

OCR COMPLAINT PROCESSING PROCEDURES

LAWS ENFORCED BY OCR

OCR enforces the following 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;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act of 2001, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum.

EVALUATION OF THE COMPLAINT

OCR evaluates each complaint that it receives in order to determine whether it can investigate the complaint. For example, OCR must determine whether OCR has legal authority to investigate the complaint; that is, whether the complaint alleges a violation of one or more of the laws OCR enforces. OCR must also determine whether the complaint is filed on time. Generally, a complaint must be filed with OCR within 180 calendar days of the last act that the complainant believes was discriminatory.¹ If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement. OCR will decide whether to grant the waiver. In addition, OCR will determine whether the complaint contains enough information about the alleged discrimination to give the recipient fair notice of what the claim is. If OCR needs more information in order to clarify the complaint, it will contact the complainant; the complainant has 20 calendar days within which to respond to OCR's request for information.

OCR will dismiss the complaint if OCR determines that:

- OCR does not have legal authority to investigate the complaint;
- The complaint was not filed timely and that a waiver will not be granted;

¹ Complaints that allege discrimination based on age are timely if filed with OCR within 180 calendar days of the date the complainant first knew about the alleged discrimination.

- The complaint is unclear or incomplete and the complainant does not provide the information that OCR requests within 20 calendar days of OCR's request;
- The allegations raised by the complaint have been resolved;
- The complaint has been investigated by another Federal, state, or local civil rights agency or through a recipient's internal grievance procedures, including due process proceedings, and the resolution meets OCR regulatory standards;
- The same allegations have been filed by the complainant against the same recipient with another Federal, state, or local civil rights agency, or through a recipient's internal grievance procedures, including due process proceedings, and OCR anticipates that there will be a comparable resolution process under comparable legal standards;
- The same allegations have been filed by the complainant against the same recipient in state or Federal court;
- The allegations are foreclosed by previous decisions of the Federal courts, the U.S. Secretary of Education, the U.S. Department of Education's Civil Rights Reviewing Authority, or OCR policy determinations.

OPENING THE COMPLAINT FOR INVESTIGATION

If OCR determines that OCR has legal authority to investigate the complaint, that the complaint is filed timely (or that a waiver of the timeliness requirement is granted), and that the complainant has alleged facts that, if true, would constitute a violation of one of the laws OCR enforces, and that give fair notice of what the claim of discrimination is, OCR will open the complaint for investigation.

Opening a complaint for investigation in no way implies that OCR has made a determination with regard to the merits of the complaint. During the investigation, OCR is a neutral fact-finder. OCR will collect and analyze relevant evidence from the complainant, the recipient, and other sources as appropriate. OCR will ensure that investigations are legally sufficient and are dispositive of the allegations raised in the complaint.

INVESTIGATION OF THE COMPLAINT

OCR may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, recipient's personnel, and other witnesses, and/or site visits. At the conclusion of its investigation, OCR will determine with regard to each allegation that:

- there is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or

- a preponderance of the evidence supports a conclusion that the recipient failed to comply with the law.

RESOLUTION OF THE COMPLAINT AFTER A DETERMINATION OF NON-COMPLIANCE

If OCR determines that a recipient failed to comply with one of the civil rights laws that OCR enforces, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, the recipient will negotiate and sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by OCR. The terms of the resolution agreement, if fully performed, will remedy the identified violation(s) in compliance with applicable civil rights laws. OCR will monitor the recipient's implementation of the terms of the resolution agreement to verify that the remedial actions agreed to by the recipient have been implemented consistent with the terms of the agreement and that the area(s) of noncompliance identified were resolved consistent with applicable civil rights laws.

If the recipient refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, OCR will inform the recipient that it has 30 days to indicate its willingness to engage in negotiations to voluntarily resolve identified areas of noncompliance, or OCR will issue a Letter of Finding to the parties providing a factual and legal basis for a finding non-compliance.

If, after the issuance of the Letter of Finding of non-compliance, the recipient continues to refuse to negotiate a resolution agreement with OCR, OCR will issue a Letter of Impending Enforcement Action and will again attempt to obtain voluntary compliance. If the recipient remains unwilling to negotiate an agreement, OCR will either initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue Federal financial assistance to the recipient, or will refer the case to the Department of Justice. OCR may also move immediately to defer any new or additional Federal financial assistance to the institution.

