

# MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-\_\_\_\_\_

SEP 8 1995

TO : Rod McCowan  
Assistant Secretary  
for Management

FROM : Norma V. Cantú  
Assistant Secretary  
for Civil Rights

SUBJECT: Office for Civil Rights Senior Management Restructuring Proposal

Attached is a proposed restructuring package for the Office for Civil Rights (OCR) Senior Management structure that includes an organizational chart, a mission and function statement, a staffing list, and new position descriptions (unclassified) for the Senior Managers. The new structure:

- Makes explicit the core business (enforcement) of the agency by organizing twelve regional locations into four Enforcement Divisions;
- Re-emphasizes the importance of direct, front-line contact with our customers, the students, parents and schools;
- Provides the Assistant Secretary with an efficient, stream-lined Senior Management Group to promote the increased involvement of front-line units in decision-making;
- Places the two career SES managers in a direct relationship with the core business of the agency;
- Enables the agency to anticipate and address future resource constraints by increasing the agency's ability to allocate available enforcement resources; and
- Recognizes and removes the unintended layers of review within the current organizational structure.

This proposal, coupled with the redesigns of the headquarters office and the regional offices, will make OCR more efficient, more focused on our customers, and will meet the priorities of the Secretary and the National Performance Review. If you have any questions, please call me or Brian Ganson at 205-5413.

Attachments  
As stated



U.S. DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
SENIOR MANAGEMENT STRUCTURE  
PROPOSED FUNCTIONAL STATEMENT

### Immediate Office of the Assistant Secretary

The Office of the Assistant Secretary includes a Deputy Assistant Secretary (DAS) who assists the Assistant Secretary (AS) in the oversight responsibilities for the Office for Civil Rights (OCR). The Office also includes two Senior Executive Service (SES) Enforcement Directors who directly manage four Enforcement Divisions. The Enforcement Directors report directly to the AS and DAS. The Office of the Assistant Secretary serves as the principal advisor to the Secretary of Education on civil rights matters, sets the priorities in OCR's Strategic Plan, provides program objectives for OCR's national enforcement docket, and manages OCR's congressional liaison and public information activities.

### Resource Management Component and Program Legal Component

The Immediate Office of the Assistant Secretary is directly supported by a Resource Management Component and a Program Legal Component. The Resource Management Component provides support in the management of OCR's resources and includes budget, human resources, technology, and customer service. The component head coordinates with the Enforcement Directors and reports directly to the AS and DAS. The Program Legal Component provides support in the development and dissemination of program policy and in the provision of legal guidance. The component head coordinates with the Enforcement Directors and reports directly to the AS and DAS.

### Enforcement Division Management Teams

OCR has four Enforcement Divisions each consisting of three regional locations. Within each Enforcement Division, there is a management team that includes a non-supervisory Enforcement Coordinator (EC) and three Associate Enforcement Directors (AEDs). If the Associate Enforcement Director is selected as Coordinator, both functions will be combined in one position. The EC is located at one of the three offices within the Division and has primary responsibility for coordinating the program operations and resource management of three offices. The Associate Enforcement Directors have primary responsibility for implementing program initiatives and managing staff and financial resources at individual offices. The Coordinators and Associate Enforcement Directors report directly to one of the Enforcement Directors.

### Individual Offices

Each regional location has the same general team-based structure and is directed by an Associate Enforcement Director in coordination with the Enforcement Division management team. The Associate Enforcement Director is responsible for implementing the civil rights statutes and regulations for which OCR is responsible. Each regional location uses a unified enforcement strategy consisting of various approaches to resolve complaint investigations and conduct proactive compliance activities in support of the mission of the Department and the priorities in OCR's Strategic Plan and enforcement docket.

U.S. DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
SENIOR MANAGEMENT STRUCTURE  
PROPOSED STAFFING LIST

IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY

Norma Cantu	Assistant Secretary	EX-301-04
Raymond Pierce	Deputy Assistant Secretary	ES-301-00
Jeanette Lim	Enforcement Director	ES-905-00 (Career)
Vacant	Enforcement Director	ES-905-00 (Career)

ENFORCEMENT SERVICE I – DIVISION A

Vacant *	Enforcement Coordinator	GS-360/905-15
Thomas Hibino	Associate Enforcement Director - Boston	GS-360-15
Helen Whitney	Associate Enforcement Director - New York	GS-360-15
Robert Smallwood	Associate Enforcement Director - Philadelphia	GS-360-15

ENFORCEMENT SERVICE I – DIVISION B

Vacant *	Enforcement Coordinator	GS-360/905-15
Vacant	Associate Enforcement Director - Wash, D.C.	GS-360/905-15
Archie Meyer	Associate Enforcement Director - Atlanta	GS-360-15
Taylor August	Associate Enforcement Director - Dallas	GS-360-15

ENFORCEMENT SERVICE II – DIVISION C

Vacant *	Enforcement Coordinator	GS-360/905-15
Linda McGovern	Associate Enforcement Director - Chicago	GS-360-15
Jim Littlejohn	Associate Enforcement Director - Kansas City	GS-360-15
Vacant	Associate Enforcement Director - Cleveland	GS-360-15

ENFORCEMENT SERVICE II – DIVISION D

Vacant *	Enforcement Coordinator	GS-360/905-15
Lillian Gutierrez	Associate Enforcement Director - Denver	GS-360-15
John Palomino	Associate Enforcement Director - San Francisco	GS-360-15
Gary Jackson	Associate Enforcement Director - Seattle	GS-360-15

\* The Enforcement Coordinator vacancies may be filled as separate positions or if an AED is selected, the functions of the Enforcement Coordinator will be combined with those of the AED.

OFFICE FOR CIVIL RIGHTS  
SENIOR MANAGEMENT STRUCTURE

The Office for Civil Rights (OCR) Senior Management Structure includes four Enforcement Divisions each of which consists of three offices. Each Enforcement Division is directed by a management team comprised of one non-supervisory Enforcement Coordinator and three Associate Enforcement Directors.

The four Enforcement Coordinator positions will be filled from within OCR. In the event that a current Associate Enforcement Director is selected to be an Enforcement Coordinator, the person would have dual responsibilities -- enforcement coordination for the Division and management of an office. Where this occurs, given the need for additional assistance in managing the office, a second GS-15 position would be allocated to that site. This position could be filled as either a GS-360-15 or a GS-905-15.

Senior General Attorney  
(Enforcement Coordinator)  
GS-905-15

I. INTRODUCTION

The incumbent serves as an Enforcement Coordinator (EC) the U.S. Department of Education, Office for Civil Rights (OCR). The EC is responsible for coordinating OCR's compliance and enforcement efforts at multiple locations to ensure that they support the mission of the Department and OCR's Strategic Plan. The EC is located at a civil rights office. OCR operates under the jurisdiction of 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, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations.

II. MAJOR DUTIES AND RESPONSIBILITIES

- Coordinates the management of an Enforcement Division that ensures civil rights compliance by recipients of Federal funds through the conduct of complaint investigations and proactive compliance activities. The EC unifies the efforts of multiple sites to ensure that the objectives of OCR's Strategic Plan are effectively promoted within the Enforcement Division.
- Facilitates the development of a Divisionwide enforcement docket and other proactive compliance activities that meet the goals and objectives of the Assistant Secretary and OCR's Strategic Plan. The EC works directly with the AS and DAS and their staffs to develop enforcement strategies and provides the Associate Enforcement Directors (AEDs) with clearly articulated guidance on the implementation of the Division's enforcement docket.
- Provides input for the development of OCR's financial management and resource allocation plan (including staff, travel and training budgets, etc.) and coordinates with the AEDs on the use of resources across the Enforcement Division.
- Works in collaboration with the AEDs and other managers and staff to develop and implement a cohesive plan for site training and other staff developmental activities across the Division.
- Manages intergovernmental affairs including articulating OCR's position on important and sensitive OCR cases to other Federal agencies, coordinates and promotes cooperation with other agencies on joint initiatives; interfaces with other agencies to exchange information; and facilitates the flow of communications between the Enforcement Division and the Office of the Assistant Secretary and other appropriate parties.
- Provides professional leadership to AEDs and uses the skills of facilitator, coach, and consensus-builder in order to establish effective and open relationships with the AEDs, other Division managers, and OCR staff in matters concerning productivity, quality control, customer service, and management philosophy.

- Acts as the point person for the Division in matters that affect OCR on a national level. Provides input into discussions regarding highly sensitive and precedent-setting issues and assists OCR develop official positions.
- Coordinates the efforts of the labor-management partnerships from each office within the Division to promote a unified labor-management approach to address administrative and programmatic issues. Represents management in complex and sensitive labor relations matters within the Division.

### III. FACTORS

#### Factor 1 - Knowledge Required by the Job

Expert knowledge of all civil rights laws and regulations enforced by OCR. Expert knowledge of policy and legal issues related to enforcing civil rights statutes. Expert knowledge of civil rights theories, principles and practices and the roles of the Federal, state and local governments to plan, evaluate, and advise all parties on funded educational programs, their requirements, and all related issues. Broad knowledge of other departmental programs.

Knowledge of management principles, techniques and methods in the areas of organizational design, administration, budget, labor management, personnel management and supervision. Expert coordination skills in order to organize the efforts of a unified enforcement strategy for the Division.

Skill in public relations and public presentation in order to deal successfully with elected officials, the Public, private managers, and media representatives in order to control the flow of information and resolve controversy.

Expert knowledge in investigative, analytical, fact-finding, problem-solving, consulting, evaluative, dispute resolution, mediation, negotiation, and compliance techniques.

#### Factor 2 - Supervisory Controls

The EC represents the Assistant Secretary for Civil Rights in the coordination and management of a multiple-site region. Each office is responsible for implementing a civil rights compliance and enforcement program. The incumbent receives general program, and policy guidance from a Senior Executive Service (SES) position located in the Office of the Assistant Secretary and exercises wide latitude in applying management and coordination techniques, communicating civil rights policy, and assisting in the determination of policies and programs. Management and program decisions, recommendations, and accomplishments are reviewed by the SES only for overall soundness and effectiveness.

#### Factor 3 - Guidelines

Guidelines include basic laws and executive orders covering civil rights, nondiscrimination, and equal employment opportunity. Implementing guidelines include Departmental regulations, procedures, and policy statements -- guidelines are subject to continuous interpretation and revisions. If guidelines and policy do not

exist, or are tentative or controversial, the EC must use a high degree of judgement and ingenuity in these areas.

Factor 4 - Complexity

The work requires the coordination of multiple offices. Each office is comprised of complaint resolution teams that include investigators and attorneys. The work is especially complex because of the controversial and rapidly changing nature of civil rights. Competing interests must be balanced. Precedent-setting decisions are made. The work is subject to legislative, executive, judicial, media and public scrutiny. Management decisions address the full range of grade levels, internal EEO issues, and an environment of uncertain resources.

Factor 5 - Scope and Effect

The incumbent plans, develops, and administers a Divisional program (consisting of up to three offices) to enforce Federal civil rights laws among recipients of Federal financial assistance. The objective is to promote compliance with civil rights regulations (in a nonadversarial manner) to eliminate discrimination within educational institutions. Efforts have a major impact on the mission of OCR.

Factor 6 - Personal Contacts

Contacts are with top level officials within the offices of the Department; top officials from educational institutions, including chancellors, provosts, presidents, and superintendents; elected and appointed officials; media representatives; leaders of advocacy groups; and complainants. The incumbent must explain complex issues of great concern to all parties.

