

Complaints/Initiatives

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Case Processing Manual (CPM)

INTRODUCTION

The mission of the Office for Civil Rights (OCR) is to ensure equal education and to promote education excellence throughout the country through vigorous enforcement of civil rights. The Case Processing Manual (CPM) provides OCR with the procedures to effectively investigate complaints and compliance issues, report findings, and to secure resolution agreements that address discriminatory policies or practices identified by OCR.

2008

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[Table of Contents](#)**EVALUATE THE COMPLAINT**

When a complainant provides written information to the U.S. Department of Education is a complaint, OCR will establish whether it meets the criteria to proceed to investigation. OCR will provide complainants with assistance regarding the nature of their rights and of the investigation process. Additionally, OCR staff will provide assistance to complainants who are persons with limited English proficiency and individuals of limited English proficiency.

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

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

601 Determine What Constitutes a Complaint

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

The following are not complaints:

- Oral allegations that are not reduced to writing and signed;
- Anonymous correspondence;
- Courtesy copies of correspondence or a complaint filed with a copy;
- Inquiries that seek advice or information but do not seek action or intervention from the Department.

A complaint should include a written explanation of what occurred; a way to contact the complainant (if the complaint is filed by e-mail OCR must have the complainant's actual name and address); identification of the person or group injured by the alleged discrimination; and identification of the person or

ation alleged to have discriminated. Generally, statistical data alone are not sufficient to support a finding of a violation, but may be sufficient to warrant an investigation when presented in conjunction with other facts and circumstances.

102 Assign a Case Number and Establish a File for Complaint

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

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

The Enforcement Office will assign a separate case number for each recipient¹ named in the complaint. If, during the course of the investigation, OCR determines that other recipients are involved in the alleged acts of discrimination, the Enforcement Office will open separate complaints and assign a case number for each such recipient; the case opening date for such complaints is the date on which OCR determines that other recipients are involved.

Multiple complaints from more than one person against the same recipient that contain different allegations are treated as separate complaints.

Multiple complaints filed by more than one person that raise substantially identical allegations against the same recipient will be treated as one complaint and assigned one case number. Complaints received later, incorporated into an existing complaint. If multiple complaints raise distinct allegations, the Office should assign separate case numbers.

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.

103 Acknowledge the Complaint

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

When disclosure of the identity of the complainant is necessary, the Office will require written consent before proceeding. OCR does not require a specific form from the complainant, but does need written consent 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 person, including when a parent files for a student over the age of 18 where the person is a minor (under the age of 18) or a competent adult, the consent form must be signed by that person's parent or legal guardian. Parental or legal guardian consent may not be required for persons under the age of 18 if they are emancipated under state law and are therefore considered to

ained majority. Proof of emancipation or incompetence provided. The written consent should include an assurance ation with OCR's investigation and complaint resolution . OCR will inform the complainant that the complaint will l if written consent is not received within 20 calendar days te of request. If OCR does not receive such timely written the complaint will be closed, and the complainant informed J.

104 Determine Subject Matter Jurisdiction

st have jurisdiction over the subject matter of the pt. For OCR to establish jurisdiction, the complaint must r OCR must be able to infer from the facts given, an n of: 1) discrimination based on race, color, national origin, bility or age, 2) discrimination in violation of the Boy f America Equal Access Act of 2001, or 3) retaliation for the of interfering with any right or privilege secured by the civil vs enforced by OCR, or as a result of making a complaint, y, or participating in any manner in an OCR proceeding. 34 § 100.7(e), 104.61, 106.71, 108.9, 110.34; 28 C.F.R. §

jurisdiction under the following statutory authorities:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ d et seq., 34 C.F.R. Part 100

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

Title IX of the Education Amendments of 1972, as ded, 20 U.S.C. §§ 1681 et seq., 34 C.F.R. Part 106

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

Section 504 of the Rehabilitation Act of 1973, as ded, 29 U.S.C. § 794, 34 C.F.R. Part 104

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

Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et 34 C.F.R. Part 110

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

Title II of the Americans with Disabilities Act of 1990, 29 U.S.C. §§ 12131 et seq., 28 C.F.R. Part 35

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

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

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

105 Determine Personal Jurisdiction

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

106 Determine Whether the Complaint is Timely

OCR will take action only with respect to those complaint instances that have been filed within 180 calendar days of the date of the last act of alleged discrimination unless the complainant obtains a waiver under Section 107. The filing date of a complaint is the earlier of the following:

- the date the complaint is received by any Department Office; or
- for Title II complaints referred from DOJ, the date the complaint is received by DOJ.

