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## OCR Case Processing Manual (CPM)

## INTRODUCTION

The mission of the Office for Civil Rights (OCR) is to ensure equal access to education and to promote education excellence throughout the nation through vigorous enforcement of civil rights. The [Case Processing Manual \(CPM\)](#) provides OCR with the procedures to promptly and effectively investigate complaints and compliance reviews, issue findings, and to secure resolution agreements that remedy discriminatory policies or practices identified by OCR.

Revised January 2010 replaces the May 2008 version of the CPM.

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**Article I EVALUATE THE COMPLAINT**

If OCR determines that written information provided to the U.S. Department of Education is a complaint, OCR will establish whether it has sufficient information to proceed to investigation. OCR will provide complainants with assistance regarding the nature of their rights and of the OCR investigation process. Additionally, OCR staff will provide appropriate assistance to complainants who are persons with disabilities, individuals of limited English proficiency or persons whose communication skills are otherwise limited.

To investigate the complaint, OCR may need to collect and analyze personal information. The Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information collected by OCR. OCR does not reveal the name or other personal information about an individual unless it is necessary for completion of an investigation or for enforcement activities against an institution that violates the laws, or unless such information is required to be disclosed under the FOIA or the Privacy Act.

All information within case files is subject to Freedom of Information Act and Privacy Act. (See [Section 603](#).)

**Section 101 Determine What Constitutes a Complaint**

A complaint is a written or electronic statement to the Department alleging that the rights of one or more persons have been violated and requesting that the Department take action. Complaints may be filed online as well as by mail, fax, or in person. Some correspondence that OCR receives, even if it concerns an alleged civil rights violation, may not be a complaint. Upon receipt, OCR will determine whether or not the correspondence is a complaint. If a complaint is filed electronically, by e-mail or fax, a signed consent form must be secured in addition to a complaint form.

The following are not complaints:

- (a) Oral allegations that are not reduced to writing;
- (b) Anonymous correspondence;
- (c) Courtesy copies of correspondence or a complaint filed with others; or
- (d) Inquiries that seek advice or information but do not seek action or intervention from the Department.

The complaint should include a written explanation of what happened; a way to

contact the complainant (if the complaint is filed by e-mail OCR must have the complainant's actual name and address); identification of the person or group injured by the alleged discrimination; and identification of the person or institution alleged to have discriminated.

### **Section 102 Assign a Case Number and Establish a File for Each Complaint**

The case opening date is the date a complaint is received by the appropriate OCR Enforcement Office. Complaints received by email or by fax over a weekend or on a holiday will be considered received on the next workday. Upon receipt by the appropriate OCR Enforcement Office, OCR assigns the incoming complaint a case number. The Enforcement Office establishes a case file for each complaint. The complaint, however it was filed, must be included in the case file.

In cases of multiple complaints, the following guidelines will be applied in determining how many case numbers should be assigned:

- (a) The Enforcement Office will assign a separate case number to each recipient<sup>1</sup> named in the complaint. If, during the course of the investigation, OCR determines that other recipients are involved in the alleged acts of discrimination, the Enforcement Office will open separate complaints and assign a case number for each such recipient; the case opening date for such complaints is the date on which OCR determines that other recipients are involved.
- (b) Complaints from more than one person against the same recipient that contain different allegations are treated as separate complaints.
- (c) Complaints filed by more than one person that raise substantially identical allegations against the same recipient may be treated as one complaint and assigned one case number or, if received later, incorporated into an existing complaint. If the complaints raise distinct allegations, the Office should assign separate case numbers.
- (d) New allegations filed by the same person against the same recipient after complaint resolution has begun are reviewed on a case-by-case basis to determine whether the allegations should be added to the open complaint or treated as a new complaint.

### **Section 103 Acknowledge the Complaint**

OCR will promptly acknowledge receipt of the complaint. The complainant will be informed that the complaint will be evaluated to determine whether OCR has authority to investigate the allegations and that further communications about the complaint will be forthcoming. If not already provided by the complainant, a consent form will be included with OCR's acknowledgement letter. The complainant will be informed that the complaint will be closed if written consent is not received within 20 calendar days of the date of the acknowledgement letter. The response will also include a copy of "OCR Complaint Processing Procedures."

When disclosure of the identity of the complainant is necessary, OCR will require written consent before proceeding. OCR does not need a specific form from the complainant, but does need written confirmation that the complainant authorizes OCR to disclose the complainant's name. A complainant filing on behalf of another person is responsible for securing the written consent from that individual, including when a parent files for a student over the age of 18. Where the person is a minor (under the age of 18) or a legally incompetent adult, the consent form must be signed by that person's parent or legal guardian. Parental or legal guardian consent may not be required for persons under the age of 18 if they are emancipated under state law and are therefore considered to have obtained majority. Proof of emancipation or incompetence must be provided. The written consent should include an assurance of cooperation with OCR's investigation and complaint resolution activities. OCR will inform the complainant that the complaint will be closed if written consent is not received within 20 calendar days of the date of request. If OCR does not receive such timely written consent, the complaint will be dismissed, and the complainant informed in writing.

### **Section 104 Determine Subject Matter Jurisdiction**

OCR must have jurisdiction over the subject matter of the complaint. For OCR to establish 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 for the purpose of interfering with any right or privilege secured by the civil rights laws enforced by OCR, or as a result of making a complaint, testifying, or participating in any manner in an OCR proceeding. 34 C.F.R. §§ 100.7(e), 104.61, 106.71, 108.9, 110.34; 28 C.F.R. § 35.134.

OCR has jurisdiction under the following statutory authorities:

- (a) **Title VI of the Civil Rights Act of 1964**, 42 U.S.C. §§ 2000d et seq., 34 C.F.R. Part 100

Under Title VI, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and certain employment complaints based on race, color, or national origin. With respect to employment, OCR has jurisdiction if (1) the alleged discrimination could adversely affect program beneficiaries on the basis of race, color, or national origin, or (2) a primary objective of the federal financial assistance is to provide employment. See [Section 601\(b\)](#) for processing Title VI complaints with respect to proprietary vocational schools. For employment complaints, OCR follows procedures consistent with the employment coordinating regulations; 28 C.F.R. Part 42 and 29 C.F.R. Part 1691. See [Section 601\(c\)](#) regarding these procedures.

**(b) Title IX of the Education Amendments of 1972**, as amended, 20 U.S.C. §§ 1681 et seq., 34 C.F.R. Part 106

Under Title IX, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and employment complaints based on sex that involve educational programs and activities. For employment complaints, OCR follows procedures consistent with the employment coordinating regulations; 28 C.F.R. Part 42 and 29 C.F.R. Part 1691. See [Section 601\(c\)](#) regarding these procedures.

**(c) Section 504 of the Rehabilitation Act of 1973**, as amended, 29 U.S.C. § 794, 34 C.F.R. Part 104

Under Section 504, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and employment complaints based on disability. For employment complaints, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640, which address coordinating disability employment complaints with DOJ and EEOC. See [Section 601\(e\)](#) regarding these procedures.

**(d) Age Discrimination Act of 1975**, 42 U.S.C. §§ 6101 et seq., 34 C.F.R. Part 110

Under the Age Discrimination Act, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents). See [Section 601\(a\)2](#) for instructions regarding referral of complaints to the Federal Mediation and Conciliation Service (FMCS) before investigation. OCR does not have jurisdiction over employment under the Age Discrimination Act. See [Section 601\(a\)\(1\)](#) for procedures on referral to EEOC.

**(e) Title II of the Americans with Disabilities Act of 1990**, 42 U.S.C. §§ 12131 et seq., 28 C.F.R. Part 35

Under Title II, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and employment complaints based on disability. For employment complaints, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640, which address coordinating disability employment complaints with DOJ and EEOC. (See [Section 601\(e\)](#) regarding these procedures.)