Factor 7 - Purpose of Contacts

Contacts are frequently urgent and for the purpose of responding to controversial concerns. Responses must be timely and diplomatic. Contacts are often to secure remedial plans to resolve identified problems at educational institutions; to enunciate Departmental policy; to gain cooperation with high level officials and to respond to the concerns of elected and appointed officials. Contacts with OCR headquarters are to resolve difficult policy, program, management and personnel issues.

Factor 8 - Physical Demands

Although the work has no physical demands, it is extremely stressful because of the controversy and deadlines.

Factor 9 - Work Environment

The work is performed in a typical office setting. Frequent travel by car and air is required.

IV. UNIQUE POSITION REQUIREMENTS

This is a non-supervisory position which requires a law degree and active bar membership.

Senior Equal Opportunity Specialist  
(Enforcement Coordinator)  
GS-360-15

I. INTRODUCTION

The incumbent serves as an Enforcement Coordinator (EC) the U.S. Department of Education, Office for Civil Rights (OCR). The EC is responsible for coordinating OCR's compliance and enforcement efforts at multiple locations to ensure that they support the mission of the Department and OCR's Strategic Plan. The EC is located at a civil rights office. OCR operates under the jurisdiction of 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, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations.

II. MAJOR DUTIES AND RESPONSIBILITIES

- Coordinates the management of an Enforcement Division that ensures civil rights compliance by recipients of Federal funds through the conduct of complaint investigations and proactive compliance activities. The EC unifies the efforts of multiple sites to ensure that the objectives of OCR's Strategic Plan are effectively promoted within the Enforcement Division.
- Facilitates the development of a Divisionwide enforcement docket and other proactive compliance activities that meet the goals and objectives of the Assistant Secretary and OCR's Strategic Plan. The EC works directly with the AS and DAS and their staffs to develop enforcement strategies and provides the Associate Enforcement Directors (AEDs) with clearly articulated guidance on the implementation of the Division's enforcement docket.
- Provides input for the development of OCR's financial management and resource allocation plan (including staff, travel and training budgets, etc.) and coordinates with the AEDs on the use of resources across the Enforcement Division.
- Works in collaboration with the AEDs and other managers and staff to develop and implement a cohesive plan for site training and other staff developmental activities across the Division.
- Manages intergovernmental affairs including articulating OCR's position on important and sensitive OCR cases to other Federal agencies, coordinates and promotes cooperation with other agencies on joint initiatives; interfaces with other agencies to exchange information; and facilitates the flow of communications between the Enforcement Division and the Office of the Assistant Secretary and other appropriate parties.
- Provides professional leadership to AEDs and uses the skills of facilitator, coach, and consensus-builder in order to establish effective and open relationships with the AEDs, other Division managers, and OCR staff in matters concerning productivity, quality control, customer service, and management philosophy.

- Acts as the point person for the Division in matters that affect OCR on a national level. Provides input into discussions regarding highly sensitive and precedent-setting issues and assists OCR develop official positions.
- Coordinates the efforts of the labor-management partnerships from each office within the Division to promote a unified labor-management approach to address administrative and programmatic issues. Represents management in complex and sensitive labor relations matters within the Division.

### III. FACTORS

#### Factor 1 - Knowledge Required by the Job

Expert knowledge of all civil rights laws and regulations enforced by OCR. Expert knowledge of policy and legal issues related to enforcing civil rights statutes. Expert knowledge of civil rights theories, principles and practices and the roles of the Federal, state and local governments to plan, evaluate, and advise all parties on funded educational programs, their requirements, and all related issues. Broad knowledge of other departmental programs.

Knowledge of management principles, techniques and methods in the areas of organizational design, administration, budget, labor management, personnel management and supervision. Expert coordination skills in order to organize the efforts of a unified enforcement strategy for the Division.

Skill in public relations and public presentation in order to deal successfully with elected officials, the Public, private managers, and media representatives in order to control the flow of information and resolve controversy.

Expert knowledge in investigative, analytical, fact-finding, problem-solving, consulting, evaluative, dispute resolution, mediation, negotiation, and compliance techniques.

#### Factor 2 - Supervisory Controls

The EC represents the Assistant Secretary for Civil Rights in the coordination and management of a multiple-site region. Each office is responsible for implementing a civil rights compliance and enforcement program. The incumbent receives general program and policy guidance from a Senior Executive Service (SES) position located in the Office of the Assistant Secretary and exercises wide latitude in applying management and coordination techniques, communicating civil rights policy, and assisting in the determination of policies and programs. Management and program decisions, recommendations, and accomplishments are reviewed by the SES only for overall soundness and effectiveness.

#### Factor 3 - Guidelines

Guidelines include basic laws and executive orders covering civil rights, nondiscrimination, and equal employment opportunity. Implementing guidelines include Departmental regulations, procedures, and policy statements -- guidelines are subject to continuous interpretation and revisions. If guidelines and policy do not

exist, or are tentative or controversial, the EC must use a high degree of judgement and ingenuity in these areas.

Factor 4 - Complexity

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Factor 5 - Scope and Effect

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Factor 8 - Physical Demands

Although the work has no physical demands, it is extremely stressful because of the controversy and deadlines.

Factor 9 - Work Environment

The work is performed in a typical office setting. Frequent travel by car and air is required.

IV. UNIQUE POSITION REQUIREMENTS

This is a non-supervisory position.

Supervisory General Attorney  
(Enforcement Coordinator and Associate Enforcement Director)  
GS-905-15

I. INTRODUCTION

The incumbent serves as a Enforcement Coordinator (EC) and Associate Enforcement Director (AED) in the U.S. Department of Education, Office for Civil Rights (OCR). The EC is responsible for coordinating OCR's compliance and enforcement efforts at multiple locations to ensure that they support the mission of the Department and OCR's Strategic Plan. In addition, the EC serves as a AED within the Enforcement Division and is responsible for managing a compliance and enforcement program. The EC is located at a civil rights office. OCR operates under the jurisdiction of 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, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations.

II. MAJOR DUTIES AND RESPONSIBILITIES

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- Provides input for the development of OCR's financial management and resource allocation plan (including staff, travel and training budgets, etc.) and coordinates with the AEDs on the use of resources across the Enforcement Division.
- Works in collaboration with the AEDs and other managers and staff to develop and implement a cohesive plan for training and other staff developmental activities across the Division.
- Manages intergovernmental affairs including articulating OCR's position on important and sensitive OCR cases to other Federal agencies, coordinates and promotes cooperation with other agencies on joint initiatives; interfaces with other agencies to exchange information; and facilitates the flow of communications between the Enforcement Division and the Office of the Assistant Secretary and other appropriate parties.
- Provides professional leadership to AEDs and uses the skills of facilitator, coach, and consensus-builder in order to establish effective and open relationships with the AEDs, other Division managers, and OCR staff in

matters concerning productivity, quality control, customer service, and management philosophy.

- Acts as the point person for the Enforcement Division in matters that affect OCR on a national level. Provides input into discussions regarding highly sensitive and precedent-setting issues and assists OCR develop official positions.
- Coordinates the efforts of the labor-management partnerships from each office within the Division to promote a unified labor-management approach to address administrative and programmatic issues. Represents management in complex and sensitive labor relations matters within the Division.
- Manages an office's enforcement program including the supervision of an investigative and legal staff who plan and implement an enforcement docket that includes complaint investigations and proactive compliance activities.
- Provides subordinate managers and staff with a clearly articulated management strategy in the areas of budget and expenditures, resource allocation, staff development, performance objectives, personnel, ethics, conduct and discipline.

### III. FACTORS

#### Factor 1 - Knowledge Required by the Job

Expert knowledge of all civil rights laws and regulations enforced by OCR. Expert knowledge of policy and legal issues related to enforcing civil rights statutes. Expert knowledge of civil rights theories, principles and practices and the roles of the Federal, state and local governments to plan, evaluate, and advise all parties on funded educational programs, their requirements, and all related issues. Broad knowledge of other departmental programs.

Knowledge of management principles, techniques and methods in the areas of organizational design, administration, budget, labor management, personnel management and supervision. Expert coordination skills in order to organize the efforts of several offices into a unified Division enforcement strategy.

Skill in public relations and public presentation in order to deal successfully with elected officials, the Public, private managers, and media representatives in order to control the flow of information and resolve controversy.

Expert knowledge in investigative, analytical, fact-finding, problem-solving, consulting, valuative, dispute resolution, mediation, negotiation, and compliance techniques.

#### Factor 2 - Supervisory Controls

The EC represents the Assistant Secretary for Civil Rights in the coordination and management of a multiple-site region. Each site is responsible for implementing a civil rights compliance and enforcement program. The incumbent receives general program and policy guidance from a Senior Executive Service (SES) position located in the Office of the Assistant Secretary and exercises wide latitude in applying management and coordination techniques, communicating civil rights policy, and assisting in the determination of policies and programs. Management and program decisions, recommendations, and accomplishments are reviewed by the SES only for overall soundness and effectiveness.

Factor 3 - Guidelines

Guidelines include basic laws and executive orders covering civil rights, nondiscrimination, and equal employment opportunity. Implementing guidelines include Departmental regulations, procedures, and policy statements -- guidelines are subject to continuous interpretation and revisions. If guidelines and policy do not exist, or are tentative or controversial, the EC must use a high degree of judgement and ingenuity in these areas.

Factor 4 - Complexity

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the concerns of elected and appointed officials. Contacts with OCR OAS staff are to resolve difficult policy, program, management and personnel issues.

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IV. UNIQUE POSITION REQUIREMENTS

This position requires a law degree and an active bar membership.

Supervisory Equal Opportunity Specialist  
(Enforcement Coordinator and Associate Enforcement Director)  
GS-360-15

I. INTRODUCTION

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II. MAJOR DUTIES AND RESPONSIBILITIES

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### III. FACTORS

#### Factor 1 - Knowledge Required by the Job

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Expert knowledge in investigative, analytical, fact-finding, problem-solving, consulting, valuative, dispute resolution, mediation, negotiation, and compliance techniques.

#### Factor 2 - Supervisory Controls

The EC represents the Assistant Secretary for Civil Rights in the coordination and management of a multiple-site region. Each site is responsible for implementing a civil rights compliance and enforcement program. The incumbent receives general program and policy guidance from a Senior Executive Service (SES) position located in the Office of the Assistant Secretary and exercises wide latitude in applying management and coordination techniques, communicating civil rights policy, and assisting in the determination of policies and programs. Management and program decisions, recommendations, and accomplishments are reviewed by the SES only for overall soundness and effectiveness.

#### Factor 3 - Guidelines

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#### Factor 4 - Complexity

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#### Factor 6 - Personal Contacts

Contacts are with top-level officials within the offices of the Department; top officials from educational institutions, including chancellors, provosts, presidents, and superintendents; elected and appointed officials; media representatives; leaders of advocacy groups; and complainants. The incumbent must explain complex issues of great concern to all parties.

#### Factor 7 - Purpose of Contacts

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the concerns of elected and appointed officials. Contacts with OCR OAS staff are to resolve difficult policy, program, management and personnel issues.

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Factor 9 - Work Environment

The work is performed in a typical office setting. Frequent travel by car and air is required.

IV. UNIQUE POSITION REQUIREMENTS

None.

Supervisory General Attorney  
(Associate Enforcement Director)  
GS-905-15

I. INTRODUCTION

The incumbent serves as an Associate Enforcement Director (AED) in the U.S. Department of Education, Office for Civil Rights (OCR). The AED is responsible for managing civil rights compliance and enforcement program at an office that supports the mission of the Department and OCR's Strategic Plan. This position is located within an Enforcement Division. OCR operates under the jurisdiction of 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, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations.