Some complaints may include those where the complainant alleges a continuing discriminatory policy or practice. The person or team filing the complaint shall make the determination of the existence of a continuing discriminatory policy or practice, in

tion with legal staff

107 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 of Education or designee, may grant a waiver of the 180-day filing period under any of the following circumstances:

The complainant could not reasonably be expected to know the complaint 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 an incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint was filed within 60 days after the period of 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 the complaint with OCR within 60 days after the other agency had 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 with a recipient of federal financial assistance, or a grievance process hearing, alleging the same discriminatory conduct as the subject of the OCR complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded;

The complainant was unable to file an internal grievance with the recipient because the recipient did not maintain and publish required grievance procedures; or

Unique circumstances generated by OCR's 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.

108 Dismissal of Complaints

OCR decides not to open a complaint for investigation or to proceed with an investigation for any of the reasons identified in [104](#), [105](#), [106](#), [107](#), and/or [109](#) it will dismiss the complaint.

109 Opening the Complaint for Investigation

OCR will open for investigation all allegations, which, if true, would constitute a violation of one of the laws it enforces.

OCR will dismiss the complaint if it is so incoherent that, as a whole, it cannot be considered to be grounded in fact. If the facts as stated by the complainant are unclear, OCR will contact the complainant by phone, in writing, or via electronic mail to request the information that will assist OCR in understanding the complaint.

OCR will dismiss the complaint if the information is not received within 20 calendar days of the date of request. If the complaint is dismissed for failure to provide necessary information within the stated time period, the complainant will be so informed in writing.

After this contact the complainant confirms that the allegations

within OCR's jurisdiction, OCR will dismiss the complaint. The manner and date by which the complainant confirms that the allegations are not within OCR's jurisdiction shall be documented in the complaint file.

110 Determine Whether OCR Will Administratively Close a Complaint²

OCR may close a complaint for the following reasons:

The complaint has been investigated by another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, and the resolution of the complaint meets OCR administrative standards; *i.e.*, all allegations were investigated, appropriate legal standards were applied, and any remedies available were secured to meet OCR's standards.

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

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

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

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

The same allegations have been filed by the complainant against the same recipient with state or federal court. An OCR complaint may be re-filed within 60 days following termination of a court proceeding if there has been no decision on the merits or settlement of the complaint allegations. (Dismissal without prejudice is considered a decision on the merits.)

The same allegations have been filed by the complainant against the same recipient with another federal, state, or local civil rights enforcement agency, or through a recipient's internal grievance procedures, including due process proceedings, and OCR anticipates that the resolution will be a comparable resolution process under comparable administrative standards; *i.e.*, all allegations will be investigated, appropriate legal standards will be applied, the same remedies available to the complainant, and remedies secured will meet OCR's standards. OCR will advise the complainant that the complaint may be re-filed within 60 days of the completion of the other entity's action. Generally, OCR will not conduct its own investigation; instead, OCR reviews the results of the other entity's determination and determines whether the other entity conducted a comparable process and met appropriate legal standards.

OCR may close a complaint for the following reasons:

The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against

same recipient that have been found to be without merit by

the same issues involving the same recipient have been
addressed in a recent OCR compliance review.

the complainant withdraws the complaint.

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

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

The allegations are moot because:

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

111 Administrative Closure of the Complaint

When OCR closes a complaint for any of the reasons identified in
Section 110, it will issue a letter of administrative closure to the
complainant and the recipient explaining the reason for the
closure. Closures under Section 110 will be approved by the Chief
Counsel, or a person specifically designated to act on behalf of the
Attorney General.

112 Notification Letter

When OCR opens a case for investigation, it will issue letters to the
complainant and recipient that state the following:

- the basis for the complaint;
- a brief statement of the allegations over which OCR has
jurisdiction;
- a brief statement of OCR's jurisdiction over the complaint;
- an indication of when the parties will be contacted.

"Complaint Processing Procedures" must be issued with the
letter to the recipient.