**(f) Boy Scouts of America Equal Access Act of 2001**, 20 U.S.C. § 7905, 34 C.F.R. Part 108

Under the Boy Scouts Act, OCR has jurisdiction to investigate complaints involving the denial of equal access or a fair opportunity to meet to, or discrimination against, any group officially affiliated with the Boy Scouts of America or officially affiliated with any other youth group listed in Title 36 of the United States Code.

### Section 105 Determine Personal Jurisdiction

OCR must also have jurisdiction over the institution alleged to have discriminated. Under Title VI, Title IX, Section 504, and the Age Discrimination Act, OCR has jurisdiction over institutions that receive federal financial assistance from the Department and institutions for which OCR has been delegated authority from other federal agencies. Under Title II, OCR has jurisdiction over public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries – regardless of whether these institutions receive federal financial assistance. Under the Boy Scouts Act, OCR has jurisdiction over public elementary schools, public secondary schools, local educational agencies and State educational agencies that receive funds made available through the Department. If a complaint is filed against an institution OCR does not cover or does not state a claim under the statutes identified above, OCR will not proceed further. When appropriate, the Enforcement Office will refer the complaint to the appropriate agency.

### Section 106 Determine Whether the Allegations Are Timely<sup>2</sup>

OCR will take action only with respect to those complaint allegations (except allegations of age discrimination and, in special circumstances, allegations relating to Early Complaint Resolution agreements) that have been filed within 180 calendar days of the date of the last act of alleged discrimination unless the complainant is granted a waiver under Section 107. With respect to complaint allegations of age discrimination, OCR will take action with respect to those complaint allegations that have been filed within 180 days of the date the complainant first had knowledge of the alleged discrimination. With respect to the timeliness requirements for allegations relating to Early Complaint Resolution agreements, see [Section 204](#).

- (a) the date the complaint is postmarked or received by any Department office<sup>3</sup>, whichever is earlier; or
- (b) for Title II complaints referred from DOJ, the date the complaint is received by DOJ.

Timely allegations may include those where the complainant alleges a continuing discriminatory policy or practice. The person or team evaluating the complaint allegations shall make the determination of the existence of a continuing discriminatory policy or practice, in consultation with the Chief Attorney or designee.

### Section 107 Determine Whether a Waiver Should be Granted

If a complaint allegation is not filed in a timely manner, OCR will notify the complainant of the opportunity to request a waiver. The Office Director, or designee, may grant a waiver of the 180-day filing requirement for good cause shown, such as under any of the following circumstances:

- (a) The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint allegation was filed within 60 days after the complainant became aware of the alleged discrimination (note that lack of previous awareness of OCR or the civil rights laws enforced by OCR is not a basis for a waiver);
- (b) The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint allegation was filed within 60 days after the period of incapacitation ended;
- (c) The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another federal, state, or local civil rights enforcement agency, or federal or state court, and filed a complaint with OCR within 60 days after the other agency had completed its investigation or, in the case of a court, reached a determination, or the agency or court notified the complainant that it would take no further action;
- (d) The complainant filed, within the 180-day period, an internal grievance with a recipient of federal financial assistance, or a due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded; or
- (e) Unique circumstances generated by OCR's action have adversely affected the complainant.

If a waiver is not requested or requested but not granted, the allegation will be dismissed and the complainant informed of the decision.

### **Section 108 Dismissal of Complaint**

OCR will assist the complainant in understanding the information that OCR requires in order to proceed to the investigation of the complainant's allegation(s). This will include explaining OCR's investigation process and the rights of the complainant under the statutes and regulations enforced by OCR. OCR will also, to the extent possible, specifically identify the information necessary for OCR to proceed to investigation of the complainant's allegation(s). OCR staff will provide appropriate assistance to complainants who are persons with disabilities, individuals of limited English proficiency, or persons whose communication skills are otherwise limited.

If OCR decides not to open a complaint for investigation or to continue with an investigation for any of the reasons identified in [Sections 104, 105, 106, and/or 107](#), it will dismiss the complaint allegation.

OCR will also dismiss an allegation for the following reasons:

- (a) The allegation fails to state a violation of one of the laws OCR enforces; or
- (b) The allegation lacks sufficient detail (i.e., who, what, where, when, how) for OCR to infer that discrimination or retaliation may have occurred or is occurring; or
- (c) The allegation is so speculative, conclusory, or incoherent that it is not sufficiently grounded in fact for OCR to infer that discrimination or retaliation may have occurred or is occurring.

Before dismissing a complaint allegation under (b) or (c) above, OCR will contact the complainant and explain in writing (by letter or via electronic mail) the information necessary for OCR to proceed to investigation of the complaint allegation, ask the complainant to provide this information to OCR within 20 calendar days of the date of the written request and advise the complainant that the complaint allegation will be dismissed if the information is not received by that date. OCR will dismiss the complaint allegation if the requested information is not received within 20 calendar days of the date of the written request.

Dismissals under Section 108(a), (b) and (c) must be approved by the Chief Attorney or designee. The Director, in consultation with the Enforcement Director, must also approve any complaints dismissed under (c) above.

If a complaint allegation is dismissed, OCR will issue a letter of dismissal to the complainant explaining the reason for the decision.

### **Section 109 Opening the Complaint for Investigation**

When OCR opens a case for investigation, it will issue letters of notification to the complainant and the recipient that contain, at a minimum, the following information:

- OCR's jurisdiction with applicable regulatory citations;
- the complaint allegations;
- standard paragraph advising that OCR is a neutral fact finder and citing the [Case Processing Manual](#);
- information about OCR's Early Complaint Resolution process; and
- contact information for the OCR staff person who will serve as the complainant's and recipient's primary contact during the investigation and resolution of the complaint.

A copy of "OCR Complaint Processing Procedures" will be included with the letter to the recipient.

## Section 110 Determine Whether OCR Will Administratively Close a Complaint<sup>4</sup>

OCR will close a complaint for the following reasons:

(a) The same complaint allegations have been filed by the complainant against the same recipient with another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, *and*

1. for pending complaint allegations, OCR anticipates that there will be a comparable resolution process under comparable legal standards; *i.e.*, all allegations will be investigated, appropriate legal standards will be applied, and any remedies secured will meet OCR's standards. OCR will advise the complainant that she or he may re-file within 60 days of the completion of the other entity's action. Generally, OCR will not conduct its own investigation; instead, OCR reviews the results of the other entity's determination and determines whether the other entity provided a comparable process and met appropriate legal standards.

2. for resolved complaint allegations, the resolution meets OCR regulatory standards; *i.e.*, all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet OCR's standards.

(b) The same allegations have been filed by the complainant against the same recipient with state or federal court. An OCR complaint may be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. (Dismissal with prejudice is considered a decision on the merits.)

(c) The complaint allegations are foreclosed by previous decisions of the federal courts, the U.S. Secretary of Education, or the U.S. Department of Education's Civil Rights Reviewing Authority.

(d) The complaint allegations are foreclosed by OCR policy determinations. (*e.g.*, OCR's policy to refrain from assessing the appropriateness of decisions made by a group of knowledgeable persons convened pursuant to Section 504, or to refrain from assessing the appropriateness of pedagogical decisions.)

(e) OCR obtains credible information indicating that the allegations raised by the complaint have been resolved, and there are no class-wide allegations. In such a case, OCR will attempt to ascertain the apparent resolution. If OCR determines that there are no current allegations appropriate for further complaint resolution, the complaint will be closed.

(f) The Enforcement Office determines that its ability to complete the investigation is substantially impaired by the complainant's or injured party's refusal to provide information that is reasonably accessible to the complainant and is necessary for investigation of the complaint.