II. MAJOR DUTIES AND RESPONSIBILITIES

- Manages the Division's enforcement program which ensures civil rights compliance by recipients of Federal funds through the conduct of complaint investigations and proactive compliance activities. Makes civil rights compliance determinations and ensures that all OCR case processing procedures are followed. Manages the development of the Division enforcement docket and all proactive program planning in conjunction with the Division management team.
- Provides subordinate program managers with advice and information on all aspects of program operations; such as Presidential initiatives, program priority issues, interpretation of civil rights law, policy development, major compliance actions, new compliance procedures, case processing procedures, regional productivity, quality, customer service, and management philosophy.
- Provides professional leadership and guidance to office staff in planning, developing, and carrying out program objectives. Coordinates the development of the Division's enforcement plan, determines the plan priorities, allocates resources, monitors progress, and manages all aspects of the Division's effort to ensure that plan objectives are achieved, as part of Division's management team.
- Establishes and maintains relationships with OCR principal officer and staff, the Department, government agencies, private organizations, advocacy organizations, elected and appointed officials, the Public, Congress and the media in order to plan and manage the Divisional program, communicate program objectives and secure program support. Meets with top level government and private officials on extremely complex and difficult compliance cases and policy matters to negotiate agreements.
- Serves as a nationally recognized authority on civil rights procedures and all applicable laws and regulations.
- Provides subordinate managers and staff with a clearly articulated management strategy in the areas of budget and expenditures, resource allocation, staff development, performance objectives, personnel, ethics, conduct and discipline.

### III. FACTORS

#### Factor 1 - Knowledge Required by the Job

Expert knowledge of all civil rights laws and regulations enforced by OCR. Expert knowledge of policy and legal issues related to enforcing civil rights statutes. Expert knowledge of civil rights theories, principles and practices and the roles of the Federal, state and local governments in order to plan, evaluate, and advice all parties on funded educational programs, their requirements, and all related issues. Broad knowledge of other departmental programs.

Knowledge of management principles, techniques and methods in the areas of organizational design, administration, budget, labor management, personnel management and supervision.

Skill in public relations and public presentation in order to deal successfully with elected officials, the Public, private managers, and media representatives in order to control the flow of information and resolve controversy.

Expert knowledge in legal, investigative, analytical, fact-finding, problem-solving, consulting, valuative, dispute resolution, mediation, negotiation, and compliance techniques.

#### Factor 2 - Supervisory Controls

The AED represents the Assistant Secretary for Civil Rights in the management of all civil rights compliance and enforcement efforts in the Department of Education programs. The incumbent receives general program and policy guidance from the Assistant Secretary (AS), Deputy Assistant Secretary (DAS) and Enforcement Director, and exercises wide latitude in applying civil rights policy and determining regional policies and programs. Program decisions, recommendations, and accomplishments are reviewed by the DAS only for overall soundness and effectiveness. The AED coordinates with the Enforcement Coordinator on the Division's enforcement docket and compliance strategy, resources, staff development, and other program- and management-related issues.

#### Factor 3 - Guidelines

Guidelines include basic laws and executive orders covering civil rights, nondiscrimination, and equal employment opportunity. Implementing guidelines include Departmental regulations, procedures, and policy statements -- guidelines are subject to continuous interpretation and revisions. If guidelines and policy do not exist, or are tentative or controversial, the AED must use a high degree of judgement and ingenuity in these areas.

#### Factor 4 - Complexity

The work requires the management of complaint resolution teams which include investigators and attorneys. The work is especially complex because of the controversial and rapidly changing nature of civil rights. Competing interests must

be balanced. Precedent-setting decisions are made. The work is subject to legislative, executive, judicial, media and public scrutiny. Management decisions address the full range of grade levels, internal EEO issues, and an environment of uncertain resources.

Factor 5 - Scope and Effect

The incumbent plans, develops, and administers a program to enforce Federal civil rights laws under the jurisdiction of the U.S. Department of Education among recipients of Federal financial assistance. The objective is to promote compliance with civil rights regulations (in a nonadversarial manner) to eliminate discrimination within educational institutions. Efforts have a major impact on the mission of OCR.

Factor 6 - Personal Contacts

Contacts are with top level officials within the national and regional offices of the Department; top officials from educational institutions, including chancellors, provosts, presidents, and superintendents; elected and appointed officials; media representatives; leaders of advocacy groups; and complainants. The incumbent must explain complex issues of great concern to all parties.

Factor 7 - Purpose of Contacts

Contacts are frequently urgent and for the purpose of responding to controversial concerns. Responses must be timely and diplomatic. Contacts are often to secure remedial plans to resolve identified problems at educational institutions; to enunciate Departmental policy; to gain cooperation with high-level officials and to respond to the concerns of elected and appointed officials. Contacts with AS, DAS and Enforcement Director are to resolve difficult policy, program, management and personnel issues.

Factor 8 - Physical Demands

Although the work has no physical demands, it is extremely stressful because of the controversy and deadlines.

Factor 9 - Work Environment

The work is performed in a typical office setting. Frequent travel by car and air is required.

IV. UNIQUE POSITION REQUIREMENTS

Law degree and active bar membership.

Supervisory Equal Opportunity Specialist  
(Associate Enforcement Director)  
GS-360-15

I. INTRODUCTION

The incumbent serves as an Associate Enforcement Director (AED) in the U.S. Department of Education, Office for Civil Rights (OCR). The AED is responsible for managing civil rights compliance and enforcement program at an office that supports the mission of the Department and OCR's Strategic Plan. This position is located within an Enforcement Division. OCR operates under the jurisdiction of 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, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations.

II. MAJOR DUTIES AND RESPONSIBILITIES

- Manages the Division's enforcement program which ensures civil rights compliance by recipients of Federal funds through the conduct of complaint investigations and proactive compliance activities. Makes civil rights compliance determinations and ensures that all OCR case processing procedures are followed. Manages the development of the Division enforcement docket and all proactive program planning in conjunction with the Division management team.
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- Serves as a nationally recognized authority on civil rights procedures and all applicable laws and regulations.
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The AED represents the Assistant Secretary for Civil Rights in the management of all civil rights compliance and enforcement efforts in the Department of Education programs. The incumbent receives general program and policy guidance from the Assistant Secretary (AS), Deputy Assistant Secretary (DAS) and Enforcement Director and exercises wide latitude in applying civil rights policy and determining regional policies and programs. Program decisions, recommendations, and accomplishments are reviewed by the DAS only for overall soundness and effectiveness. The AED coordinates with the Enforcement Coordinator on the Division's enforcement docket and compliance strategy, resources, staff development, and other program- and management-related issues.

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Guidelines include basic laws and executive orders covering civil rights, nondiscrimination, and equal employment opportunity. Implementing guidelines include Departmental regulations, procedures, and policy statements -- guidelines are subject to continuous interpretation and revisions. If guidelines and policy do not exist, or are tentative or controversial, the AED must use a high degree of judgement and ingenuity in these areas.

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The work requires the management of complaint resolution teams which include investigators and attorneys. The work is especially complex because of the controversial and rapidly changing nature of civil rights. Competing interests must

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Factor 5 - Scope and Effect

The incumbent plans, develops, and administers a program to enforce Federal civil rights laws under the jurisdiction of the U.S. Department of Education among recipients of Federal financial assistance. The objective is to promote compliance with civil rights regulations (in a nonadversarial manner) to eliminate discrimination within educational institutions. Efforts have a major impact on the mission of OCR.

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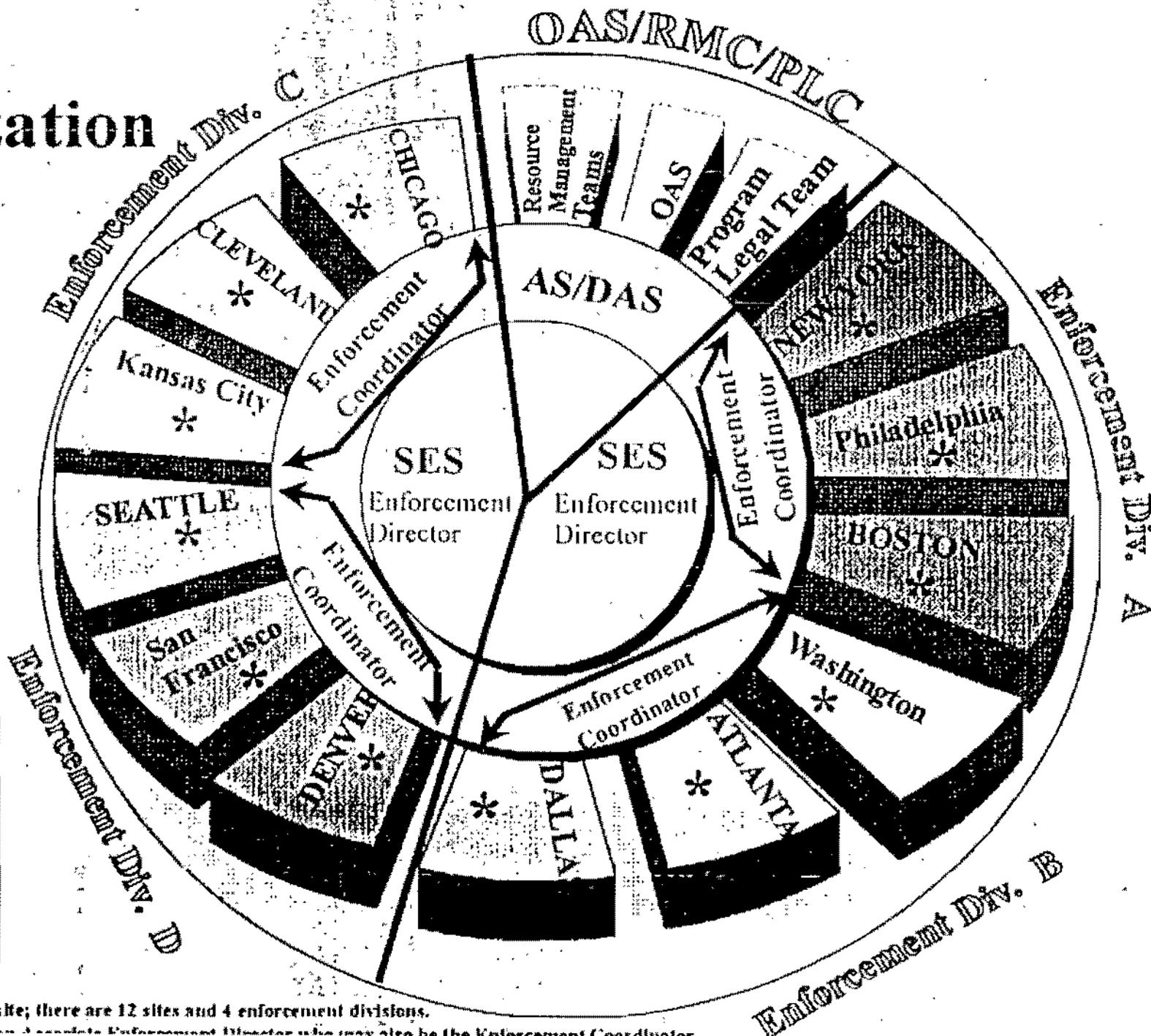
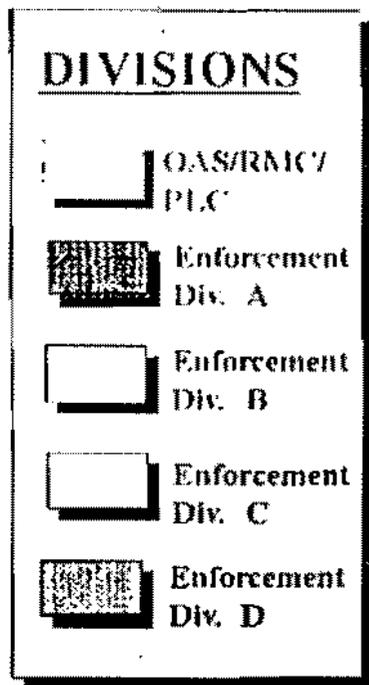
Factor 9 - Work Environment

The work is performed in a typical office setting. Frequent travel by car and air is required.

