



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

AUDIT SERVICES

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Catherine E. Lhamon
Assistant Secretary
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202-4300

Dear Ms. Lhamon:

This **final audit report**, titled *The Resolution of Discrimination Complaints by the Department's Office for Civil Rights*, presents the results of our audit. The objective of our audit was to determine whether the Department of Education's (Department) Office for Civil Rights (OCR) resolves discrimination complaints in a timely and efficient manner and in accordance with applicable policies and procedures.

BACKGROUND

OCR's mission is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights laws. These laws prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in all programs and institutions that receive financial assistance from the Department.

OCR derives its authority from the following Federal civil rights laws:¹

- Title VI of the 1964 Civil Rights Act,
- 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
- The Boy Scouts of America Equal Access Act.

¹ See Attachment 1 for descriptions of the Federal civil rights laws noted.

Although OCR provides guidance to stakeholders to prevent civil rights violations and performs proactive compliance reviews that target specific issues of discrimination, most of its work is driven by public complaints. Complaints of discrimination can be filed by anyone who believes an education institution that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. A person or organization can file a complaint on behalf of another person; however, in most instances, the victim's consent is required for OCR to proceed to investigation. A complaint must be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended by OCR for good cause shown under certain circumstances.

OCR's primary procedures for handling discrimination complaints are prescribed in its Case Processing Manual (CPM). The CPM provides general instruction for evaluating, planning for and investigating complaints, issuing findings, and securing resolution agreements that remedy discriminatory policies or practices identified by OCR.² Complaints can include multiple allegations of discrimination which can involve one or more of the Federal civil rights laws noted above.

OCR's complaint evaluation, investigation, and resolution activities are conducted by its 12 enforcement offices throughout the country. Each office is led by a Regional Director, Chief Attorney, and Program Manager who supervise the handling of discrimination complaints. Two Enforcement Directors in OCR's Office of the Assistant Secretary oversee and advise the regional offices to ensure procedural consistency. Management and staff in OCR's headquarters office in Washington, D.C. provide additional administrative support, coordination, policy development, and overall leadership. In FY 2015, OCR had 554 full-time equivalents (FTE), with approximately 90 percent of its FTE located in its 12 enforcement offices throughout the country and the remaining 10 percent located in its headquarters office.

AUDIT RESULTS

We found that OCR generally resolves discrimination complaints in a timely and efficient manner and in accordance with applicable policies and procedures. Specifically, we determined that OCR resolves discrimination complaints in a timely fashion at a high overall rate and does not have a large backlog of unresolved cases. The primary factors that contribute to OCR's timely and efficient resolution of complaints include efficient case resolution methods, consistency in case investigation practices, and effective case tracking and information management systems. By resolving complaints in a timely and efficient manner, OCR is able to respond to complainants quickly and provide prompt relief to complainants who need it. However, we noted that increasing workload and decreasing resources could have a negative impact on complaint resolution over time. While we found that staff timely and efficiently respond to complaints, they may not be able to maintain current levels of productivity if these trends continue.

² Supplemental discrimination and case-specific guidance also prescribes procedures for resolving certain types of cases.

We also determined that OCR generally resolves discrimination complaints in accordance with the CPM and other established policy. We determined that OCR has generally developed clearly defined procedures that allow regional staff to follow established policy when resolving the different types of discrimination complaints and allow management to provide clear direction to regional staff when complications or questions arise. We also noted that OCR management has created a control environment that ensures the investigative teams understand the importance of compliance with policies and procedures. As a result, OCR is able to ensure that complaints are processed and resolved consistently, efficiently, and effectively across the regions, in line with OCR's statutory and regulatory responsibilities. However, we determined that two regional offices were not appropriately maintaining separate files for the Early Complaint Resolution (ECR) process, and in some instances destroyed or discarded documentation obtained during that process. Failure to separate ECR records from investigative case files may compromise the confidentiality of the ECR process and may impact the impartiality and objectivity of the staff investigating the complaint should ECR not be successful. Additionally, failure to retain ECR records can provide the appearance that OCR is not competently managing the information it receives when resolving discrimination complaints. After learning of these practices, headquarters officials took immediate action to correct the issue.