(g) The Enforcement Office determines that its ability to complete the investigation is substantially impaired by its inability to contact the complainant in order to obtain information that is necessary for investigation of the complaint. The Office will include documentation in the case file of its efforts to contact the complainant by phone, in writing, or via electronic mail to request the necessary information. OCR will not close the complaint until more than 20 calendar days have passed since the date of OCR's attempt to contact the complainant.

In addition, OCR may close a complaint for the following reasons:

(h) The same complaint allegations have been filed by someone other than the complainant against the same recipient with another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, *and*

1. for pending complaint allegations, the relief sought must be the same as the remedy that would be obtained if OCR were to find a violation of the complaint and OCR anticipates that there will be a comparable resolution process under comparable legal standards; *i.e.*, all allegations will be investigated, appropriate legal standards will be applied, and any remedies secured will meet OCR's standards. OCR will advise the complainant that she or he may re-file within 60 days of the completion of the other entity's action. Generally, OCR will not conduct its own investigation; instead, OCR reviews the results of the other entity's determination and determines whether the other entity provided a comparable process and met appropriate legal standards;

2. for resolved complaint allegations, any relief obtained is the same as the remedy that would be obtained if OCR were to find a violation of the complaint and the resolution meets OCR regulatory standards; *i.e.*, all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet OCR's standards.

(i) The same allegations have been filed by someone other than the complainant against the same recipient with state or federal court. The relief sought must be the same as the remedy that would be obtained if OCR were to find a violation of the complaint. An OCR complaint may be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. (Dismissal with prejudice is considered a decision on the merits.)

(j) The complaint is a continuation of a pattern of complaints previously filed by the complainant or someone other than the complainant involving the same or

similar allegations against the same recipient or against another recipient that have been found to be without merit by OCR.

(k) The same issues involving the same recipient have been addressed in a recent OCR compliance review.

(l) The complainant withdraws the complaint.

(m) OCR transfers or refers the complaint to another agency for investigation. For clarification see [Section 601](#), Special Intake Procedures.

(n) The death of the complainant or injured party makes it impossible to investigate the allegations fully, or when the death of the complainant or injured party forecloses the possibility of relief because the complaint involved potential relief solely for the complainant or injured party.

(o) The allegations are moot because:

1. There are no current allegations appropriate for further investigation and resolution;
2. There are no class-wide allegations; and
3. There is no need for the recipient to change its policies or procedures in order to protect against a future violation.<sup>5</sup>

### **Section 111 Administrative Closure of the Complaint**

If OCR closes a complaint for any of the reasons identified in Section 110, it will issue a letter of administrative closure to the complainant and the recipient explaining the reason for the decision. Closures under Section 110 must be approved by the Chief Attorney, or designee. Closures under Section 110(h), (i) and (k) must also be approved by the Director.

### **Section 112 Request for Reconsideration of Administrative Closure or Dismissal of the Complaint**

OCR is committed to a high quality resolution of every case. OCR affords an opportunity to the complainant for reconsideration of administrative closures or dismissals. The reconsideration process provides an opportunity for complainants to bring information to OCR's attention that would change OCR's decision to administratively close or dismiss a complaint. The reconsideration process will not be a *de novo* review of OCR's decision.

Notice of the reconsideration process is provided to complainants in the information sheet that is enclosed with OCR's letter acknowledging receipt of the complaint. Notice of OCR's reconsideration process is also published on OCR's Internet site: <http://www.ed.gov/about/offices/list/ocr/complaints-how.html>.

The complainant may send a request for reconsideration to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR's administrative closure or dismissal letter. The complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, *and* how this would change OCR's determination in the case. Failure to do so may result in the denial of the request for reconsideration.

Although a complainant generally is expected to submit a request for reconsideration within 60 days of the date of the administrative closure or dismissal letter, the Deputy Assistant Secretary for Enforcement may exercise discretion in granting a waiver of the 60-day timeframe where:

1. the complainant was unable to submit the request for reconsideration within the 60-day timeframe because of illness or other incapacitating circumstances and the request was filed within 30 days after the period of illness or incapacitation ended; or
2. unique circumstances generated by agency action have adversely affected the complainant.

A written decision in response to a request for reconsideration will be issued as promptly as possible. The decision of the Deputy Assistant Secretary for Enforcement constitutes the agency's final decision with respect to administrative closures and dismissals.

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## **Article II EARLY COMPLAINT RESOLUTION (ECR)**

The Early Complaint Resolution (ECR) process facilitates the voluntary resolution of complaints by providing an early opportunity for the parties involved to resolve the allegations.

### **Section 201 Early Complaint Resolution**

#### **(a) OCR's Role**

- To serve as facilitator, upon request of both parties;
- To inform the parties of the procedures, establish a constructive tone, and encourage the parties to work in good faith toward a mutually acceptable resolution;
- To maintain an impartial approach and inform the parties that OCR will not insist on particular terms or any specific resolution;
- To review the allegations and make sure the parties understand the issues that OCR has accepted for investigation, and, as appropriate, facilitating an

- understanding of pertinent legal standards and possible remedies;
- To facilitate a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution; and
- To offer assistance, as appropriate, with regard to reducing any resolution to writing. If an agreement is reached, the parties are informed that OCR will issue a closure letter reflecting the voluntary resolution of the complaint by agreement of the parties.

#### **(b) Role of the Participants**

- To participate in the discussions in good faith;
- To consider offers or suggestions with an open mind and to work constructively toward a mutually acceptable resolution; and
- To implement any agreement in good faith.

Although encouraged early, ECR may take place at any time during the investigative process. OCR does not sign, approve, or endorse any agreement reached between the parties. However, OCR will assist both parties in understanding pertinent legal standards and possible remedies.

#### **Section 202 Initiation and Termination of the ECR Process**

If the Office Director or designee determines that ECR is appropriate and the complainant and the recipient are willing to proceed, the Office Director or designee will designate staff to facilitate an agreement between the recipient and complainant. To the extent possible, staff assigned to conduct ECR of a complaint shall not be staff assigned to the investigation of that complaint.

An Agreement to Participate in ECR must be reviewed and either signed or verbally agreed to by the complainant and recipient. In circumstances where ECR occurs by telephone and verbal acknowledgement is obtained, the ECR facilitator shall send a letter to the parties confirming this agreement.

The period of time that a complaint is in the ECR process (*i.e.*, from the date of approval for ECR by the Office Director or designee to the date of the termination of ECR) shall not count in the 180-day GPRA standard period of time for completion of the investigation of the complaint. However, the Office Director or designee is responsible for ensuring that ECR proceeds without undue delay and that ECR is terminated as soon as it is clear that the parties will not succeed in resolving the complaint.

#### **Section 203 Confidentiality of the ECR Process**

A Confidentiality Agreement must be reviewed and either signed or acknowledged by the ECR facilitator and the parties to the ECR (the complainant or complainant's representative and the recipient or recipient's representative). In circumstances where ECR occurs by telephone and verbal or electronic (email) acknowledgement of the Confidentiality Agreement is obtained, the ECR facilitator shall send a letter to the parties confirming this agreement.

In order to maintain confidentiality of the ECR process, any notes taken during ECR by the facilitator and/or any records or other documents offered by either party to the facilitator during ECR will be kept in a separate file and will not be shared with the staff member(s) assigned to investigate the complaint.

#### **Section 204 Successful Conclusion of ECR**

At the conclusion of ECR, OCR will obtain a copy of a statement that the allegation has been resolved, signed by the complainant, or a copy of any settlement agreement that has been signed by the complainant. Once resolution of any allegation has been obtained, OCR will notify the parties in writing that the allegation(s) has or have been resolved; other outstanding issues, if any, are to be resolved through the investigation and resolution process. (See [Article III](#).) A copy of any ECR agreement between the parties will be attached to the closure letter.