IV. UNIQUE POSITION REQUIREMENTS

None.

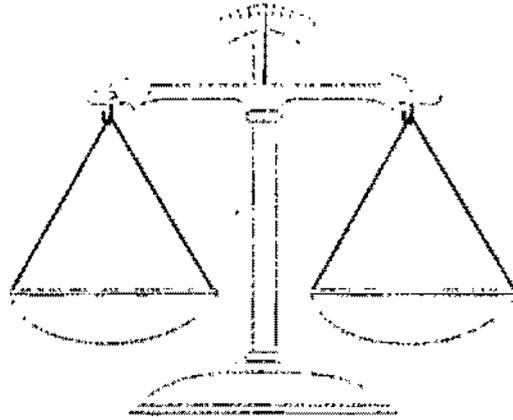
# OCR's Organization Chart



Note: Each wedge represents a site; there are 12 sites and 4 enforcement divisions.

Each Enforcement Director may also be the Enforcement Coordinator for one of the divisions.

# OFFICE FOR CIVIL RIGHTS



# CASE RESOLUTION MANUAL

Office for Civil Rights  
U.S. Department of Education  
Washington, D.C. 20202-1100

# MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-\_\_\_\_\_

FEB 13 1998

TO : ALL OCR STAFF

FROM : Raymond C. Pierce  
Deputy Assistant Secretary  
for Civil Rights

SUBJECT : Revised CRM



I am pleased to announce that the revised CRM is ready for distribution. A copy of the manual is attached. Most of the changes are editorial in nature, or involve changes in nomenclature to reflect our new structure. A few sections were also reorganized to better group ideas that are related or logically associated.

As you review the revised manual, I suggest that you note in particular the following changes:

- (1) The term Early Complaint Resolution has been changed to Resolution Between the Parties, to more accurately reflect what occurs, and to be consistent with our approach that permits such resolution activities at any point, not just "early" in the life of the complaint (Section II.C.);
- (2) The language in Section II.F.1. "Communicate Decisions to Interested Parties" was modified to clarify that while our focus remains on resolving complaint allegations, if in the process of gathering information, we identify civil rights violations, they will also be addressed;
- (3) Language has been added to Tab D calling for consultation with plaintiffs about the status of litigation, and coordination with the Litigation Coordinator, in cases where allegations filed with us are also covered under a court order to which the United States is not a party; and,
- (4) The discussion on what complainants may do if they disagree with OCR's resolution of their complaint (Section II.F.1.) has been slightly revised.

I would like to thank all staff who provided suggestions for improvements to the CRM, and especially the CRM team (Sue Bowers, Cathy Lewis, Gary Jackson, Linda McGovern, Helen Whitney, Paul Fairley and Lee Berthel) for their work in developing excellent

recommendations for revisions to the manual. If you have questions about specific changes, or the implementation of any CRM provision, please do not hesitate to contact one of the team members.

Attachment

cc: Marvin Farmer  
President, Council 252

## INTRODUCTION

The Office for Civil Rights (OCR) is committed to ensuring equal access to education and promoting educational excellence through vigorous enforcement of civil rights. The Case Resolution Manual (CRM) provides OCR with the tools to accomplish these objectives promptly and effectively.

For complaint resolution our approach is simple. Do we understand the complaint? What is the complainant saying is wrong? Does it fall under our jurisdiction? Is it timely? If we don't have jurisdiction, are there other avenues of assistance the complainant might pursue? Can the parties resolve the matter between themselves? Has our resolution process led us to conclude that a civil rights violation has occurred? If so, what is the appropriate remedy? Have we monitored that remedy to ensure full implementation? If resolution cannot be voluntarily achieved, have we initiated enforcement?

Compliance reviews, which are agency-initiated, are designed to focus on systemic educational practices that are denying equal access. Reviews enable the agency to protect the rights of thousands of children every year and enable their communities to understand, commit to, and implement strategies that provide opportunities to learn for all.

The CRM is not a prescriptive document. It offers flexibility, not rigid rules. It establishes general parameters within which a variety of resolution approaches can be appropriately utilized. The manual places primary emphasis on effective change, not document production.

The manual is premised on a strong belief in the merit of teamwork: within each team, within each Enforcement Office, within each Division, and between each OCR component. It places a premium on consultation and a willingness to take responsibility. It assumes full engagement of each individual throughout the resolution process.

There are many critical civil rights issues confronting our nation today. Our office has a key role to play in the federal effort to address those issues. The resolution approach set forth in this manual enables us to utilize our resources wisely and to maximize our effectiveness in ensuring civil rights compliance.

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# OCR CASE RESOLUTION MANUAL

## I. EVALUATE THE COMPLAINT

If OCR determines that written information provided to the Department of Education is a complaint, OCR will evaluate the complaint to understand the complainant's allegations, gather appropriate information, including jurisdictional information, and decide whether OCR will proceed to complaint resolution or take other appropriate action.

### A. Determine Whether OCR Has Received a Complaint

A complaint is a written statement to the Department of Education (including an electronic message) alleging that the rights of one or more persons have been violated and requesting, directly or by implication, that the Department of Education take action. Some correspondence that OCR receives, even if it concerns an alleged civil rights violation, may not be a complaint. Immediately upon receipt, OCR will determine whether or not the correspondence is a complaint. (See Tab A.)

The following are not complaints:

1. *Oral allegations.*
2. *Anonymous correspondence.*
3. *Courtesy copies of correspondence or a complaint filed with others.*
4. *Inquiries that seek advice or information but do not seek action or intervention from the Department.*

### B. Acknowledge the Complaint

A brief letter should immediately be sent to each complainant, acknowledging receipt of the complaint, stating that the complaint will be evaluated, and assuring the complainant that he or she will be contacted within a given time. The enforcement office will attach to the letter the document "Information About OCR's Complaint Resolution Procedures."

### C. Assign a Case Number and Establish a File for Each Complaint

The case opening date is the date a complaint is received by the correct OCR office. Upon receipt by the correct OCR Enforcement Office, OCR assigns the incoming complaint a case number. The office establishes a case file for each complaint.

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

1. The office will assign a separate case number to each recipient 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 office will open separate complaints and assign a case number for each such recipient: the case opening date for such complaints is the date OCR determined the complaint should be opened.
2. Complaints from more than one person against the same recipient that contain different allegations are treated as separate complaints.
3. 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 individual allegations, the office should assign separate case numbers.
4. 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.

#### **D. Gather Basic Information**

OCR will actively work with complainants and examine other sources of information (e.g., survey data or recipient information) to ensure that the agency has sufficient information to evaluate complaints appropriately. OCR staff will provide appropriate assistance to complainants, including persons with disabilities and individuals who speak a language other than English, who may need help in providing information OCR needs. The information needed will usually include at least the following:

1. a signed, written explanation of what has happened;
2. a way to contact the complainant;
3. identification of the person or group injured by the alleged discrimination;
4. identification of the person or institution alleged to have discriminated;
5. sufficient information to understand the factual bases for the complainant's belief that discrimination has occurred and when that discrimination has occurred.

If information establishes that OCR has no jurisdiction over the subject matter or institution alleged to have discriminated, it is not necessary to inquire further about the factual bases for the complainant's belief that discrimination has occurred.

OCR may contact the complainant by telephone to obtain missing necessary information. A record of contact summarizing the conversation should be placed in the case file. In the alternative, OCR will inform the complainant in writing of the information needed. If the necessary information is not provided within 30 calendar days of the date of the notification letter, the complaint will be closed and the complainant so informed.

If the complaint contains sufficient information with respect to at least one allegation, but lacks sufficient information with respect to other allegations, OCR will attempt to obtain the missing information, as described above. Allegations not completed within the 30-day timeframe will be closed; OCR will initiate complaint resolution only for those allegations for which sufficient information has been provided.

When identification of the complainant is necessary to resolve the complaint, OCR will require consent in writing before proceeding to complaint resolution. 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. Where the person is a minor child or incompetent adult, the consent form must be signed by the person's parent or guardian. The written consent should include an assurance of cooperation with OCR's complaint resolution activities.

The complainant's name cannot be released until we have received written consent. If OCR does not receive written consent within 30 calendar days, the complaint will be closed, and the complainant so informed.

See TAB A for Special Intake procedures, covering such issues as referral to FMCS, referral or transfer to the Equal Employment Opportunity Commission (EEOC), referral to the Department of Veterans Affairs, and referral to the Department of Justice.

See TAB C for Freedom of Information and Privacy Act Guidelines.

See TAB D for guidance on recipients operating under court order.

**E. Determine if the Institution and Type of Alleged Discrimination are Within OCR's Authority**

OCR only has jurisdiction over institutions that receive federal financial assistance from the U.S. Department of Education and institutions for which we have delegated authority from other federal agencies. Also, OCR only has authority over certain forms of discrimination, specifically, discrimination based on race, color, national origin, sex, disability, and age. Our regulations describe the specific type of conduct our laws prohibit. If a complaint is not filed against an institution we cover or if the complaint does not state a claim under the laws OCR enforces, we will not proceed further with the complaint. The Enforcement Office should refer the complaint to another agency, if appropriate.

**F. Determine Whether the Complaint is Timely**

Generally, OCR will take action only with respect to those complaint allegations that have been filed within 180 calendar days of the alleged discrimination. (See Tab A for special requirements for evaluating timeliness under the Age Act.) The filing date of a complaint is the earlier of the following:

the postmark of the complaint; or

the date the complaint is received by any Department of Education office, or for Title II complaints referred from DOJ, the date the complaint is received by DOJ.

Timely complaints include those where the complaint alleges a continuing discriminatory policy or practice. The person or team evaluating the complaint shall make the determination of the existence of a continuing discriminatory policy or practice in consultation with legal staff.

**G. Determine Whether a Waiver Should be Granted**

If a complaint 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 under any of the following circumstances:

The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint was filed within 60 days after the complainant became aware of the alleged discrimination.

The complainant was unable to file a complaint because of illness or other incapacitating circumstances during the 180-day period, and the complaint was filed within 60 days after the period of illness or incapacitation ended.

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, and filed a complaint with OCR within 60 days after the other agency has completed its investigation or notified the complainant that it would take no further action.

The complainant filed, within the 180-day period, an internal grievance 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.

Unique circumstances generated by agency action have adversely affected the complainant.