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EARLY COMPLAINT RESOLUTION (ECR)

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

201 Early Complaint Resolution

OCR's Role

to serve as facilitator, upon request of both parties;

- to inform the parties of the procedures, establish a constructive tone, and encourage the parties to work in good faith toward a mutually acceptable resolution;
- to maintain an impartial approach and inform the parties that OCR will not insist on particular terms or any specific resolution;
- to review the allegations and make sure the parties understand the issues that OCR has accepted for investigation, and, as appropriate, facilitating an understanding of pertinent legal standards and possible remedies;
- to facilitate a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution; and
- to offer assistance, as appropriate, with regard to reducing any resolution to writing. If an agreement is reached, the parties are informed that OCR will issue a closure letter reflecting the voluntary resolution of the complaint by agreement of the parties.

Role of the Participants

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

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

202 Informing Parties of the Availability of the ECR

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

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

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

203 Successful Conclusion of ECR

Upon successful conclusion of ECR, OCR will obtain a copy of a statement that the complaint has been resolved, signed by the complainant, or a copy of any settlement agreement that has been signed by the complainant. Once resolution of any allegation has been obtained, OCR will notify the parties in writing that the allegation(s) has or has not been resolved; other outstanding issues, if any, are to be resolved through the investigation and resolution process. (See Section 1.1.) A copy of any agreement between the parties will be included in the resolution letter.

Breach of Agreements

will not monitor the agreement but will inform the parties if a breach occurs, the complainant has the right to file a new complaint. If such a new complaint is filed, OCR will reassess the original allegations and will not address the alleged breach of the agreement. To be considered timely, the new complaint must be filed either within 180 days of the date of the original discrimination or within 60 days of the date the complainant obtains information that a breach occurred, whichever date is later.

204 Investigative Determination When ECR is Not Conducted

OCR will monitor the process of ECR to ensure adequate time for completion of the investigation in the event that ECR is not successful. Where appropriate, investigation should proceed to completion in accordance with normal case processing standards and timelines.

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INVESTIGATION OF THE COMPLAINT

Ensure that investigations are legally sufficient and that they cover all of the allegations raised in the complaint. OCR will keep the parties informed of the progress in investigating a complaint and will communicate with the parties regularly regarding the status of any investigation. OCR staff will return the parties' telephone calls promptly, by the end of the following business day. OCR staff will acknowledge the receipt of the parties' substantive letters and emails promptly, and, where a response is needed, provide a response to the parties' letters and emails in a timely manner. These communications will be documented in the case file.

301 Case Planning

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

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

- Allegation(s)
- OCR's jurisdiction over subject matter and parties
- Legal issue(s)
- Investigation strategy
- Resolution agreement

The case file will contain documentation that supports the decisions made with respect to each of the applicable essential planning elements. Planning documentation should be organized so that it is readily located in the case file. In routine closures under 34 CFR provisions, the required documentation may be satisfied by a cover letter.

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

required action(s) to achieve compliance,
 dates for completion of specific actions,
 verification/reporting requirements (e.g. a description of
 specific data, documentation and other needed information),
 dates for reporting to OCR, and
 efficient resource use including:

- . verification methods (e.g. reports/ reviews and/or onsite visits); and
- . reporting requirements.

302 Resolution Agreement Reached During an Investigation

A complaint may be resolved when, before the conclusion of an investigation, the recipient asks to resolve the complaint. Such a resolution to resolve the complaint during the course of an investigation must be approved by the Office Director. If approved, the recipient must immediately notify the complainant of the recipient's decision and will keep the complainant informed throughout all steps of this resolution process. The provisions of the resolution agreement will be aligned with the complaint allegations or the findings obtained during the investigation, and will be consistent with applicable regulations. A copy of the resolution agreement will be provided with the resolution letter. (See [Section 304.](#))

303 Investigative Determinations: Letters of Finding

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

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

Letters of finding(s) that make a determination under Title II of the Americans with Disabilities Act will include the following language: "The complainant may file a private suit pursuant to Section 303 of the Americans with Disabilities Act, whether or not there is a violation of Title II."

Insufficient Evidence Determination

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

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

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

A letter of finding(s) must be approved and signed by the Chief Attorney, or the Chief Attorney's designee.

Non-Compliance Determination

When by a preponderance of the evidence OCR determines that

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

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

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

A letter of finding(s) to the parties must include:

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

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

A letter of finding(s) must be approved by the Chief Attorney, the Office Director, the appropriate Enforcement Director and the Deputy Assistant Secretary for Enforcement, and signed by the Chief Attorney, or the Chief Attorney's designee.