#### **(a) Breach of Agreements**

OCR will not monitor the agreement but will inform the parties that if a breach occurs, the complainant has the right to file another complaint. If a new complaint is filed, OCR will not address the alleged breach of the agreement. Instead, the Office Director, in consultation with the Enforcement Director, will determine whether to investigate the original allegation. When making this determination, the Office Director will consider the nature of the alleged breach, its relation to any alleged discrimination and any other factors as appropriate. To be considered timely, the new complaint must be filed either within 180 days of the date of the original discrimination or within 60 days of the date the complainant obtains information that a breach occurred, whichever date is later.

#### **Section 205 Investigative Determination When ECR is not Achieved**

The office will monitor the process of ECR to ensure adequate time for completion of the investigation in the event that ECR is unsuccessful. Where appropriate, investigation should proceed to ensure completion in accordance with normal case processing standards and timelines.

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### **Article III INVESTIGATION OF THE COMPLAINT**

OCR will ensure that investigations are legally sufficient and that they are dispositive of the allegations raised in the complaint. OCR resolution agreements should be carefully drafted to ensure compliance with the civil rights laws enforced by OCR and thereby further OCR's mission to ensure equal access to education and to promote educational

excellence for all students.

### Section 301 Case Planning

Case planning will begin as early as possible, will be thorough, and will be conducted throughout the life of every case to ensure high quality decisions, prompt investigations and efficient use of OCR resources. Planning decisions will reflect sound legal standards and will be adjusted as necessary to take into account new information obtained during case processing. Management is accountable for effective planning and will participate in critical planning decisions commensurate with the nature and complexity of the case, to ensure consistent high quality casework.

The following essential elements of case planning will be addressed in every OCR case and placed in the file (unless inapplicable):

- (a) Allegation(s)
- (b) OCR's jurisdiction over subject matter and parties
- (c) Legal issue(s)
- (d) Investigation strategy
- (e) Resolution agreement

The case file will contain documentation that supports the decisions made with respect to each of the applicable essential planning elements. Planning documentation should be organized so that it can be readily located in the case file. In routine closures under Article I provisions, the required documentation may be satisfied by the closure letter.

OCR staff will carefully plan all settlement activities. These planning activities will ensure accountability for high quality and consistency with OCR standards and will address:

- (a) required action(s) to achieve compliance,
- (b) dates for completion of specific actions,
- (c) verification/reporting requirements (e.g. a description of specific data, documentation and other needed information),
- (d) dates for reporting to OCR, and
- (e) efficient resource use including:
  1. verification methods (e.g. reports/ reviews and/or onsite visits); and
  2. reporting requirements.

### Section 302 Resolution Agreement Reached During an Investigation

A complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. OCR should inform the recipient that this process is voluntary. OCR's determination that it is appropriate to resolve the complaint during the course of an investigation must be approved by the Office Director or designee. If approved, OCR will immediately notify the complainant of the recipient's interest in resolving the complaint and will keep the complainant informed throughout all stages of this resolution process. The provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation, and will be consistent with applicable regulations. A copy of the resolution agreement will be included with the resolution letter. Resolution letters and agreements must be approved by the Chief Attorney or designee and the Office Director or designee, in consultation with the Enforcement Director. (See [Section 304](#) regarding resolution agreements.)

### Section 303 Investigative Determinations: Letters of Finding

At the conclusion of the investigation, OCR will determine that:

- there is insufficient evidence to support a conclusion of noncompliance; or
- there is sufficient evidence to support a conclusion of noncompliance. (For recipients operating under federal court order see [Section 604](#).)

OCR will issue a letter of finding(s) to the parties. All letters of finding(s) will include a statement that "The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation."

#### (a) Insufficient Evidence Determination

When OCR determines that the evidence does not support a conclusion that the recipient failed to comply with applicable regulations, OCR will issue a letter of finding(s) to the parties. Under this section (303(a)), the letter of finding(s) must include:

1. a statement of the issues raised by the complaint;
2. a statement of OCR's jurisdiction over the complaint; and
3. clear explanation of the pertinent legal standard and factual analysis.

The case file will include an index of documents in the file and a key referencing by tab of the evidence relied upon in making the determination.

The letter of finding(s) must be approved by the Chief Attorney or designee and the Director.

#### (b) Non-Compliance Determination

When OCR determines that a preponderance of the evidence supports a conclusion that the recipient failed to comply with applicable regulations, OCR will prepare a statement of the case (including a proposed resolution agreement), which the Chief Attorney or designee must approve. The statement

of the case must set out the issues investigated; OCR's basis for entering into a resolution agreement; and an explanation of how the terms of the agreement are aligned with the issues investigated and are consistent with applicable regulations. The provisions of the resolution agreement will be aligned with the identified violation(s) and will be consistent with applicable regulations. (See [Section 304](#) for resolution agreement requirements.)

The Office Director, in consultation with the Enforcement Director, must approve the initiation of negotiations and the proposed resolution agreement. Upon approval, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a resolution agreement. If the resolution agreement is signed, a letter of finding(s) will be sent to the parties.

If the recipient does not indicate that it is willing to negotiate a resolution agreement, OCR will inform the recipient that it has 30 calendar days within which to indicate its willingness to do so. OCR will further inform the recipient that if it does not indicate its willingness to voluntarily resolve the identified areas of non-compliance within 30 calendar days, OCR will issue a letter of finding(s).

If OCR has entered into negotiations with a recipient, and the Office Director, in consultation with the appropriate Enforcement Director, determines that the negotiations have reached an impasse, OCR will notify the recipient of the impasse and will inform the recipient that it will issue a letter of finding(s) in 10 calendar days if a resolution agreement is not reached. OCR may continue negotiating during this 10 calendar day period if it is deemed advisable by the Office Director.

This communication with the recipient must be memorialized in the case file.

Under Section 303(b), the letter of finding(s) to the parties must include:

1. a statement of the issues raised by the complaint;
2. a statement of OCR's jurisdiction over the complaint;
3. a clear explanation of the pertinent legal standard and factual analysis;
4. If negotiations have resulted in an agreement, a statement that, when fully implemented, the resolution agreement will address all of OCR's compliance concerns. The letter will include a copy of the agreement; and
5. If negotiations have not resulted in an agreement, a description of OCR's unsuccessful attempts to resolve the complaint.

The case file will include an index of documents in the file and a key referencing by tab of the evidence relied upon in making the determination.

All letters of finding(s) must be approved by the Chief Attorney or designee and the Office Director or designee. In cases where a letter of finding(s) is issued when a recipient does not enter into a resolution agreement, the letter of finding(s) must also be approved by the appropriate Enforcement Director and the Deputy Assistant Secretary for Enforcement.

If the referenced (10 and 30 day) time periods in Section 303(b) have expired and OCR has issued a letter of finding(s) and the recipient has refused to make a commitment to voluntarily resolve the identified areas of noncompliance, the Enforcement Office will follow the procedures set forth in 34 C.F.R. § 100.8. (See also [Section 305](#).)

#### **Section 304 Guidelines for Resolution Agreements**

The complaint will be considered resolved and the recipient deemed compliant if the recipient enters into an agreement that, fully performed, will remedy the complaint (pursuant to Section 302) or identified violations (pursuant to Section 303). A copy of the agreement will be included with the resolution letter (if obtained during the investigation, pursuant to Section 302) or letter of finding(s) (if obtained after a compliance determination is made at the end of the investigation, pursuant to Section 303). Resolution agreement planning will be documented in the case file either separately or by reference to the resolution agreement.

##### **Resolution Agreements:**

1. Must be signed by a person with authority to bind the recipient;
2. Must be approved by the Chief Attorney or designee;
3. Must be approved by the Office Director or designee; and
4. Must include:
  - (i) specific acts or steps the recipient will take to resolve compliance issues;
  - (ii) dates for implementing each act or step; and
  - (iii) dates for submission of reports and documentation verifying implementation.