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

#### H. Circumstances Where OCR is not Able to Proceed Further with Complaint Allegations

There are a variety of reasons why OCR may decline to proceed further with complaint allegations. These are described below:

1. The complaint is so weak, attenuated, or insubstantial that it is without merit, or so replete with incoherent statements that the complaint, as a whole, cannot be considered to be grounded in fact.
2. The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same recipient or other recipients that repeatedly have been found factually or legally insubstantial by OCR.
3. The same allegations and issues of the complaint have been addressed in a recently closed OCR complaint or compliance review.
4. The complaint has been investigated by another agency and the resolution of the complaint meets OCR regulatory standards: i.e., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet OCR's standards.
5. The complaint allegations are foreclosed by previous decisions by federal courts, the Secretary of Education, the Civil Rights Reviewing Authority, or OCR policy determinations.
6. The complainant decides to withdraw his or her complaint. If the complaint included class allegations, the office may: (1) close out the entire complaint; (2) pursue

resolution of the class allegations; or (3) use the information to target future compliance review activity.

7. OCR obtains information at any time indicating that the allegations raised by the complaint have been resolved. In such a case, OCR will attempt to confirm the apparent resolution. If OCR determines that there are no current allegations appropriate for further complaint resolution, the complaint should be closed.
8. Litigation has been filed raising the same allegations. Such cases may be refiled within 60 days following termination of the 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.)
9. The same complaint allegations have been filed with another Federal, State, or local agency, or through a recipient's internal grievance procedures, including due process proceedings, and OCR anticipates that the agency will provide the complainant with a comparable resolution process. The complainant should be advised that she or he may refile within 60 days of the completion of the other agency's action. (Generally, OCR's consideration of such a complaint will not be a *de novo* review of the case.) Referrals of complaints by OSERS to individual state agencies will not be considered an investigation by another state agency.
10. OCR obtains information that the complaint allegation is moot, and there are no class allegations.
11. The information received from a complaint does not provide sufficient detail to proceed with complaint resolution. Where appropriate, the Enforcement Office may use the information as the basis for targeting future compliance reviews or technical assistance activities.
12. The Enforcement Office determines that its ability to complete the investigation is being substantially impaired by the complainant's or injured party's refusal to cooperate. In such a case, the complainant or injured party must be contacted as soon as possible. If this does not resolve the matter, a letter will be sent to the complainant or injured party explaining why the failure to cooperate (including refusal to give permission to disclose identity) has made it impossible to investigate further. The letter must inform the complainant or injured party that refusal to cooperate within 15 days of the date of the letter will result in OCR closing the case; and if the required information is not received within 20 days, the case will be closed.
13. A complaint over which OCR otherwise has jurisdiction may be closed when OCR transfers or refers the complaint to another agency for investigation. See Tab A, Special Intake Procedures.

14. 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.
15. A complaint involving a priority issue, because of its scope, may require a massive amount of resources. In such instances, the Office Director in consultation with the Enforcement Director may consider treating such a complaint as a compliance review, after considering the "basic information" described in D. above. If the Enforcement Office selects this option, it should discuss the decision with the complainant, close the complaint, assign a review number, and initiate the review as soon as possible. As part of this process, the Enforcement Office should also consider whether any of the complaint allegations can be resolved immediately. The results of the review will be shared with the complainant upon completion.
16. If the Office Director in consultation with the Enforcement Director determines that a compliance review is the most effective means of addressing multiple individual complaints against the same recipient, the Enforcement Office should discuss the decision with the complainants, close the individual complaints, assign a review number, and initiate a review as soon as possible. Any outstanding individual allegations that can not be promptly resolved should be incorporated into the review. The results of the review will be shared with the complainants upon completion.

#### **I. Notify the Parties Following Complaint Evaluation**

OCR will notify the complainant and, where appropriate, the recipient whether OCR will proceed to complaint resolution.

1. If OCR decides not to proceed to complaint resolution, the letter to the complainant (and recipient if appropriate) will state that the complaint is being closed and will explain the reason for the decision. The letter(s) should be reviewed by the Chief Attorney, or designee, and the Office Director, or designee.
2. If the complaint has been resolved during the evaluation process, the complaint resolution letter to the complainant (and recipient if appropriate) should contain:
  - o the basis for the complaint (race, color, national origin, sex, disability, and/or age);
  - o a brief statement of the allegations over which OCR has jurisdiction;
  - o a brief statement of OCR's jurisdiction over the complaint; and

- o an explanation of the basis for OCR's determination that the complaint has been resolved.
- o A copy of any agreement must be attached to the resolution letter.

The letter should be reviewed by the Chief Attorney, or designee, and the Office Director, or designee.

3. If OCR decides to proceed, the evaluation letters to the complainant and recipient will contain:
  - o the basis for the complaint;
  - o a brief statement of the allegations over which OCR has jurisdiction;
  - o a brief statement of OCR's jurisdiction over the complaint; and
  - o an indication of when the parties will be contacted.

Where a letter is sent to the recipient, the document "Information About OCR's Complaint Procedures" should be attached.

OCR's objective is to complete complaint evaluation as promptly as possible. The time required will vary depending upon the nature of the complaint and the amount of information provided. Our target date for completion of complaint evaluation is 30 days from receipt of the complaint. Many complaints will be evaluated in fewer days; some may require additional time.

## II. ATTEMPT TO RESOLVE THE COMPLAINT

OCR's objective is to resolve the complainant's allegations of discrimination promptly and appropriately. OCR may employ a variety of approaches. These include: resolutions between the parties, negotiated agreements, and investigation and enforcement. Offices are encouraged to use any of these approaches to resolve allegations from complainants that fall within OCR's jurisdiction.

Any approach, or combination of approaches, to resolving a particular allegation may be initiated at any time after receipt of the complaint and multiple approaches may be used to resolve the allegations of a complaint. Staff should constantly consider which tool is most likely to promote complaint resolution.

OCR may consider a complaint resolved when any of the following occur:

1. OCR facilitates resolution between the recipient and complainant through Resolution Between the Parties (RBP).

2. OCR negotiates an agreement resolving the allegations raised by the complainant.
3. OCR determines that there is insufficient evidence to support a finding of a violation.
4. OCR makes a finding, based upon its investigation, and negotiates an agreement with the recipient.

#### **A. Invest in Case Planning**

Complaint resolution should be preceded by planning. It is anticipated that planning will be a team approach that includes staff such as the attorney, investigator, and/or team leader. Issue teams may be consulted for particularly difficult or significant cases within priority issue areas. A written Investigative Plan may or may not be prepared, as determined by the complaint resolution team in consultation with the Office Director, or designee.

Whether or not an Investigative Plan is prepared, all case files must set out, in writing, the specific allegations to be resolved and the expected internal timeframes to be adhered to by the complaint resolution team.

#### **B. Establish Complaint Resolution Target Dates**

OCR's objective is to resolve each case on its own merits in an appropriate and timely way. To accomplish this objective, the Office Director, or designee, in consultation with the complaint resolution team, will establish target dates for each case that reflect the OCR's experience in resolving cases of similar complexity and scope. The initial target dates, any significant target date changes (more than 15 days), and the reasons for those changes should be documented in the case file. If the office has individual cases more than 180 days old, the office will develop a specific plan, with target dates, for resolving these cases.

#### **C. Resolution Between the Parties**

Resolution between the Parties (RBP) facilitates the resolution of complaints by providing the parties involved the opportunity to resolve the allegations prompting the complaint. It may occur at any time during the complaint resolution process, and may be carried out by any staff member, whether or not the staff member has been, or will be, involved in fact finding related to the complaint allegations.

If the office determines that RBP is appropriate, and the complainant and the recipient (after being informed of the information above) are willing to proceed, the office will initiate RBP to facilitate an agreement between the recipient and the complainant.

In RBP, OCR does not sign, approve, or endorse any agreement reached between the parties; however, OCR should assist both parties in understanding pertinent legal standards and

possible remedies. At the conclusion of RBP, OCR should obtain a copy of a statement signed by the complainant that the allegation has been resolved or a copy of any settlement agreement that has been signed by the complainant.

Once resolution of any allegation has been obtained, OCR may close that portion of the complaint; other approaches may be utilized to resolve any outstanding allegations.

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 investigate allegations of discrimination, not allegations that the agreement has been breached. However, the 180-day limitation on timeliness of a complaint will be determined by the date of the alleged breach.

#### **D. Gather Information and Pursue Resolution**

OCR's primary objective in complaint resolution is to resolve the complainant's allegations of discrimination promptly and appropriately. Investigation will continue until such time as the office can determine an appropriate resolution of the complaint allegations under OCR regulatory standards. The office is encouraged to use a variety of fact finding techniques; e.g., joint discussions with the complainant and recipient, short preliminary data requests, as well as traditional investigative approaches. The general guidelines for specific investigatory procedures are set forth at Tab B; information on participating in expedited resolution approaches is set forth at Tab E.

1. OCR may enter into discussions with a recipient at any time to reach an agreement to take action that fully resolves the complaint allegations (i.e., is consistent with OCR compliance standards). OCR will consult with the complainant to ensure that the interests of the complainant are appropriately considered. Written information may be given to the recipient/complainant if helpful to the negotiation process. All agreements should be crafted with a view toward effective monitoring. (See Section II.G. on content of agreements.)
2. If OCR determines that the evidence establishes a violation and negotiations are unsuccessful, OCR will issue a violation LOF and move to enforcement. (See Section III.)

The determination of the appropriate resolution of the complaint must be approved by the Chief Attorney or designee and the Office Director or designee.

#### **E. Determine Whether an Investigative Report Will Be Helpful**

The office should prepare sufficient documentation to support its findings and conclusions. In some cases, it will be helpful to prepare an investigative report (IR). An IR is a written

document that may include the following: the allegations investigated in a case, the legal standards applicable to those allegations, a summary and analysis of the information discovered during the investigation, the findings of fact OCR draws from that information, the conclusions of law OCR reaches based upon those findings, and any recommendations for further action needed as a result of those conclusions.

If an IR is not prepared, the Enforcement Office should prepare an index of documents in the file, and a key referencing by tab the evidence relied upon in making each finding and conclusion. The determination of which document will be prepared will be made by the Office Director, or designee, in consultation with the investigative team.

#### **F. Communicate Decisions to Interested Parties**

Enforcement Office staff should communicate with parties (complainants and recipients), as appropriate, regarding progress in resolving the complaint. Parties should hear from OCR no less than every 60 days regarding the status of any complaint not yet resolved. A record of these communications should be included in the case file.

##### **1. Prepare Case Resolution Letters Where the Complaint is Resolved**

If the complaint resolution process results in resolution of the complaint, the Enforcement Office will issue a complaint resolution letter. It is anticipated that these letters will be concise. Additional information about complaint resolution letters and related documentation is described below.

- a. If resolution is the result of RBP, the allegations and other factual information must be reflected in the case file. A copy of any agreement between the parties should be attached to the resolution letter.
- b. For all other cases, the allegations, any civil rights violations established during the fact finding, pertinent factual information, and analysis, as appropriate, must be reflected in the case file and the resolution letter. The resolution letter must include sufficient information so that those receiving the document can understand how OCR reached its determination. Specifically, the complaint resolution letter should contain:
  - o the basis for the complaint (race, color, national origin, sex, disability, and/or age);
  - o a brief statement of the allegations over which OCR has jurisdiction;
  - o a brief statement of OCR's jurisdiction over the complaint; and

- o an explanation of the basis for OCR's determination that the complaint has been resolved.

The letter may also include a summary of the pertinent legal standard and a brief statement and analysis of the ultimate facts. In selecting how much detail to include in the letter, the team should consider a variety of factors including the scope of the violation, length of plan implementation, conduct of the recipient, and recipient's or complainant's understanding of OCR's actions.

- c. A copy of any agreement must be attached to the resolution letter..

(See F. 2 below for information about LOF's.)

All resolution letters should be reviewed by the Chief Attorney, or designee, and signed by the Office Director, or designee.