Following the expiration of the 30 calendar day period or the 10 calendar day period referenced in this subsection and the issuance of a letter of finding(s), the recipient has refused to make a commitment to voluntarily resolve the identified areas of non-compliance, the Enforcement Office will follow the procedures set forth in 34 C.F.R. § 100.8. (See also Section

Section 304 Guidelines for Resolution Agreements

Whenever OCR enters into a resolution agreement a Statement of the Case is required, which the Chief Attorney or designee must approve. The statement of the case sets out the issues investigated; OCR's basis for entering into a resolution agreement; and an explanation of how the terms of the agreement are aligned with the issues investigated and are consistent with applicable regulations. A cross-reference and/or link to the evidence in the case file will also be included.

A resolution agreement must be consistent with policy and aligned with the identified violation. The complaint will be considered resolved and the recipient deemed compliant if the recipient enters into an agreement that, fully performed, will remedy the identified violations. A copy of the agreement will be included with the resolution letter.

Resolution agreement planning will be documented in the case file either separately or by reference to the resolution agreement. OCR staff shall notify the Deputy Assistant Secretary for Enforcement or his or her designee of its intent to

into negotiations concerning the terms of the proposed resolution agreement. If the Enforcement Office has not received a response from the DAS or designee to the notification of its intent to enter into negotiations within three business days of the date the notification was sent, the Enforcement Office may infer authorization to proceed with negotiations.

Resolution Agreements:

- . Must be signed by a person with authority to bind the recipient;
- . Must be approved by the Chief Attorney or a person specifically designated as acting on his/her behalf;
- . Must be approved by the Office Director or a person specifically designated as acting on his/her behalf; and
- . Must include:
 - (i) specific acts or steps the recipient will take to resolve compliance issues;
 - (ii) dates for implementing each act or step; and
 - (iii) dates for submission of reports and documentation verifying implementation.

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

While many agreements may be fully implemented within a short period of time, some agreements will involve more complex terms that require additional time to complete. The general expectation is that resolution agreements should be implemented and monitored for not more than two years after issuance.

Following are examples of circumstances that may justify extending the period of implementation and monitoring beyond two years:

- action involving construction of, or major modification to, a recipient's facilities;
- action that cannot be completed without action by a legislative body; or
- action requiring the collection and analysis of data lasting more than one school year.

A copy of the agreement will be attached to the letter of notification(s).

Resolution Letters

After the resolution agreement is signed, a resolution letter will be sent to the parties. The letter must include:

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

The resolution letter must state that, when fully implemented, the resolution agreement will address all of OCR's compliance concerns.

The resolution letter must be approved by the Chief Attorney, the Office Director, or their designees, and must be signed by the Office Director.

Section 305 Letter of Impending Enforcement Action

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

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

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

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

Section 306 Request for Reconsideration

OCR is committed to a high quality resolution of every case. It affords an opportunity for reconsideration to the complainant. Notice of the reconsideration process is provided to complainants in the information sheet that is enclosed with

s letter acknowledging receipt of the complaint. Notice of
s reconsideration process is also published on OCR's
net site: [http://www.ed.gov/about/offices/list/ocr/
complaints-how.html](http://www.ed.gov/about/offices/list/ocr/complaints-how.html).

dition, OCR will provide a specific notice of the
consideration process in letters to complainants closing
ations pursuant to Section 303(a) of the Case Processing
Manual.

ters closing a complaint under the above-cited section of
Case Processing Manual, the complainant will be informed
he or she may send a request for reconsideration to the
e Director within 60 days of the date of OCR's closure
letter. The complainant must explain why he or she believes
the actual information was incomplete, the analysis of the facts
was incorrect, and/or the appropriate legal standard was not
applied, and how this would change OCR's determination in the
future. Failure to do so may result in the closure of the request
for reconsideration.

ough a complainant generally is expected to submit a
request for reconsideration within 60 days of the date of the
closure letter, the Office Director may exercise discretion in
granting a waiver of the 60-day timeframe where:

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

When a complainant files a request for reconsideration with the
Office Director, the Office Director will issue a written decision in
response to a request for reconsideration as promptly as
practicable.

The written decision from the Office Director will include
information that if the complainant disagrees with the decision of the
Office Director, the complainant may submit an appeal in
writing to the office of the Deputy Assistant Secretary for
Enforcement within 60 days of receipt of the written decision of
the Office Director. The complainant will be advised to be as
concise as possible, focusing on factual or legal questions that
may change the disposition of the case, and advised also that
the Deputy Assistant Secretary for Enforcement will not
reconsider any issues or concerns that were not raised with the
Office Director. If the complainant raises a concern that the
Office Director inappropriately declined to waive the 60-day
timeframe and the Deputy Assistant Secretary for Enforcement
determines that the waiver should have been granted, the
Deputy Assistant Secretary will return the case to the
appropriate enforcement office for reconsideration. The
decision of the Deputy Assistant Secretary constitutes OCR's
final decision.