Where the agreement is memorialized through an exchange of letters, each of the above elements must be satisfied.

#### **Section 305 Letter of Impending Enforcement Action**

(a) If, following the expiration of the 30 calendar day period or the 10 calendar day period referenced in Section 303(b) and the issuance of a letter of finding(s), the recipient has refused to make a commitment to voluntarily resolve the identified areas of noncompliance, the Enforcement Office will prepare a Letter of Impending Enforcement Action. The Letter of Impending Enforcement Action will be prepared in consultation with the Chief Attorney or designee and the Office Director. The following information should be included, as appropriate:

1. A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation;
2. A statement of each issue and the findings of fact for each, supported by any necessary explanation or analysis of the evidence on which the findings are based;
3. Conclusions for each issue that reference the relevant facts, the applicable regulation, and the appropriate legal standards;
4. Notice that the Letter of Impending Enforcement Action is not intended and should not be construed to cover any other issue regarding the recipient's compliance;
5. Notice of the time limit on OCR's settlement process and the consequence of failure to reach settlement;
6. If a decision is made to defer final approval of any applications by the recipient for additional federal financial assistance or, with respect to the Boy Scouts Act, additional funds made available through the Department over what the recipient is presently receiving, the letter also will provide notice of such possible deferral. A separate deferral letter will be prepared if appropriate; and
7. Title II letters will include the following language: "The complainant may file a private suit pursuant to section 203 of the Americans with Disabilities Act, whether or not OCR finds a violation of Title II."

The Enforcement Office should consult with the Enforcement Director, the Deputy Assistant Secretary for Enforcement, and others as appropriate during the preparation of the Letter of Enforcement Action and during any negotiations that may occur after issuance of the letter.

(b.) The Chief Attorney or designee and the Office Director must approve the Letter of Impending Enforcement Action. The Enforcement Director will obtain authorization from the Deputy Assistant Secretary for Enforcement and the Assistant Secretary for issuance of Letter of Impending Enforcement Action by the Enforcement Office.

### **Section 306 Appeal of Letter of Finding**

OCR is committed to a high quality resolution of every case. OCR affords an opportunity to the complainant for appeal of OCR's letters of finding(s) issued pursuant to Section 303(a) of the [Case Processing Manual](#). The appeal process provides an opportunity for complainants to bring information to OCR's attention that would change OCR's decision. The appeal process will not be a *de novo* review of OCR's decision.

Notice of the appeal process is provided to complainants in the information sheet that is enclosed with OCR's letter acknowledging receipt of the complaint. Notice of OCR's appeal process is also published on OCR's Internet site: <http://www.ed.gov/about/offices/list/ocr/complaints-how.html>. In addition, OCR will provide a specific notice of the availability of the appeal process in the letter of finding(s).

The complainant may send an appeal to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR's letter of finding(s). The complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, *and* how this would change OCR's determination in the case. Failure to do so may result in the denial of the appeal.

Although a complainant generally is expected to submit an appeal within 60 days of the date of the letter of finding(s), the Deputy Assistant Secretary for Enforcement may exercise discretion in granting a waiver of the 60-day timeframe where:

1. the complainant was unable to submit the appeal within the 60-day timeframe because of illness or other incapacitating circumstances and the request appeal was filed within 30 days after the period of illness or incapacitation ended; or
2. unique circumstances generated by agency action have adversely affected the complainant.

A written response to an appeal will be issued as promptly as possible. The decision of the Deputy Assistant Secretary constitutes the agency's final decision with respect to letters of finding(s) issued pursuant to Section 303(a) of the [Case Processing Manual](#).

### **Section 307 Monitoring Resolution Agreements**

Effective and vigorous case monitoring is essential to OCR's mission of ensuring compliance with civil rights laws that we enforce and ensuring equal access and promoting educational excellence for all students. OCR will promptly conduct its monitoring activities consistent with the following standards and procedures.

#### **(a) Verification of Recipient's Implementation**

OCR will obtain sufficient information to determine whether the commitments made by the recipient have been implemented consistent with the terms of the settlement agreement. Depending on the nature of the agreement, verification of remedial actions may be accomplished by careful review of reports, documentation and other information submitted by recipients and knowledgeable persons, discussion with the recipients and knowledgeable persons, and/or a site

visit.

### **(b) Responding to Monitoring Reports**

OCR will acknowledge receipt of monitoring reports promptly. OCR will evaluate the report, and issue a decision as promptly as possible. Substantive responses to interim monitoring reports (e.g., where OCR determines actions taken are sufficient or insufficient under the agreement) must be approved by an attorney and a manager.

### **(c) Changed Circumstances Affecting Agreements**

#### **1. Mootness or Change in Law or Policy**

OCR may agree to modify or terminate the settlement agreement if it learns that circumstances have arisen that fully resolve, or render moot, some or all of the compliance concerns that were addressed by the resolution agreement (e.g., further remedial action is not required because the student has moved out of the school district or the programs at issue no longer exist). OCR will also modify the agreement in response to changes in controlling case law, statutes, regulations, or agency policy that make some or all of the provisions contained in the agreement no longer legally required.

#### **2. New Compliance Issues**

Compliance issues identified for the first time during monitoring should, in consultation with the Office Director, be addressed by providing technical assistance or opening a new complaint, or considered for a future compliance review.

#### **3. Implementation Problems**

OCR will promptly provide written notice to the recipient of any deficiencies with respect to implementation of terms of the agreement, and will promptly request appropriate action to address such deficiencies. Where a recipient notifies OCR that it will not carry out a provision of the agreement in the agreed-upon time or manner, or when OCR reaches this determination, OCR will take appropriate steps to address the problem. OCR may seek additional commitments where necessary to address the failure of the recipient to implement commitments in the original agreement. Appropriate investigative, legal and management staff will participate in such determinations to ensure accountability for high quality and consistency with OCR standards. If the Enforcement Office and the recipient are unable to resolve any deficiencies in the implementation of the agreement, the Enforcement Office should take appropriate action. (See [Section 404.](#))

#### **4. Approval of Modifications**

Any modifications to the agreement must be appended to the original agreement. Modification of the agreement provisions, reporting provisions, or timetable for completion or reporting will be documented in the case file. Extensions of time of up to 30 days for each report may be granted as authorized by the team leader or other management representative. Other extensions of time or any substantive modifications to the agreement must be reviewed and approved by the Office Director or designee and Chief Attorney or designee. The recipient and the complainant will be notified, in writing, of significant modifications to the agreement.

### **(d) Conclusion of Monitoring**

OCR will conclude the monitoring of a case when it determines that the recipient has fully implemented the terms of settlement agreement, including any subsequent modifications to the agreement. The recipient and complainant will be promptly notified in writing of this decision. The letter informing the parties that monitoring is concluded will be reviewed and approved by the Office Director and Chief Attorney or their designees.

### **Section 308 Notify the Department of Justice (DOJ) or EEOC When Required**

If a Title II complaint was referred to OCR by the Department of Justice, OCR will send a copy of the letter resolving the case to DOJ. When a Title II/504 employment discrimination complaint has been dual-filed with EEOC and OCR and referred to OCR, OCR will notify the EEOC once the complaint has been resolved. (For precision please refer to 28 C.F.R. Part 37 and 29 C.F.R. Part 1640.)

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## **Article IV INITIATING ENFORCEMENT ACTION**

If OCR is unable to negotiate a settlement with the recipient OCR will initiate enforcement action. OCR will either: (1) initiate administrative proceedings to suspend, terminate, or refuse to grant or continue and defer financial assistance from or, with respect to the Boy Scouts Act, funds made available through the Department to the recipient; or (2) refer the case to DOJ for judicial proceedings to enforce any rights of the United States under any law of the United States.