OCR is committed to ensuring that every complaint is appropriately resolved. If the complainant has questions or concerns about OCR's resolution determination, he or she should contact the OCR staff person whose name appears in the complaint resolution letter. The complainant should be encouraged to address his or her concerns with as much specificity as possible, focusing on factual or legal questions that would change the resolution of the case. Should the complainant continue to have questions or concerns, she or he should be advised to contact the Office Director. The Office Director will verify the appropriateness of the complaint resolution.

## **2. Prepare a Letter of Findings (LOF) Where Appropriate**

An LOF can be issued under the following circumstances:

- a. The investigation establishes that there is no legal basis for violation or the violation has been resolved, but an LOF would have significant precedential value for OCR or the public.

The letter should be prepared with appropriate consultation and reviewed by the Chief Attorney and signed by the Office Director.

- b. The investigation establishes that there is a violation, negotiation is unsuccessful, and the office moves to enforcement.

Preparation of the violation LOF is discussed in Section III.

## **3. Notify the Department of Justice (DOJ) When Required**

If a Title II complaint was referred by the Department of Justice, a copy of the resolution letter must be sent to DOJ.

### **G. Develop Effective Agreements**

The agreement is a critical step in the resolution of any case because this is when we identify changes that must be made. All agreements should be crafted with a view toward effective monitoring. Any agreement must incorporate the following:

1. Agreements must be in writing and signed by a person with authority to bind the recipient, reviewed by the Chief Attorney or designee, and approved by the Office Director or designee.
2. An agreement must include (a) specific acts or steps the recipient will take to resolve the allegations; (b) the timetable for implementing each act or step; and (c) a specific timetable for submission of documentation.
3. If, as the result of the investigation, OCR has sufficient information to conclude that there are violations other than those alleged, these should also be addressed in the agreement.

A copy of the agreement should be attached to the resolution letter.

### **H. Monitor All Agreements**

Monitoring is critical to ensure that all necessary action is completed. OCR monitors the implementation of all agreements that include actions to be taken subsequent to the date of any agreement. Monitoring may or may not require an on-site visit.

Monitoring activities should be undertaken as outlined in the agreement. The Office Director or designee may agree to modify the schedule or the terms of the agreement, if necessary. A memorandum that records the basis for such a modification should be placed in the case file. Any modifications to the agreement must be appended to the original agreement.

The recipient and the complainant should be notified, in writing, of significant modifications to the agreement and successful completion of the agreement.

If a recipient has failed to satisfactorily complete its agreement, the recipient and the complainant should be notified promptly in writing of this determination.

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 III.F.



### III. MOVE TO ENFORCEMENT WHERE NECESSARY

If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative proceedings to suspend, terminate, or refuse to grant or continue ED financial assistance 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. Whenever enforcement action is anticipated, the Enforcement Office will consult with the Enforcement Directors.

#### A. Prepare a Letter of Findings

The following information should be included, as appropriate, in the violation Letter of Findings:

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 information on which the findings are based.
3. A conclusion for each issue that references the relevant facts, the applicable regulation, and the appropriate legal standards.
4. Notice that the LOF 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 achieve a voluntary settlement.
6. If a decision is made to defer final approval of any applications by the recipient for additional Federal financial assistance over what the recipient is presently receiving, the letter also will provide notice of such possible deferral.

The office should consult as appropriate during the preparation of this draft document and during any negotiations that may occur after issuance of the LOF.

#### B. Issuing Violation Letters of Findings

The draft LOF, and other documentation as appropriate, will be shared electronically with the Enforcement Directors. The Enforcement Directors will consult, as appropriate, with staff within OCR and the Department. It is anticipated that this consultation process will be completed within 30 days. As soon as concurrence is obtained from the Office of the Assistant Secretary, the LOF will be issued by the enforcement office.

The draft LOF should be accompanied by the following documents:

1. a litigation memorandum if the case raises new or unresolved legal issues. If a litigation memorandum is prepared it should include:
  - a. the nature of the violation found on each issue;
  - b. a discussion of the applicable statutes, regulations or case law; and
  - c. an evaluation of the evidence that supports each finding;
2. a case summary that includes the chronology of the case and provides information on federal financial assistance; and
3. a recommended forum for enforcement.

In some instances, the Enforcement Office may also be asked to provide a copy of the case file.

#### **C. Initiate Administrative Proceedings Where Appropriate**

If administrative proceedings are initiated, and the recipient has been notified in writing of OCR's intention to impose deferral, the notice of imposition of deferral and Notice of Opportunity will be issued within 30 working days after notification by the Enforcement Office that negotiations have been unsuccessful.

If an administrative proceeding is initiated, a team will be established to prosecute the case.

#### **D. Refer to DOJ Where Appropriate**

If post-LOF negotiations do not result in an acceptable agreement, the Enforcement Office will notify the Office of the Assistant Secretary and that office will issue a 10-day letter to the recipient. The Enforcement Directors will consult with DOJ as appropriate.

The target date for completion of referral to DOJ is 30 days after the office has notified the Office of the Assistant Secretary that negotiations have failed.

#### **E. Move to Enforcement for Denial of Access**

Where the recipient has denied access to information (See Tab B), no LOF is necessary to proceed to enforcement. However, if deferral is contemplated, the recipient must be notified 30 days before notice of an imposition of deferral can be issued. As soon as the Enforcement Office concludes that the recipient will not voluntarily provide access, it will notify the



## F. Move to Enforcement for Failure to Implement Agreement

Where the recipient has failed to implement its corrective action agreement, it is not necessary to prepare an LOF if findings on the underlying violation have already been made. Whenever the Enforcement Office determines that voluntary compliance cannot be achieved, it will notify the recipient and prepare a brief information memorandum, including a summary of the recipient's federal financial assistance, for the Enforcement Director. If deferral is contemplated, the recipient must be notified 30 days before a notice of an imposition of deferral can be issued. The documents provided to the Enforcement Director may be supplemented by a detailed description of how the recipient has failed to implement its agreement. These documents should be shared electronically with the Enforcement Director. That office will provide information to the Office of the General Counsel, as appropriate. Procedures set forth in III.C. or D., will be followed, as appropriate.

#### IV. CARRY OUT COMPLIANCE REVIEWS UNDER THE CRM

The investigative procedures identified in the manual for complaint resolution should be utilized for compliance reviews, as appropriate.

Generally, OCR conducts compliance reviews within the following timeframes:

- A. The "start date" for a compliance review is the date the on-site begins or, if there is no on-site, the date data are first requested from the recipient.
- B. The Enforcement Office will establish a target date for completion of each review when it identifies the review site.
- C. Generally, an investigation will be conducted for each compliance review. The investigation may result in: (1) a letter of findings if there is a violation or violation-corrected; (2) a letter of findings if there is no violation, but precedential value in the determination; (3) a closure letter if there is no violation; or (4) a case resolution letter.

(TABS A, B, C, D, AND E ATTACHED.)

## SPECIAL INTAKE PROCEDURES

## I. 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.

## A. 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.

## B. Service Complaints

All complete and timely (see 34 CFR Sec. 110.31 and 110.32) complaints containing an allegation of age discrimination in services, including those also containing allegations under Title VI, Title IX, and/or Section 504, are referred to:

Federal Mediation and Conciliation Service  
2100 K Street, S.W.  
Washington, DC 20427.

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 the complaint is not resolved by FMCS within 60 days from the date of filing with OCR, OCR will resume processing the complaint.

## II. 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:

Equal Opportunity Staff  
Veterans Assistance Service  
Department of Veterans Benefits  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, DC 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 may be 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 CFR § 18a.1(a).

OCR remains responsible for enforcement of Title VI where a proprietary vocational school offers nondegree 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 CFR § 18a.1(b).

## III. Title VI and Title IX Employment Complaints

Certain Title VI and Title IX employment complaints over which both OCR and EEOC may have jurisdiction must be "referred" to EEOC within 30 days of receipt of the complaints, in accordance with governmentwide regulations. Also, under those regulations, all employment complaints over which OCR lacks jurisdiction, but over which EEOC may have jurisdiction, must be "transferred" to EEOC. The following guidelines apply to the handling of any Title VI or Title IX employment complaint:

Within 10 calendar days of OCR's receipt of the complaint, OCR will notify the recipient and complainant of the following:

that OCR has received the complaint;

that OCR will determine within 30 days of receipt of the complaint whether the complaint will be referred to EEOC; and

that OCR's determination regarding whether the complaint is complete or timely under OCR's case processing rules will be deferred until it has been determined whether OCR or EEOC will investigate the complaint.

The letter to the recipient must also set forth the date, place, and alleged circumstances of the discriminatory act set forth in the complaint.

Within 30 calendar days after the receipt of the complaint, OCR will determine whether the complaint will be investigated by OCR or referred to EEOC, and will so notify the complainant and recipient.

*Complaints referred to EEOC.* Where the entire complaint is referred to EEOC, the complaint will be closed. The letters notifying the complainant and recipient of referral to EEOC must state that OCR is closing the complaint. No determination of completeness or timeliness need be made.

*Complaints referred in part to EEOC.* Where OCR retains any portion of the complaint (e.g., allegations of discrimination in services), the original case will be closed upon referral to EEOC and a new case number assigned to the portion retained by OCR.

#### **IV. Title II ADA Complaints (Other than Employment)**

OCR has jurisdiction to investigate Title II complaints against recipients, and other public educational entities and libraries. If OCR receives an ADA complaint over which it does not have jurisdiction, it should be referred to the Department of Justice and closed. The complainant should be notified of the referral.

#### **V. Disability Employment Complaints**

Disability employment complaints should be closed in two circumstances: if OCR has no jurisdiction under either Title II or Section 504, or if OCR has jurisdiction under Title II but not under Section 504. If the complaint is against an employer with fewer than 15 employees, it should be referred to DOJ. If the employer has 15 or more employees, the complaint should be referred to the EEOC.

The handling of complaints over which OCR has jurisdiction under both Title II and Section 504 will vary depending on several factors. If the complaint is a pattern and practice complaint or an individual complaint that also has other non-employment issues, it must be retained by OCR. If the complaint is an individual complaint only, whether filed only with OCR or with both OCR and

the EEOC, the complaint will be referred to the EEOC unless the complainant indicates a desire for it to remain with OCR.

Thus, for single issue individual employment disability complaints filed with OCR only or with both OCR and the EEOC:

Within 10 calendar days of OCR's receipt of the complaint, OCR will notify the recipient and complainant of the following:

that OCR has received the complaint;

that OCR will refer the complaint to the EEOC unless we receive a written request, within 20 days that OCR retain it;

that there are differences in the processing of complaints under Section 504 and Title II, and potential remedies may differ;

that OCR's determination regarding whether the complaint is complete or timely under OCR's case processing rules will be deferred until it has been determined which agency will investigate the complaint.

If the complainant elects to have the complaint remain with OCR, within 30 days OCR must make the decisions regarding completeness and timeliness.

## DATA COLLECTION AND INFORMATION GATHERING

### I. 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 investigative strategies. Some general principles that should guide decision making during data collection include:

- A. Attempt to obtain independent written documentation to corroborate oral statements.
- B. Clearly label all evidence, both documents 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).

### II. OCR's Authority for Obtaining Information

OCR has the right to complete access during a recipient's normal business hours to all information maintained by the recipient needed to determine compliance status on those issues under investigation. See 34 CFR § 100.6(c) and 34 CFR § 99.31(a)(3)(ii). 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. See Section I.H.9. regarding any case where the complainant's refusal to provide information interferes with OCR's ability to investigate the case.