RESOLUTION OF THE COMPLAINT PRIOR TO THE CONCLUSION OF THE INVESTIGATION

Early Complaint Resolution (ECR):

Early Complaint Resolution allows the parties (the complainant and the institution which is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation. If both parties are willing to try this approach, and if OCR determines that Early Complaint Resolution is appropriate, OCR will facilitate settlement discussions between the parties and work with the parties to help them understand the legal standards and possible remedies. Staff assigned by OCR to facilitate the Early Complaint Resolution process will not be the staff assigned to the investigation of the complaint.

OCR does not approve, sign or endorse any agreement reached between the parties as a result of Early Complaint Resolution, and OCR does not monitor the agreement. However, if the recipient institution does not comply with the terms of the agreement, the complainant may file another complaint with OCR within 180 days of the date of the original discrimination or within 60 days of the date the complainant learns of the failure to comply with the agreement, whichever date is later.

Resolution of the Complaint Prior To the Conclusion of an Investigation

A complaint may also be resolved before the conclusion of an investigation, if the recipient asks to do so. If OCR determines that resolution of the complaint before the conclusion of an investigation is appropriate, it will notify the complainant of the recipient's request and will keep the complainant informed throughout all stages of the resolution process. The provisions of the resolution agreement that is reached must be aligned with the complaint allegations and the information obtained during the investigation, and must be consistent with applicable regulations.

A resolution agreement reached before the conclusion of an investigation must be approved and will be monitored by OCR.

REQUEST FOR RECONSIDERATION OF OCR'S DETERMINATIONS

If the complainant disagrees with OCR's decision to dismiss or close a complaint for any reason (e.g., jurisdiction, timeliness, other administrative reasons, insufficient evidence to support the allegation(s)), he or she may send a written request for reconsideration to the Office Director within 60 days of the date of OCR's dismissal or closure letter. The complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change OCR's determination in the case. Failure to do so may result in the closure of the request for reconsideration.

The Office Director will respond to the request for reconsideration in writing. If the complainant disagrees with the Office Director's decision, he or she may appeal in writing to OCR's Deputy Assistant Secretary for Enforcement.

ADDITIONAL INFORMATION

Right to File a Separate Court Action

The complainant has the right to file suit in Federal court, regardless of OCR's findings. OCR does not represent the complainant in case processing, so if the complainant wishes to file a court action, he or she must do so through his or her own attorney or on his or her own through the court's pro se clerk's office.

If a complainant alleges discrimination prohibited by the Age Discrimination Act of 1975, a civil action in Federal court can be filed only after the complainant has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

- 1) 180 days have elapsed since the complainant filed the complaint with OCR and OCR has made no finding; or
- 2) OCR issues a finding in favor of the recipient. If this occurs, OCR will promptly notify the complainant and will provide additional information about the right to file for injunctive relief.

Prohibition against Intimidation or Retaliation

An institution under the jurisdiction of the Department of Education may not intimidate, threaten, coerce, or retaliate against anyone who asserts a right protected by the civil rights laws that OCR enforces, or who cooperates in an investigation. Anyone who believes that he or she has been intimidated or retaliated against should file a complaint with OCR.

Investigatory Use of Personal Information

In order to investigate a complaint, OCR may need to collect and analyze personal information such as student records or employment records. No law requires anyone to give personal information to OCR and no formal sanctions will be imposed on complainants or other persons who do not cooperate in providing information during the complaint resolution process. However, if OCR is unable to obtain the information necessary to process a complaint because of the complainant's failure to provide information or sign a consent form, OCR may dismiss or close the complaint.

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 that is submitted to all Federal agencies and their individual components, including OCR. It applies to records that are maintained by the government that are retrieved 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. The Department of Education has published a Privacy Act system of records notice entitled "Complaint Files and Log, 18-08-01" that applies to these types of records.

The information that OCR collects is analyzed by authorized personnel within the agency and will be used only for authorized civil rights compliance and enforcement activities. However, 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. Also, OCR may be required to reveal information requested under FOIA, which gives the public the right of access to records of Federal agencies. OCR will not release any information to any other agency or individual except in accordance with the provisions of FOIA and the Privacy Act, or otherwise provided by law.

FOIA gives the public the right of access to records of Federal agencies, except to the extent that the records or parts of them are protected from public disclosure by one of nine exemptions. 5 U.S.C. § 552(b). In addition, a Federal agency's use of any one of the FOIA exemptions is discretionary. 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 for records under FOIA, with some exceptions. Although each request will be reviewed on a case-by-case basis, generally, OCR is not required to release documents during complaint evaluation and investigation or enforcement proceedings, if the release could affect OCR's law enforcement activities. 5 U.S.C. § 552(b)(5) and (b)(7). Also, a Federal agency may refuse a request for records if their release would result in an unwarranted invasion of privacy of an individual. 5 U.S.C. § 552(b)(6).