### **Section 401 Initiate Administrative Proceedings Where Appropriate**

If post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement, the Enforcement Office will so inform the Assistant Secretary and will request that an administrative proceeding be initiated. OCR will establish a team to prosecute the case. If deferral of funds has been imposed, the Notice of Opportunity will be issued within 30 days of the notice of the deferral action.

**Section 402 Refer to DOJ Where Appropriate**

If post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement, the Enforcement Office will so inform the Assistant Secretary, and that office will issue a 10-day letter informing the recipient that the case will be referred to DOJ in 10 days of the date of the letter. OCR will prepare a draft of the referral letter to DOJ for the General Counsel's signature. The Enforcement Directors, in conjunction with OGC, will consult with DOJ where appropriate.

**Section 403 Move to Enforcement for Denial of Access**

Where the recipient has denied access to information necessary to investigate the case (see [Section 602](#)), a Letter of Impending Enforcement Action is not necessary to proceed to enforcement. No such action can be taken until 30 days have elapsed after notification of recipient. As soon as the Enforcement Office concludes that the recipient will not voluntarily provide access, it will notify the recipient of the Enforcement Office's determination and the Enforcement Office's intention to recommend enforcement. The Enforcement Office will then prepare a draft letter, which may include notice of OCR's intention to impose deferral of funds. These documents will be forwarded to the Enforcement Director and Deputy Assistant Secretary for Enforcement.

**Section 404 Move to Enforcement for Failure to Comply with OCR Agreement**

Where the recipient has failed to comply with the agreement it is necessary to prepare a Letter of Impending Enforcement Action consistent with the procedures outlined under [Sections 303](#) and [305](#). If a new agreement cannot be reached after issuance of the Letter of Impending Enforcement Action, procedures set forth in [Sections 401](#) and [402](#) will be followed, as appropriate.

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**Article V COMPLIANCE REVIEWS**

The investigation procedures identified in the manual for complaint resolution should be utilized for compliance reviews, where appropriate. The "start date" is the date the recipient is notified of the compliance review.

**Section 501 Compliance Concerns Unrelated to the Original Complaint**

If, during the course of an investigation, OCR identifies compliance concerns involving unrelated issues that were not raised in the original complaint, the Office Director, with the approval of the Deputy Assistant Secretary for Enforcement, may initiate a Compliance Review.

**Section 502 Treating a Complaint as a Compliance Review**

The Office Director, with the approval of the Deputy Assistant Secretary for Enforcement, may treat a complaint as a Compliance Review when:

- (a) the complaint, because of its scope, involves systemic issues;
- (b) a compliance review would be the most effective means of addressing multiple individual complaints against the same recipient; or
- (c) the complainant decides to withdraw a complaint that includes class allegations.

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**Article VI APPENDICES****Section 601 Special Intake Procedures****(a) Age Discrimination Complaints**

An age discrimination complaint is timely if it is filed within 180 days of the date the complainant first had knowledge of the alleged discrimination.

**1. Employment Complaints**

OCR does not have jurisdiction over employment complaints under the Age Discrimination Act. Employment complaints filed by persons 40 and older are referred to the appropriate EEOC office, and the OCR complaint is closed. Employment complaints filed by persons under 40 are not within the jurisdiction of EEOC and may be closed with notice to the complainant that there is no jurisdiction under the Act. If the complaint alleges age discrimination in employment that is within EEOC's jurisdiction and also contains allegations of discrimination in services within the jurisdiction of OCR, the complaint is split into two separate cases. Each is given its own case number, the age employment complaint is referred to EEOC with the OCR age employment case being closed, and OCR proceeds with the age services complaint.

**2. Service Complaints**

All complete and timely (see 34 C.F.R. §§ 110.31 and 110.32) complaints containing an allegation of age discrimination in services are promptly referred to:

Federal Mediation and Conciliation Service  
2100 K Street, N.W.

Washington, D.C. 20427

Where OCR receives a complaint containing both allegations of age discrimination in services and allegations under Title VI, Title IX, Title II, Section 504, and/or the Boy Scouts Act, and OCR determines that the non-age allegation(s) is independent and separable from the age allegation, OCR will refer only the age portion of the complaint to FMCS. OCR will proceed to investigate the additional allegations over which OCR has jurisdiction. OCR will not wait for mediation of the age portion of the complaint to conclude before beginning investigation of the non-age portion of the complaint. Copies of the complaint and letters of acknowledgment to the complainant and recipient and a completed FMCS "Request for ADA Mediation Assistance" must be included.

If FMCS does not resolve the complaint within 60 days from the date of filing with OCR, OCR will resume processing the age aspects of the complaint. The date that the complaint, or any portion of a complaint is sent to FMCS shall be entered in CMS; the date that the complaint is referred back from FMCS shall also be entered in CMS. FMCS's processing time will, therefore, not be included in OCR's case processing time.

The complainant will be informed that they may file a civil action under the Age Discrimination Act in federal court only after they have exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred: 1) 180 days have elapsed since the filing of a complaint with OCR and OCR has made no finding, or 2) OCR issues a finding in favor of the recipient. If OCR fails to make a finding within 180 days or issues a finding in favor of the recipient, OCR will promptly notify the complainant of this fact and of his or her right to bring a civil action for injunctive relief. OCR's notice must also contain the following information: that a civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business; that a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint filed with the court; that before commencing the action, the complainant shall give 30 days' notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient; that the notice shall state the alleged violation of the Age Discrimination Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails; and that the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

#### **(b) Title VI Complaints Against Proprietary Schools**

Authority to process Title VI complaints against proprietary vocational schools (privately owned, profit-making enterprises that teach a trade or skill leading to immediate employment) has, with certain exceptions, been delegated to the Department of Veterans Affairs. Such complaints must be forwarded to:

Veterans Benefits Administration  
Office of Resolution Management  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420

OCR must refer to the Department of Health and Human Services Title VI complaints filed against a proprietary school operated by a hospital. The complainant must be notified of the referral, and the complaint closed.

The following exceptions apply:

- OCR remains responsible for enforcement of Title VI where a proprietary vocational school is operated by a college or university. See 38 C.F.R. § 18a.1(a).
- OCR remains responsible for enforcement of Title VI where a proprietary vocational school offers non-degree courses for which credit is given and which, on transfer, would be accepted toward a baccalaureate or higher degree by a degree-granting institution. See 38 C.F.R. § 18a.1(b).

#### **(c) Title VI and Title IX Employment Complaints** (see 29 C.F.R. §§ 1691.1 – 1691.13 and 28 C.F.R. §§ 42.601 – 42.613)

Race, national origin and sex discrimination in employment complaints will be processed in accordance with the government-wide regulations. OCR will:

- Within ten days of receipt, notify the complainant and the recipient that OCR has received the complaint, including the date, place and circumstances of the alleged unlawful employment practice.
- Within thirty days of receipt:
  1. Determine whether OCR has jurisdiction over the complaint under Title VI or Title IX.
  2. Determine whether EEOC may have jurisdiction over the complaint.
  3. Transfer to the EEOC all complaints over which OCR does not have jurisdiction but over which EEOC may have jurisdiction. Notify the complainant and the recipient of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date the agency received the complaint will

be deemed the date it was received by EEOC.

4. Refer to the EEOC certain complaints over which both OCR and EEOC appear to have jurisdiction ("joint complaints"), consistent with the following guidance:

(i) Absent special circumstances, OCR will refer a joint complaint that solely alleges employment discrimination against an individual.

(ii) Absent special circumstances, OCR will not refer a joint complaint alleging a pattern or practice of employment discrimination.