### III. Requests for Records

#### A. Data Request Letters

A data request letter is a written request to the recipient for information 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.

## B. Timeframes for Recipient's Response

The recipient should generally be given a minimum of 15 calendar days from the date of OCR's request to submit the information requested.

Section 34 of the  
Civil Rights Act of 1964  
requires that the recipient  
submit the information requested  
within 15 calendar days of the  
date of the request.

### C. Form of Data Provided by Recipient

OCR's legal authorities require that a recipient must submit information in any form OCR stipulates as necessary for our compliance activities. However, other Federal regulations and policies may restrict OCR's information requests.

1. 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.
2. 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.
3. 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 extract the needed information, then the recipient has provided OCR with the requisite access.

### D. Confidentiality

OCR should have access to a recipient's records, even if those records identify individuals by name and the names are not relevant to the investigation. To protect the confidential nature of the records, OCR, for example, may permit the recipient to code names 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 will need access to the unmodified records. See also 20 U.S.C. § 1232(6)(B)(1),(3) regarding the applicable provisions of the Family Educational Rights and Privacy Act.

## IV. Interviews

### A. Generally

An interview is any conversation with anyone during the course of an investigation for the purpose of obtaining information relevant to the issues in the case.

## B. Notice

Anyone being interviewed by OCR as part of an investigation should be given notice of the following items before initiating the substantive part of an interview:

1. A general explanation of why the person is being interviewed, including who OCR is, what law or laws are part of the current investigation, and where appropriate, a brief explanation of what is being investigated.
2. A brief notice regarding the potential uses of the information to be obtained from them, and of the Freedom of Information Act. Witnesses who want a more thorough explanation should be provided a copy of the OCR Notice of Witness Rights.
3. If the witness is an employee of a recipient, notice of his or her right not to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview.
4. The witness' right to personal representation during the interview by a person of their choice.
5. The regulatory provisions concerning prohibition of intimidating or retaliatory acts by a recipient.
6. In most cases, the recipient's counsel will be allowed to sit in on upper level management interviews.

## C. Witness' Right to Representation

The witness' right to representation does not include a general right to have other persons present during the interview. Besides the OCR investigator, the person being interviewed, and any needed interpreters, the only other person present during any interview should be the witness' personally designated representative. If the witness, other than an upper level manager, identifies the recipient's counsel or a supervisor or manager for the recipient as a personal representative, the witness should be informed that such a person may have a conflict of interest between that person's responsibilities to the recipient and the person's responsibilities as a personal representative. The witness should also be informed that if a representative with responsibilities to the recipient appears to interfere with OCR's ability to interview the witness or obtain requested information, the representative will be asked to leave. The witness should then be asked again if the witness wishes to have a personal representative and whom the witness wishes to have as that representative. If the witness still identifies the same person as the witness, and OCR has no other reason to believe the presence of the identified representative will interfere with the gathering of information, OCR

should proceed with the interview. Investigators should discuss these considerations with the witness prior to scheduling the interview.

**D. Recipient's Employees**

Recipients must provide OCR with access to all books, records, accounts, and other sources of information or facilities that OCR finds necessary to determine compliance. This includes what an employee can supply orally as well as any written information he/she may have that is not maintained elsewhere by the recipient. OCR cannot compel a recipient's employees to provide information upon the employee's refusal; however, the recipient is responsible for providing the information by any other possible method.

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

Generally, parental or guardian written consent is to be obtained when interviewing any person under 18 years of age or otherwise legally incompetent, for example, mentally impaired. However, parental or guardian consent may not be necessary for students when the questions asked are of a general nature, not related to any specific events in which the interviewee was involved, and there are no records kept to identify the student. If a recipient refuses to allow students under 18 years of age to be interviewed without parental or guardian consent, even for general information, parental or guardian 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.

**F. Records of Interviews**

A written record of both telephone and in-person interviews must be made to preserve information obtained. Whether notes are taken or a tape recorder is used during a particular interview, depends on the investigative technique of the interviewer and the reactions of the interviewee. Tape recording will be done only with the consent of the interviewee. 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:

1. case identification (name and case number);
2. name and identification of the interviewee, interviewer, and any other person present (include an explanation for the presence of any other persons);

3. date, time, and location of interview (including whether the interview was conducted by telephone);
4. a record of whether the interviewee was informed of required notifications; and
5. 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).

## **V. Limitations on Obtaining Information**

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

It is a clear denial of access to information when a recipient either explicitly or by its overall conduct:

1. refuses to permit OCR access to written or unwritten information, such as electronic storage media, microfilm, retrieval systems, photocopies, etc., and the recipient's facilities during the recipient's normal business hours;
2. refuses to permit OCR access to employees during recipient's normal business hours;
3. fails to provide information to which it has access if one of its employees refuses to do so or to provide access to information maintained exclusively by an employee in his/her official capacity; or
4. refuses to complete OMB-approved compliance and survey forms relevant to an investigation (e.g., OS/CR 532-1 and 532-2 survey forms).

### **B. OCR's Response to Refusals to Provide Data or Access to Witnesses**

In instances where the recipient states an intent to refuse to provide OCR with requested information or access to records or witnesses, OCR will do the following:

1. 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, where possible, attempt to explain OCR's authority or provide other information to address the recipient's concerns.
2. If the investigator is unable to obtain access to the requested information, the investigator should 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.

3. Where attempts to persuade a recipient to provide information have failed, a letter should be prepared, in consultation with OCR legal staff, setting forth OCR's authority to obtain access to the information and addressing as fully as possible any particular concerns expressed by the recipient.
4. Whenever the office determines that voluntary compliance cannot be achieved (generally not to exceed 90 days from the date of the request), the case should be referred for enforcement (See Section III).

## FREEDOM OF INFORMATION ACT AND PRIVACY ACT

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, gives the public a right of access to records of Federal agencies, including the records and files of the Office for Civil Rights. The FOIA is implemented by Department of Education regulations, 34 CFR Part 5.

The OCR "Guide to the Freedom of Information Act" (August 1989) provides detailed guidance on the application of FOIA to OCR activities. The guide establishes procedures for processing FOIA requests and appeals, covers the assessment of fees, fee waivers, and the relationship between the FOIA and the Privacy Act.

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 investigative files have been exempted from the provisions of the Privacy Act that provide individuals with access to records maintained on themselves. With limited exceptions, third parties may not gain access to records about individuals within a system of records without the consent of the subject individual.

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.

**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:

**I. United States a Party**

- A. The Office Director will forward to the Department of Justice (DOJ) a copy of the complaint and the court order (if readily available).
- B. The Enforcement Office will accept the complaint for investigative purposes only and will so notify the complainant in the letter of acknowledgment.
- C. At the conclusion of its investigation, the Enforcement Office will forward a report to DOJ of OCR's findings of fact.
- D. The Enforcement Office will then close the complaint and notify the complainant that the case has been referred to DOJ.

**II. United States Not a Party**

- A. As part of evaluation of the complaint, and at other points as appropriate, the Enforcement Office will consult with plaintiffs about the current status of the monitoring of the court order and with the Litigation Coordinator before proceeding to resolution.
- B. If a violation is issued, the LOF should notify the complainant and recipient that if settlement is not achieved, the case will be referred to DOJ for enforcement. If settlement is not achieved, refer to III.D., page 19.

## OCR'S ROLE IN PARTICIPATING IN VARIOUS EXPEDITED RESOLUTION APPROACHES

### I. OBJECTIVE

To facilitate efficient, prompt, effective, and appropriate case resolutions.

### II. PURPOSE

- o Provide a constructive opportunity for the complainant to achieve a mutually acceptable resolution without the necessity for an OCR investigation and determination regarding the allegations.
- o Provide the parties the opportunity to clarify those facts that are agreed upon and those that are in dispute. This process can reduce the scope of OCR's investigation and fact finding. Where relevant facts are agreed upon, OCR will not need to conduct an independent investigation into such facts. If the agreed upon facts are sufficiently comprehensive to resolve the allegations, no further investigation by OCR will be necessary.
- o Provide the opportunity for a full resolution of all allegations without the need for an investigation and determination by OCR on the merits of the allegations. This process involves a formal commitment by the recipient to take steps that OCR determines sufficient to resolve any possible violation(s). In essence, the recipient does not admit a violation but is willing to take steps to ensure its compliance with respect to the possible violation(s) raised by the allegations.

### III. VOLUNTARY RESOLUTIONS BETWEEN PARTIES (RBP)

#### A. OCR'S ROLE

- o To serve as facilitator.
- o 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.
- o To maintain an impartial approach and ensures the parties realize that OCR will not insist on particular terms or any specific resolution.
- o To review the allegations and makes sure the parties understand the allegations OCR has accepted for potential investigation and, as appropriate, facilitating and understanding of pertinent legal standards and possible remedies.

- o To facilitate a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution.
- o 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 through mediation.

#### **B. ROLE OF THE PARTICIPANTS**

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

### **IV. FACT FINDING CONFERENCES**

#### **A. OCR'S ROLE**

- o To clearly communicate to the parties regarding the allegations under investigation and the potential benefits of narrowing the questions of fact to those matters in dispute between the parties. Also, to inform the parties that OCR will evaluate any agreed-upon facts in reaching a decision on the complaint and that OCR will not deem it necessary to obtain independent corroboration of facts that the parties agree upon.
- o To plan and be prepared for the fact finding conference. To have identified in advance those questions of fact that should be resolved in order for OCR to reach a decision on the allegations raised in the case.
- o To direct inquiries to the parties that are clear and focused on facts that are essential to reach a decision on the allegations raised.
- o To ensure that each person stipulating to or agreeing to facts has personal knowledge or has the authority to speak for the recipient or complainant as to the facts agreed upon.
- o To accurately record and maintain the facts as agreed upon by the parties. To ensure the parties are informed of the facts that OCR finds are not in dispute.

#### **B. ROLE OF COMPLAINANT AND RECIPIENT'S REPRESENTATIVE**

- o To cooperate in responding to OCR's questions regarding facts that are important to the resolution of the complaint.



## V. EXPEDITED RESOLUTION BASED ON RECIPIENT'S AGREEMENT

### A. ROLE OF OCR

- o To carefully analyze the allegations and determine what remedy would be required to resolve them.
- o To make sure the recipient understands the process, including the fact that OCR would monitor any commitments that are to be completed subsequent to the agreed-upon commitments. Further, to ensure that the recipient understands that if it does not implement commitments as agreed, OCR will reopen the case and conduct an investigation of the allegations. Also, to ensure that the commitments are set forth clearly and reduced to writing and signed by an authorized representative on behalf of the recipient.
- o To keep the complainant informed regarding the recipient's interest in resolving the matter without regard to whether OCR would find a violation based on an investigation of the allegations. To take into consideration any information provided by the complainant regarding the consequences of the alleged discrimination.
- o To accept only remedies determined to be legally sufficient to resolve the allegations.
- o To promptly notify the complainant when OCR has determined that the recipient has agreed to a commitment that fully resolves the complainant's allegations (under OCR's standards).
- o To monitor the agreement thoroughly and to ensure that the complaint investigation is reopened if the recipient fails to carry out the terms of the agreement.
- o Where the agreement resolves some allegations, but not all, to conduct an investigation of the remaining allegations.

### B. RECIPIENT'S ROLE

- o To cooperate with OCR in promptly responding to OCR's position with regard to what actions would be required to resolve the allegations.
- o To promptly execute a written commitment once the terms have been agreed upon and acceptance indicated by OCR.
- o To faithfully implement the terms of the agreement in a timely fashion.