307 Monitor Post-Investigation Resolution Requirements

OCR will promptly conduct its monitoring activities consistent with
the following standards and procedures:

Verification of Recipient's Implementation

OCR will obtain sufficient information to determine whether the
commitments made by the recipient have been implemented
consistent with the terms of the settlement agreement. In
many instances verification of remedial actions can be

Completed by careful review of reports, documentation and information submitted by recipients and knowledgeable persons. In some instances, a site visit may be required to verify actions taken by the recipient or may be deemed the most efficient method of verification. Monitoring site visits will be conducted as necessary to verify or ensure compliance with the agreement and will be approved by the Office Director or by a person specifically designated to act on behalf of the Director.

Responding to Monitoring Reports

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

Changed Circumstances Affecting Agreements

1. Mootness or Change in Law or Policy

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

2. New Compliance Issues

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

3. Implementation Problems

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

4. Approval of Modifications

Any modifications to the agreement must be appended to the original agreement. Modification of the agreement provisions, reporting provisions, or timetable for completion or reporting will be documented in the case file. Extensions of time of up to 30 days for each report may be granted as authorized by the team leader or other management representative. Other modifications to the agreement will

be reviewed and approved by the Office Director and Chief Attorney or persons specifically designated as acting on their behalf. The Office Director or person specifically designated as acting for the Director must approve any modification that would extend the total monitoring period beyond two years from the date of the original agreement. The recipient and the complainant will be notified, in writing, of significant modifications to the agreement.

Conclusion of Monitoring

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

308 Notify the Department of Justice (DOJ) or EEOC Required

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

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INITIATING ENFORCEMENT ACTION

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

401 Initiate Administrative Proceedings Where Appropriate

If, after a period of Impending Enforcement Action negotiations do not result in a resolution agreement, the Enforcement Office will so advise the Assistant Secretary and will request that an administrative proceeding be initiated. OCR will establish a team to handle the case. If deferral of funds has been imposed, the recipient's opportunity will be issued within 30 days of the notice of enforcement action.

402 Refer to DOJ Where Appropriate

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

403 Move to Enforcement for Denial of Access

If the recipient has denied access to information necessary to resolve the case (see [Section 602](#)), a Letter of Impending Enforcement Action is not necessary to proceed to enforcement. Enforcement action can be taken until 30 days have elapsed after notification of recipient. As soon as the Enforcement Office determines that the recipient will not voluntarily provide access, it notifies the recipient of the Enforcement Office's determination and the Enforcement Office's intention to recommend enforcement. The Enforcement Office will then prepare a draft letter, which may include notice of OCR's intention to impose deferral of funds. These documents will be forwarded to the Enforcement Director and the Deputy Assistant Secretary for Enforcement.

404 Move to Enforcement for Failure to Comply with Agreement

If the recipient has failed to comply with the agreement it is required to prepare a Letter of Impending Enforcement Action in accordance with the procedures outlined under [Sections 306](#) and [307](#). If a new agreement cannot be reached after issuance of the Letter of Impending Enforcement Action, procedures set forth in [401](#) and [402](#) will be followed, as appropriate.

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COMPLIANCE REVIEWS

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

501 Compliance Concerns Unrelated to the Original Complaint

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

502 Treating a Complaint as a Compliance Review

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

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

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APPENDICES

601 Special Intake Procedures

Age Discrimination Complaints

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

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.

Service Complaints

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

Federal Mediation and Conciliation Service
2100 K Street, N.W.
Washington, D.C. 20427

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

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

The complainant will be informed that they may file a civil action under the Age Discrimination Act in federal court only after they have exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred: 1) 180 days have elapsed since the filing of a complaint with OCR and OCR has made no finding, or 2) OCR issues a finding in favor of the recipient.

