guidance memorandum
  - Relaxed data collection guidelines
  - Only open “systemic” or “class action” complaint when systemic issue is alleged
  - Emphasis on swiftly addressing complaints & reasonable resolutions
- Withdrawal of “Dear Colleague” Guidance Letters
  - February 2017 – Guidance on Transgender Students
  - September 2017 – Guidance on Sexual Violence (2011 & 2014)
  - July 2018 – Guidance regarding affirmative action
- March 2018 – New Case Processing Manual

# OCR: PROCESS

- Complaint Filed

- Jurisdiction?

- The complaint must allege, or OCR must be able to infer from the facts given, an allegation of (1) discrimination based on race, color, national origin, sex, disability or age; (2) discrimination in violation of the Boy Scouts of America Equal Access Act of 2001; or (3) retaliation
    - Recipient of federal funds? (except Title II of the ADA)

- Timely?

- 180 calendar days or waiver

# OCR: PROCESS

- Complaint Filed
  - Evaluation stage (NEW!) – Dismissal of Allegations:
    - ✓ Allegation fails to state a violation of law enforced by OCR
    - ✓ Allegation lacks sufficient detail
    - ✓ Allegation is so speculative, conclusory, or incoherent that OCR cannot infer discrimination may have occurred
    - ✓ Based upon review of information from complainant, OCR unable to conclude that allegation establishes violation of law

# OCR: PROCESS

- Evaluation stage (NEW!) – Dismissal of Allegations (con't):
  - ✓ Allegation not timely filed
  - ✓ Consent form not signed by complainant
  - ✓ Same or similar allegation filed with another federal, state, or local civil rights enforcement agency, or through a district's internal grievance procedure
  - ✓ Same or similar allegation filed with state or federal court
  - ✓ OCR obtains credible information indicating allegations are currently resolved or no longer appropriate for investigating

# OCR: PROCESS

- Evaluation stage (NEW!) – Dismissal of Allegations (con't):
  - ✓ Complaint filed against the same recipient raises the same or similar allegation(s) based on the same operative facts that was previously dismissed or closed by OCR
  - ✓ OCR has recently investigated or is currently investigating the same or similar allegation(s) based on the same operative facts involving the same recipient
  - ✓ Complainant withdraws the complaint
  - ✓ OCR transfers to another agency for investigation



# OCR: PROCESS

- Evaluation stage (NEW!) – Dismissal of Allegations (con't):
  - ✓ Death of the complainant
  - ✓ OCR's ability to investigate is substantially impaired by the complainant's refusal to provide information
  - ✓ Lack of jurisdiction
  - ✓ Complaint is a continuation of a pattern of complaints previously filed with OCR by an individual or group against multiple recipients or a complaint is filed for the first time against multiple recipients that, viewed as a whole, places an unreasonable burden on OCR's resources
  - ✓ Allegation is moot

# OCR: PROCESS

- Investigation

- Notice of complainant's identity – can now request a copy of the complaint itself
- Timeline for response – more flexibility
- Requests for information & documents – more limited
  - Records of student
  - Records of other students
  - Data
  - Written response
- Interviews
  - On-site
  - Telephone

# OCR: PROCESS

- Letters of Finding
  - Insufficient evidence to support a conclusion of noncompliance (appeal eliminated)
  - Sufficient evidence to support a conclusion of noncompliance & resolution agreement reached
    - Resolution letter

# OCR: PROCESS

- Letters of Finding

- Sufficient evidence to support a conclusion of noncompliance
  - Resolution agreement – “when fully implemented, the resolution agreement will address all of OCR’s compliance concerns”
  - Must respond to proposed resolution within 30 days
  - 90 days to negotiate a resolution
  - Impasse Letter
  - Letter of Finding issued – 30 days to reach agreement

# OCR: PROCESS

- Enforcement Action
  - Letter of impending enforcement action
  - Possible deferral of funds
  - Initiation of enforcement action
    - Notice of hearing when deferral of federal funds imposed
    - Possible referral to Department of Justice

# OCR: PROCESS

- Resolution Agreement
  - Signed by person with authority
  - Include:
    - Specific steps by district to resolve compliance issues
    - Dates for implementing each step & submission of reports
    - Timeframes for implementation
    - Agreement to provide additional information as necessary for OCR to determine whether terms of agreement have been met
  - Notice of Breach – 60 days to cure

# OCR: PROCESS

- Other Options

- Rapid Resolution Process

- Where recipient has already taken action that will resolve the complaint → Dismissal
    - Recipient has indicated willingness to take action to resolve the complaint → Resolution Agreement
    - OCR obtains sufficient information to make compliance determination → Letter of Finding or Letter of Finding + Resolution Agreement

# OCR: PROCESS

- Other Options

- Facilitated Resolution Between the Parties (FRBP)

- OCR facilitator
- Written agreement – no monitoring by OCR
- If breach, complainant can file another complaint

- Section 302 Resolution Agreement

- Any time before the conclusion of an investigation, when the recipient expresses interest in resolving the complaint
- May still have to provide some information
- Resolution letter



# OCR: PROCESS

- Compliance Reviews
  - Title VI regulations require OCR to initiate “periodic compliance reviews” to assess practices of recipients
  - Incorporated by reference for other statutes
  - Broad discretion for OCR
- Directed Investigations
  - Matter warrants immediate attention
  - Not otherwise being addressed through the complaint, compliance review, or technical assistance process

# OCR: SUMMARY OF CHANGES

- Easier to get complaints dismissed
- More flexibility on timelines
- Narrower scope of interviews
- More focus on technical assistance

# OCR: HELPFUL HINTS

- Review policies and procedures
- Be proactive in training – and document it
- Remember Technical Assistance option – but seek guidance first
  - Possibility for training
  - Consultation before implementing policy/practice
- When issues arise in schools, consider whether any of these laws are implicated
- Follow your procedures!

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