(iii) Absent special circumstances, OCR will not refer a joint complaint that alleges discrimination in employment and includes allegations regarding other practices of a recipient. If, because of special circumstances, the employment allegations of such a complaint are referred to EEOC, OCR will assign a new case number to the allegations that are retained.

(iv) Notify the complainant and recipient of the action taken on the joint complaint. In the case of a referral to EEOC, the notice will include the location of the EEOC office to which the complaint was referred, the civil rights provision(s) involved, the authority of EEOC under this regulation and that the date the agency received the complaint will be deemed the date it was received by EEOC.

(v) For those joint complaints retained for OCR investigation, OCR will contact the EEOC to ensure that, in the event EEOC has also received the complaint, EEOC defers its investigation.

**(d) Title II ADA Complaints (Other than Employment)**

(see 28 C.F.R. § 35.171(a)(2)(i))

OCR has jurisdiction to investigate Title II complaints against public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. If OCR receives an ADA-only complaint over which it does not have jurisdiction, it will be referred to the Department of Justice, then closed. The complainant will be notified of the referral.

**(e) Section 504 and Title II Disability Employment Complaints** (for precision, please refer to 28 C.F.R. Part 37 and 29 C.F.R. Part 1640)

**1. Referral or deferral**

(i) Disability employment complaints shall be referred to the Department of Justice Civil Rights Division if OCR has no jurisdiction under either Title II of the ADA or Section 504 of the Rehabilitation Act of 1973, and EEOC does not have jurisdiction under Title I (*i.e.*, recipient has fewer than 15 employees). If EEOC has jurisdiction under Title I (recipient has 15 or more employees) the complaint shall be referred to them.

(ii) OCR shall defer individual complaints unless the complainant elects to have OCR process the charge. OCR must notify the complainant that he or she may choose whether to have OCR or the EEOC process the complaint and that if the complainant would like OCR to process the complaint, OCR must receive such written request within twenty calendar days of the date of the letter. (28 C.F.R. § 37.8(a)(1)) If special circumstances make deferral inappropriate, OCR and the appropriate agency may jointly determine to reallocate investigation responsibilities. (28 C.F.R. § 37.8(e))

**2. Retention**

(i) If OCR has jurisdiction over a disability employment complaint under Section 504, OCR shall retain the complaint if:

- The EEOC does not have jurisdiction under Title I (*i.e.*, if fewer than 15 employees);
- The EEOC has jurisdiction, but the complainant elects to have OCR process the complaint;
- The complaint alleges discrimination in both employment and in other practices or services covered by section 504; or
- The complaint alleges a pattern or practice of employment discrimination. (28 C.F.R. § 37.6(d)(1))

(ii) If OCR has jurisdiction under Title II of the ADA but not under Section 504 OCR shall retain jurisdiction over a complaint if it determines that EEOC does not have jurisdiction under Title I. (28 C.F.R. §§ 37.6(d)(2) and (3))

**Section 602 Data Collection and Information Gathering**

**(a) Generally**

Generally, OCR requests documentary evidence from the recipient, develops interview questions based upon those data and any other available information, and conducts interviews with the complainant, recipient personnel, and others as appropriate. The exact approach taken to data/information collection will vary from case to case depending on the issues raised, the extent to which relevant data are in the control of the recipient or others, and investigation strategies. Some general principles that should guide decision-making during data collection

include:

- Obtain independent written documentation to corroborate oral statements.
- Label all evidence, documents, electronic media, and written records of contact, with information identifying the case being investigated and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted, and who provided a given document).

#### **(b) OCR's Authority to Obtain Information**

OCR has the right of access during a recipient's regular business hours to recipient's facilities and to information maintained by the recipient that is necessary to determine compliance status on those issues under investigation. See 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii). Generally, this includes access to oral information from a recipient's employees as well as to written or non-written information, such as electronic storage media, microfilming, retrieval systems, and photocopies maintained by the recipient. OCR, not the recipient, decides what information is relevant to a determination of compliance.

OCR has no legal authority to require the complainant or any other non-recipients to provide information.

#### **(c) Requests for Records**

##### **1. Data Request Letters**

A data request seeks information from the recipient relevant to the investigation. It can be used to initiate information collection or to request additional information after the primary information collection activity has been completed.

##### **2. Timeframes for Recipient's Response**

The recipient will be given 15 calendar days from the date of OCR's request to submit the information required. This timeframe may be modified, at OCR's discretion, depending on the nature and extent of data and/or other special circumstances.

##### **3. Data Provided by Recipient**

A recipient must submit information as necessary for OCR's compliance activities. However, other federal regulations and policies may restrict OCR's information requests:

(i) For example, unless the request is made in the context of an ongoing complaint or compliance review investigation (see 5 C.F.R. § 1320.3), OCR may not generally require a recipient to record information on a "form" or other standardized data collection instrument without obtaining prior approval for its use by the Office of Management and Budget. OCR may, however, suggest suitable formats to be used at the discretion of the recipient as information collection instruments.

(ii) Similarly, OCR must consider federal policies concerning paperwork burdens when requesting a recipient to do more than provide OCR access to normally maintained information. Requests that a recipient manipulate or compile information to meet an OCR need must be reasonable and take into consideration the burden being placed on the recipient.

(iii) If a recipient invites OCR to come on-site and collect the requested information, and provides OCR with sufficient access to files, records, logs, and appropriate indexes for OCR to obtain the needed information, then the recipient has provided OCR with the requisite access.

##### **4. Confidentiality**

OCR has access to a recipient's records, even if those records identify individuals by name. To protect the confidential nature of the records, OCR, for example, may permit the recipient to replace names with a code and retain a key to the code. However, OCR should inform the recipient that if at any time such a procedure impedes the timely investigation of the case, OCR shall have access to the unmodified records. See also 20 U.S.C. §§ 1232g(b)(1) and 1232g(b)(3) regarding the applicable provisions of the Family Educational Rights and Privacy Act.

#### **(d) Interviews**

##### **1. Introduction**

Interviews are an integral part of most investigations. The objective of interviews is to gain an understanding of the records and data relevant to the issues in the case; to obtain information from and assess the credibility of witnesses; and to evaluate recipient defenses.

##### **2. Notice**

Prior to initiating an interview, OCR should inform the witness of the following:

(i) The general purpose of the interview, including OCR's role, what law or laws may be pertinent to the investigation, and where appropriate, a brief explanation of what is under investigation.

(ii) The potential uses of the information to be obtained from the witness

and the Freedom of Information Act. A witness who wants a more thorough explanation should be given a copy of the OCR Notice about Investigatory Uses of Personal Information.

(iii) The witness's right to personal representation during the interview by a person of their choice.

(iv) If the witness is an employee of a recipient, his or her right to refuse to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview.

(v) The regulatory provisions concerning prohibition of intimidating or retaliatory acts by a recipient.

(vi) In most cases, the recipient's counsel will be allowed to be present during upper level management interviews.

### **3. Privacy**

Interview witnesses under circumstances that assure privacy. An interpreter may be used if safeguards are taken to ensure the competence of the interpreter and to protect the witness's privacy.

### **4. Interviews with Minors (Persons Under 18) or Legally Incompetent Individuals**

OCR shall obtain written consent from a parent or guardian prior to interviewing any person under 18 years of age or otherwise adjudicated legally incompetent, for example, mentally impaired. Parental or legal guardian consent may not be required for persons under 18 if they are emancipated under state law and are therefore considered to have obtained majority. For persons under 18 who state they are emancipated, OCR should obtain proof of emancipation. Parental or legal guardian consent (or proof of emancipation) may not be necessary when the questions asked are of a general nature, not related to any specific events in which the minor was involved, and there are no records kept to identify the student. If a recipient refuses to allow minor students to be interviewed without consent even in the above circumstance, written consent must be obtained. If parents or guardians refuse to provide consent for an interview, and OCR determines that the child's information is critical, OCR may attempt to secure parental or guardian consent by inviting the parent or guardian to be present during the interview. If consent is denied, OCR will not interview the child.