In its response to the draft audit report, OCR agreed with each of the recommendations. In addition, OCR stated that it has recently hired two additional staff to perform the duties and responsibilities of Enforcement Directors which will further contribute to OCR resolving discrimination complaints in a timely, efficient, and effective manner. OCR also noted it intends to continue training about consistency with the CPM, including ECR-specific requirements, as part of its on-going training of staff.

OCR's comments are summarized at the end of each finding. As a result of OCR's comments, we did not make any changes to the audit findings or the related recommendations. The full text of OCR's response is included as Attachment 4 to this report.

FINDING NO. 1 – OCR Generally Resolves Discrimination Complaints in a Timely and Efficient Manner

We found that OCR generally resolves discrimination complaints in a timely and efficient manner. However, increasing workload and decreasing resources could have a negative impact on complaint resolution over time. While we found that staff timely and efficiently respond to complaints, they may not be able to maintain current levels of productivity if these trends continue.

In 1999, based on years of experience, OCR established a Government Performance and Results Act (GPRA) performance measure of 180 calendar days from the date the complaint was received in which to resolve complaints. Acknowledging that some cases are so complex and/or sensitive that they cannot be resolved within that timeframe, OCR's associated performance target was set at 80 percent. In 2006, OCR added a new efficiency measure -- capping the

percentage of over age cases at no more than 25 percent -- to help ensure that there is no significant backlog of over age cases.³

To assess OCR’s timeliness of complaint resolution, we analyzed data maintained in OCR’s Case Management System (CMS) for cases opened in fiscal year (FY) 2009 through FY 2013. We found that OCR resolved discrimination complaints within 180 calendar days at an overall rate of 89.6 percent during this time period, with the resolution rate in each year ranging between 87.7 and 92.1 percent as depicted in Table 1.⁴ We also noted that the rate at which OCR resolved complaints within 180 days remained at a high level even with a significant increase in the number of complaints received. For example, OCR received 3,589 more complaints in FY 2013 than it did in FY 2009, yet the rate at which OCR resolved complaints within 180 days was actually higher for FY 2013.

Table 1. Number of Complaints Received and Percentage of Those Complaints Resolved Within 180 Days		
2009	6,367	88.5
2010	6,937	87.7
2011	7,839	89.0
2012	7,834	89.8
2013	9,956	92.1
Overall	38,933	89.6

We further analyzed the data to determine timeliness by complaint resolution type as shown in Table 2 below. OCR has several categories by which it classifies complaint resolutions. Specifically, there are five resolution types that are assigned to indicate the manner in which a complaint was resolved. These include the following:

- Dismissals – Complaints that OCR determines it does not have legal authority to investigate, are untimely, fail to state a violation of one of the laws OCR enforces, lack sufficient detail, or are so speculative, conclusory, or incoherent that they are not sufficiently grounded in fact for OCR to infer that discrimination or retaliation may have occurred or is occurring.

³ To calculate the percentage of its caseload that is older than 180 days, OCR divides the number of open cases at the end of a fiscal year that are over 180 days old by the total number of cases that are open.

⁴ Reflects data maintained in OCR’s CMS as of September 10, 2014. Our timeliness calculation excludes the 16 days that the federal government was closed in October 2013, since OCR staff were unavailable to work on any cases during this time. Additionally, OCR’s CPM requires that certain age discrimination complaints be referred to the Federal Mediation and Conciliation Service (FMCS) and notes that the time a complaint is being processed through FMCS, up to 60 days, will not be included in OCR’s case processing time. Therefore, we excluded these days from our timeliness calculation.

- Administrative Closures – Complaints that do not meet the criteria for dismissal and are subsequently opened, but OCR subsequently determines it cannot proceed on them. This includes when the same allegations have been filed by the complainant against the same recipient with another civil rights enforcement agency or through a recipient’s internal grievance procedures; when allegations have been filed by the complainant against the same recipient with state or federal court; when allegations are foreclosed by previous decisions of the federal courts, Secretary of Education, or OCR policy determinations; or when OCR obtains credible information indicating allegations have been resolved and there are no class-wide allegations.
- Early Complaint Resolution – Complaints that are resolved voluntarily by the parties involved, generally occurring early in the investigative process. OCR serves as a facilitator to this process but does not sign, endorse, or approve any agreement reached.
- No Violation or Insufficient Evidence – Complaints that are investigated and in which OCR determines there is insufficient evidence to support a conclusion of noncompliance. These generally involve extensive investigative work prior to resolution.
- Closure with Change – Complaints that generally involve extensive investigative work and negotiations with the recipient prior to resolution.⁵