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) with certain exceptions, been delegated to the Department of Veterans Affairs. Such complaints must be forwarded to:

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

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

Following exceptions apply:

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

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

National origin and sex discrimination in employment complaints will be processed in accordance with the government-regulations. OCR will:

- Within ten days of receipt, notify the complainant and the recipient that OCR has received the complaint, including the date, place and circumstances of the alleged unlawful employment practice.
- Within thirty days of receipt:
 1. Determine whether OCR has jurisdiction over the complaint under Title VI or Title IX.
 2. Determine whether EEOC may have jurisdiction over the complaint.
 3. Transfer to the EEOC all complaints over which OCR does not have jurisdiction but over which EEOC may have jurisdiction. Notify the complainant and the recipient of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date the agency received the complaint will be deemed the date it was received by EEOC.
 4. Refer to the EEOC certain complaints over which both OCR and EEOC appear to have jurisdiction ("joint complaints"), consistent with the following guidance:
 - (i) Absent special circumstances, OCR will refer a joint complaint that solely alleges employment discrimination against an individual.
 - (ii) Absent special circumstances, OCR will not refer a joint complaint alleging a pattern or practice of employment discrimination.

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

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

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

Title II ADA Complaints (Other than Employment)

28 C.F.R. § 35.171(a)(2)(i))

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

Section 504 and Title II Disability Employment

Complaints (for precision, please refer to 28 C.F.R Part 37 and 28 C.F.R. Part 1640)

Referral or deferral

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

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

Retention

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

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

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

602 Data Collection and Information Gathering

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 involved, the extent to which relevant data are in the control of the recipient or others, and investigation strategies. Some general principles that should guide decision-making during data collection include:

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

OCR's Authority to Obtain Information

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

Requests for Records

1. Data Request Letters

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

Timeframes for Recipient's Response

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

Data Provided by Recipient

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

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

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

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

Confidentiality

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

Interviews

Introduction

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

Notice

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

(i) The general purpose of the interview, including OCR's role, what law or laws may be pertinent to the

investigation, and where appropriate, a brief explanation of what is under investigation.

(ii) The potential uses of the information to be obtained from the witness and the Freedom of Information Act. A witness who wants a more thorough explanation should be given a copy of the OCR Notice of Witness Rights

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

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

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

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

Privacy

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

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

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

Records of Interviews

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

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

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

Limitations on Obtaining Information

Actions Constituting Denial of Access

recipient denies access to OCR when it:

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

Refusals to Provide Data or Access to Witnesses

- (i) If the refusal is stated orally, either in person or over the telephone, the investigator should attempt to ascertain the exact basis for the recipient's refusal, and attempt to explain OCR's authority or provide other information to address the recipient's concerns.
- (ii) If the investigator is unable to obtain access to the requested information, the investigator will consult with OCR legal staff (when on-site, this should be done over the telephone whenever possible before the investigator leaves the recipient's premises). Where appropriate, OCR legal staff should discuss the refusal to provide information directly with the recipient's representative.
- (iii) Where attempts to persuade a recipient to provide information have failed, a letter should be prepared setting forth OCR's authority to obtain access to the information and addressing any particular concerns expressed by the recipient.
- (iv) Whenever the office determines that compliance cannot be achieved, the office shall recommend that the case be referred for enforcement. (See Section III).

603 Freedom of Information Act and Privacy Act

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

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

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

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

604 Recipients Operating Under Federal Court Order

The 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:

United States a Party

1. The Office Director will consult with the Enforcement Office Director and forward to the Department of Justice (DOJ) a copy of the complaint and the court order (if readily available) asking whether DOJ is currently active in the district and whether OCR may proceed with an investigation. Based on DOJ's response OCR will either:

- (i) Refer the case to DOJ; or
- (ii) Proceed with an investigation.

2. Accordingly, the Enforcement Office will then close the complaint and notify the complainant that the case has been referred to DOJ, or accept the complaint and so notify the complainant in the notification letter.

3. If OCR proceeds with an investigation, at the conclusion

of its investigation, the Enforcement Office will forward a report to DOJ of OCR's findings of fact. If DOJ offers no objection, OCR will proceed to issue a letter of finding(s) consistent with routine case processing standards. (See [Article III](#))

United States Not a Party

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

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

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

That if prior to opening a complaint for investigation, OCR determines that any of the criteria set forth in Section 110 has been met, OCR will not open the complaint for investigation, but instead will dismiss the complaint. OCR dismisses a complaint for any reasons identified in Section 110. If it will issue a letter of dismissal to the complainant setting forth the reason for the decision. Dismissals issued pursuant to Section 110 must be approved by the Chief Attorney, or the Chief Attorney's designee.

Purposes of this subsection, a child graduating, or otherwise leaving a school or school district alone is not generally grounds to dismiss an allegation based on mootness.

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