### **5. Records of Interviews**

A written record of both telephone and in-person interviews must be kept. Interviewers will notify interviewees if a tape recording is used and tape recording will be done only with the consent of the interviewee. If interviewers use tape recording, the tape becomes part of the case record along with the written record. Regardless of the technique used during the interview, a written record of the interview must be created.

The record of the interview to be placed in the case file must contain the following information:

- (i) case identification (name and case number);
- (ii) name and identification of the interviewee, interviewer, and any other person present (include an explanation for the presence of any other persons);
- (iii) date, time, and location of interview (including whether the interview was conducted by telephone);
- (iv) a record of whether the interviewee was informed of required notifications; and
- (v) written record reflecting the questions and responses obtained during the interview (this need not be a verbatim transcript but must accurately reflect the responses of the witness).

### **(e) Limitations on Obtaining Information**

#### **1. Actions Constituting Denial of Access**

A recipient denies access to OCR when it:

- (i) refuses to permit OCR access to written or unwritten information, such as electronic storage media, microfilm, retrieval systems, photocopies, etc., or to recipient's facilities during the recipient's normal business hours;
- (ii) refuses to permit OCR access to employees during recipient's regular business hours;
- (iii) fails to provide information by virtue of the refusal of one of its employees to do so or to provide access to information maintained exclusively by an employee in his/her official capacity; or
- (iv) refuses to complete applicable OMB-approved compliance and survey forms relevant to an investigation.

#### **2. Refusals to Provide Data or Access to Witnesses**

- (i) If the refusal is stated orally, either in person or over the telephone,

the investigator should attempt to ascertain the exact basis for the recipient's refusal, and attempt to explain OCR's authority or provide other information to address the recipient's concerns.

(ii) If the investigator is unable to obtain access to the requested information, the investigator will consult with OCR legal staff (when on-site, this should be done over the telephone whenever possible before the investigator leaves the recipient's premises). Where appropriate, OCR legal staff should discuss the refusal to provide information directly with the recipient's representative.

(iii) Where attempts to persuade a recipient to provide information have failed, a letter should be prepared setting forth OCR's authority to obtain access to the information and addressing any particular concerns expressed by the recipient.

(iv) Whenever the office determines that compliance cannot be achieved, the office shall recommend that the case be referred for enforcement. ([See Section III](#)).

### **Section 603 Freedom of Information Act and Privacy Act**

The information OCR collects is analyzed by authorized personnel within the agency and is used only for authorized civil rights compliance and enforcement activities. In order to resolve a complaint OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such information could include the age or physical condition of a complainant. The Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information submitted to all federal agencies and their individual components, including OCR.

The Privacy Act of 1974, 5 U.S.C. § 552a, regulates the collection, maintenance, use, and dissemination of certain personal information in federal agency files. OCR's investigation files have been exempted from the provisions of the Privacy Act that provide individuals with access to records maintained on them. The Department has published a Privacy Act system of records notice entitled Complaint Files and Log, 18-08-01.

Third parties may not gain access to records about individuals within a system of records without the consent of the subject individual except as required by FOIA or pursuant to other statutory exceptions contained in the Privacy Act. (5 U.S.C. § 552a(b)) The Freedom of Information Act (FOIA), 5 U.S.C. § 552, gives the public a right of access to records of federal agencies. The FOIA is implemented by Department regulations. (34 C.F.R. Part 5)

Any requests for copies of documents or other access to information contained in OCR's files should be referred to the Enforcement Office staff responsible for handling FOIA and Privacy Act requests. Although each request will be reviewed on a case-by-case basis, generally, OCR is not required to release documents during the case resolution and investigation process or enforcement proceedings if the release could affect OCR's law enforcement activities. See 5 U.S.C. §552(b)(7)(A). Also, a federal agency is not required to release records if they are pre-decisional documents that would be subject to certain privileges in litigation. See 5 U.S.C. § 552(b)(5). Finally, a federal agency is not required to release documents if their release would or could result in an unwarranted invasion of privacy of an individual. See 5 U.S.C. §§ 552(b)(6) and (7)(C). OCR will not reveal the name or other identifying information about an individual unless it is necessary for completion of an investigation or for enforcement activities against an institution that violates the laws, or unless such information is required to be disclosed under the FOIA or the Privacy Act.

### **Section 604 Recipients Operating Under Federal Court Order**

Enforcement Office legal staff will determine whether any allegations made in a complaint are covered by a federal court order. If allegations are covered by such an order, normal case processing procedures will be altered as follows:

#### **(a) United States a Party**

1. The Office Director will consult with the Enforcement Director and forward to the Department of Justice (DOJ) a copy of the complaint and the court order (if readily available) asking whether DOJ is currently active in the district and whether OCR may proceed with an investigation. Based on DOJ's response OCR will either:
  - (i) Refer the case to DOJ; or
  - (ii) Proceed with an investigation.
2. Accordingly, the Enforcement Office will then close the complaint and notify the complainant that the case has been referred to DOJ, or accept the complaint and so notify the complainant in the notification letter.
3. If OCR proceeds with an investigation, at the conclusion of its investigation, the Enforcement Office will forward a report to DOJ of OCR's findings of fact. If DOJ offers no objection, OCR will proceed to issue a letter of finding(s) consistent with routine case processing standards. (See [Article III](#))

#### **(b) United States Not a Party**

1. As part of evaluation of the complaint the Enforcement Office will consult with parties about the current status of the court order and with the Enforcement Director before proceeding to resolution.

2. If a Letter of Impending Enforcement Action is issued, the Letter should notify the complainant and recipient that if settlement is not achieved, the case would be referred to DOJ for enforcement. If settlement is not achieved, refer [Section 402](#).

<sup>1</sup> For simplicity this manual uses the term recipient throughout. With respect to Title VI, Title IX, Section 504, and the Age Discrimination Act, a recipient is an entity that receives federal financial assistance. With respect to the Boy Scouts of America Equal Access Act, a recipient is a public elementary or secondary school or local or State educational agency that receives funds made available through the Department and with respect to Title II, the term is intended to include public entities whether or not they receive federal financial assistance. Specifically, the Department of Justice has identified the Department of Education as the designated agency to carry out Title II compliance activities regarding public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries.

<sup>2</sup> Although the manual refers to complaints and complaint allegations somewhat interchangeably, OCR makes determinations as to each allegation in a complaint. For example, in a single complaint, OCR may decide it is appropriate to proceed to complaint investigation on one or more allegations while dismissing or administratively closing another allegation or other allegations. The complainant will be informed of OCR's decision with respect to each allegation.

<sup>3</sup> The filing date of complaints filed online or sent by e-mail or by fax will be the date the complaint was filed online or sent to OCR.

<sup>4</sup> Please note that if *prior* to opening a complaint for investigation, OCR determines that any of the criteria set forth in Section 110 has been met, the complaint will be "dismissed." If OCR dismisses a complaint for any reasons identified in this section, it will issue a letter of dismissal to the complainant setting forth the reason for the decision. If *after* opening a complaint for investigation, OCR determines that any of the criteria set forth in Section 110 has been met, a complaint will be "administratively closed." Dismissals issued pursuant to Section 110 must be approved by the Chief Attorney, or the Chief Attorney's designee.

<sup>5</sup> For the purposes of this subsection, a child graduating or otherwise leaving a school or school district generally will not be sufficient to dismiss or close an allegation based on mootness. However, there are situations where dismissal or closure would be appropriate if the complaint allegation relates only to the particular student and the appropriate and available remedy requires the student's presence in the school district.

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