- o To report to OCR with the information requested and consistent with the agreed upon timeframes and to cooperate fully in providing any information that OCR deems necessary to enable it to adequately monitor the implementation of the recipient's commitments.

## INFORMATION ABOUT OCR'S COMPLAINT RESOLUTION PROCEDURES

### I. Complaint Evaluation

OCR begins by evaluating complaints. OCR's objective in complaint evaluation is to determine whether or not OCR can proceed to complaint resolution. OCR cannot proceed to complaint resolution under a variety of circumstances, for instance, where OCR has no jurisdiction; where a complaint is not timely; where another agency has already reached a binding decision; or where the person alleged to be injured declines to cooperate in OCR's investigation.

OCR will actively work with complainants and examine other sources of information to ensure that the agency has sufficient information to evaluate complaints appropriately. OCR staff will provide appropriate assistance to complainants who may need help in providing information OCR needs.

It is expected that complainants will also work actively with OCR to ensure that OCR has the information needed; OCR can initiate complaint resolution only for those complaints for which sufficient information has been provided.

OCR is responsible for enforcing the following Federal civil rights laws:

- ▶ Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin;
- ▶ Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs;
- ▶ Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- ▶ The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and
- ▶ Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.

Generally, OCR will take action only with respect to those complaints that have been filed within 180 calendar days of the last act of alleged discrimination, or where the complaint alleges a continuing discriminatory policy or practice. If a complaint is not filed in a timely manner, the complainant may request a waiver, which may be granted only under limited circumstances. Age discrimination complaints are timely if filed within 180 days of the date the complainant first had knowledge of the alleged discrimination.

## II. Complaint Resolution

OCR's primary objective in complaint resolution is to resolve the complainant's allegations of discrimination promptly and appropriately. OCR has a variety of tools for resolving complaints. These include: Resolution Between the Parties, agreements for corrective action, and enforcement. Any approach, or combination of approaches, may be initiated at any time and multiple approaches may be used to resolve any complaint.

#### a. Resolution Between the Parties

Resolution Between the Parties provides the parties involved the opportunity to immediately resolve the allegations prompting the complaint. If the complainant and the recipient are willing to utilize this approach, OCR will work with the parties to facilitate resolution of the complaint. 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.

OCR does not monitor any agreement reached between the parties in RBP, but if the recipient does not follow through on the agreement, the complainant may file another complaint with OCR.

#### b. Agreements

OCR's investigations continue until such time as OCR can determine an appropriate resolution of the complaint allegations under OCR regulatory standards. OCR may use a variety of fact finding techniques, which may include informal fact finding such as joint discussions with the complainant and recipient.

Any agreement for corrective action will specify the action, if any, to be taken by the recipient to resolve each complaint allegation. Implementation of such agreements will be monitored by OCR.

#### c. Other Ways Complaints Can be Resolved

OCR may also consider a complaint resolved when any of the following occur:

- if the complaint has been investigated by another agency and the resolution of the complaint meets OCR standards;
- if OCR determines that the evidence is insufficient to support a finding of a violation;
- if the complainant withdraws his or her complaint; and
- if OCR obtains information indicating that the allegations raised by the complaint have already been resolved.

### III. Letters of Findings and Enforcement

If OCR determines that the recipient has violated one or more provisions of the civil rights laws, and the recipient is unwilling to correct the violation(s), OCR will promptly issue a violation letter of findings specifying the factual findings and the legal basis for the violation(s). OCR will again attempt to negotiate a corrective action agreement. If OCR is still unable to obtain voluntary compliance, OCR will move immediately to enforcement by either initiating administrative enforcement proceedings or referring the case to the Department of Justice. OCR can also move immediately to defer any new or

additional federal financial assistance to the recipient, and will begin administrative enforcement proceedings to terminate existing federal assistance.

#### **IV. Additional Information For the Complainant**

##### **a. What To Do If You Disagree With OCR's Resolution of Your Complaint**

OCR is committed to ensuring that every complaint is appropriately resolved. If the complainant has questions or concerns about OCR's resolution determination, he or she should contact the OCR staff person whose name appears in the complaint resolution letter. The complainant should be encouraged to address these concerns with as much specificity as possible, focusing on factual or legal questions that would change the resolution of the case. Should the complainant continue to have questions or concerns, she or he should be advised to contact the Office Director. The Office Director will verify the appropriateness of the complaint resolution.

##### **b. Information About the Right To File a Separate Court Action**

The complainant should be aware that a separate court action may be filed regardless of OCR's findings. It should be clear that, in resolving complaints, OCR cannot and does not represent the complainant in the way that a person's private attorney would. If the complainant wishes to file a court action, he/she may do so through an attorney.

The complainant alleging discrimination prohibited by the Age Discrimination Act of 1975 may file a civil action in federal court only after exhausting administrative remedies. Administrative remedies are exhausted upon the earlier of either (1) 180 days have elapsed since the complainant filed the complaint with OCR and OCR has made no finding with regard to the complaint, or (2) OCR issues a finding in favor of the recipient. At such time, OCR will promptly notify the complainant of this fact and will provide additional information regarding the complainant's right to file a civil action for injunctive relief.

Complainants and recipients have the right to have a representative at all stages of the complaint procedure.

##### **c. Prohibitions Against Intimidation or Retaliation**

A recipient may not intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either taken action or participated in an action to secure rights protected by the civil rights statutes enforced by OCR. If any individual believes that he or she is being harassed or intimidated by a recipient because of the filing of a complaint or participating in the resolution of it, a complaint alleging such harassment or intimidation may be filed with OCR.

#### d. Investigatory Uses of Personal Information

OCR processes complaints and conducts compliance reviews regarding discrimination on the basis of race, color, national origin, sex, disability, or age at institutions that receive Federal financial assistance from the Department of Education. The resolution of complaints may involve the collection and analysis of personal information, such as student records (including academic standing) and, in some cases, employment records. No law requires a complainant to give personal information to OCR, and no sanctions will be imposed on complainants or other individuals who do not cooperate in providing information requested by OCR in connection with its case resolution process. However, if OCR is unable to obtain information needed to investigate or to otherwise resolve allegations of discrimination, it may be necessary for OCR to discontinue its complaint resolution activities.

There are two laws governing personal information submitted to all Federal agencies, including OCR: the Privacy Act of 1974 (Privacy Act), 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

THE PRIVACY ACT OF 1974 protects individuals from the misuse of personal information held by the Federal Government. The law applies to records that are kept and can be located by the individual's name, social security number, or other personal identifier. It regulates the collection, maintenance, use, and dissemination of certain personal information in the files of Federal agencies. Persons who submit information to OCR should know that the information that OCR collects is analyzed by authorized personnel with the agency and will be used only for authorized civil rights compliance and enforcement activities.

However, OCR may need to reveal certain information to persons outside the agency in the course of verifying facts or gathering additional information to develop a basis for resolving a complaint. Such details could include the physical condition or age of a complaint. Also, OCR may be required to reveal certain information to an individual who requests it under the provisions of the Freedom of Information (FOIA) (discussed below); OCR will not release information to any other agency or individual except in the 11 instances defined in the Department's regulation at 34 C.F.R. § 5.b.9(b), one of which is release under the FOIA.

Finally, OCR does not reveal the name or other identifying information about an individual unless it is necessary for the 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. OCR will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the FOIA, the Privacy Act or otherwise by law.

THE FREEDOM OF INFORMATION ACT gives the public a right of access to records and files of Federal agencies, including those of OCR. Individuals may obtain items from many categories of records of the Federal Government, not just materials that apply to them personally. OCR must honor requests under the FOIA with some exceptions. Generally, OCR is not required to release documents during the case resolution process or enforcement proceedings if the release could have an adverse

effect on the ability of OCR to do its job. Also, any Federal agency may refuse a request for records compiled for law enforcement purposes if their release could constitute an unwarranted invasion of privacy of an individual. Also, a request for other records, such as medical records, may be denied where disclosure would be a clearly unwarranted invasion of privacy.

**OFFICE FOR CIVIL RIGHTS  
ACTUAL OBLIGATIONS  
FY 1992 thru FY 2000  
(\$'s in 000)**

04-Aug-00

	1992	1993	1994	1995	1996	1997	1998	1999	2000
11.1 Full Time Personnel	\$ 34,425	\$ 36,639	\$ 37,038	\$ 36,768	\$ 36,712	\$ 35,588	\$ 36,095	\$ 39,668	\$ 42,764
11.31 Full Time (Temporary)	848	539	539	579	553	493	1,036	1,156	412
11.32 Part Time Perm/Temp	321	340	537	574	581	617	720	905	1,350
11.33 Consultants	0	0	0	0	0	0	0	0	0
11.91 On-Call	43	9	10	15	4	8	17	11	20
11.92 Awards	447	487	393	420	203	106	420	405	400
11.93 Other Compensation	0	0	0	0	0	52	0	0	0
12 Bonuses	6,598	7,129	7,330	7,399	7,310	7,182	7,710	8,669	9,231
13 Services	34	34	1,360	1,740	38	110	0	1	0
<b>SUBTOTAL PC&amp;A</b>	<b>\$42,686</b>	<b>\$45,227</b>	<b>\$47,437</b>	<b>\$47,495</b>	<b>\$45,401</b>	<b>\$44,156</b>	<b>\$45,908</b>	<b>\$50,815</b>	<b>\$54,177</b>
21 Travel	727	804	843	900	788	919	1,289	1,219	1,300
22 Transportation of Things	15	28	12	12	0	3	2	1	2
23 Rent to GSA	3,747	4,069	3,402	4,593	4,073	4,313	4,401	4,836	4,762
23.1 Construction/Alter.	11	3	1	175	0	0	0	0	1,483
23.2 ADP Telecommunications	684	198	217	312	774	271	1,204	1,181	0
23.3 Postage Fees	390	408	510	500	39	35	35	50	50
23.31F Copy/Equipment Rentals	246	0	0	0	0	0	0	0	343
24 Printing	101	61	67	27	104	178	55	140	216
25 Advisory/Consultants	0	51	9	0	7	6	221	66	150
26 Other Services	247	234	254	206	147	297	676	392	278
26.2 Training	309	309	274	409	225	100	456	612	501
26.3F Int-Agency	1,000	1,340	2,084	1,943	1,327	1,772	715	1,192	1,463
26.31 Building Maintenance	0	0	100	111	108	86	62	0	0
26.32 Equipment Repair/Replac	352	392	580	73	280	126	123	75	61
26.33 ADP Services	944	1,005	203	412	574	951	2,279	2,896	4,100
26.34 Supplies	740	513	345	613	503	801	640	454	313
26.35 ADP Equipment	875	709	709	1,277	386	421	1,253	1,268	1,396
26.36 Equipment	214	820	96	34	352	297	1,462	77	294
26.37 Building Alterations	47	89	0	16	43	38	354	839	106
41.10 Grants	0	0	0	0	0	0	245	10	0
43.10 Incent and Dividends	0	0	0	1	0	0	4	5	0
<b>DISCRETIONARY SUBTOTAL</b>	<b>\$10,656</b>	<b>\$10,909</b>	<b>\$9,437</b>	<b>\$10,619</b>	<b>\$9,761</b>	<b>\$10,605</b>	<b>\$15,446</b>	<b>\$15,133</b>	<b>\$17,023</b>
<b>TOTAL</b>	<b>\$53,342</b>	<b>\$56,136</b>	<b>\$56,874</b>	<b>\$58,114</b>	<b>\$55,164</b>	<b>\$54,761</b>	<b>\$61,354</b>	<b>\$65,948</b>	<b>\$71,200</b>