We noted that OCR dismissed or administratively closed a large majority (69.9 percent) of the complaints it received during the fiscal years noted. Nearly all complaints that OCR dismissed (99.7 percent) and administratively closed (95.4 percent) during this time were resolved within 180 days. In fact, we noted that OCR usually dismissed and administratively closed complaints well before 180 days. For cases received in FY 2013, for example, the median number of days for dismissals and administrative closures was 43 and 33, respectively. Conversely, we noted that only 54.7 percent of complaints categorized as Closure with Change were resolved within 180 days. Given that these generally involve the most extensive investigative work and negotiations this lower rate is not unexpected. We did find that the percentage of these complaints resolved within 180 days has increased over the last few fiscal years. For cases received in FY 2013, the median number of days for this resolution type was 177.

⁵ “Closure with Change” resolutions are generally the result of investigations in which OCR determines that there is sufficient evidence to support a conclusion of noncompliance; however, OCR also refers to resolved cases as a “Closure with Change” when OCR’s investigation caused a change to recipient action even if OCR did not make a finding or require a resolution agreement.

Table 2. Percentage of Cases Resolved Within 180 Days by Resolution Type					
FY Received	Dismissal	Administrative Closure	ECR	No Violation or Insufficient Evidence	Closure with Change
2009	99.6	95.0	88.5	81.6	48.2
2010	99.6	94.4	84.7	75.5	45.4
2011	99.9	95.1	80.4	77.5	48.6
2012	99.6	95.2	73.9	80.7	61.3
2013	99.8	96.9	74.1	81.5	68.0
Overall	99.7	95.4	80.3	79.3	54.7

We also noted that OCR does not have a large backlog of unresolved cases. Only 2.2 percent of the complaints received in FY 2013 are still unresolved, while the rate of unresolved complaints received in each year from FY 2009 through FY 2012 is at 1 percent or below. Additionally, as of September 30, 2013, OCR had only 462 total cases that have been pending for more than 180 days, regardless of fiscal year received.

OCR officials noted that timeliness is just one of the elements that OCR takes into account when resolving complaints. They noted that while timeliness is very important, developing a high-quality and consistent product is just as important. OCR officials emphasized that certain cases require a significant amount of time for review because they want to make sure that all decisions OCR issues are clear and consistent and because the implications of OCR’s decisions are far-reaching.

In addition to reviewing CMS data to understand trends in case volume and resolution, we selected a nonstatistical sample of complaints for review to determine reasons for untimely resolution and identify any potential systemic efficiency issues. We randomly selected a sample of 20 complaints that were opened between June 2008 and June 2013 and were unresolved for more than one year. As a result of our review, we identified a few areas that can potentially allow a case to age unnecessarily. Specifically, we determined that when cases pass the 180-day time frame they can become less of a priority for regional staff. Additionally, we determined that there were communication weaknesses involving status updates for certain cases that required headquarters review.

With regard to case prioritization, staff from some regions explained that cases that are still able to meet the 180-day time frame may be prioritized over cases that have already reached that age. Regional staff noted that even though all cases received are considered important, there is pressure from OCR’s GPRA requirements to meet timeliness milestones. OCR officials explained that the message they try to convey to all regions is that older cases should be prioritized in the same way as a newer case. OCR officials noted that they review data involving this issue periodically and discuss with regional offices as necessary. In written communication following our audit exit conference, OCR officials noted that since FY 2010, OCR has conducted multiple training sessions with enforcement staff nationwide on how to move categories of cases that are often over 180 days, and since May 2014, OCR has made the closure of older cases a

performance standard in the performance agreements of all regional employees who have responsibility for case processing.

With regard to communication on case status, we specifically noted instances when headquarters was under the impression that action on a case was due from the region even though review was actually needed from headquarters before the case could proceed. Nine of the 12 Regional Directors noted that headquarters officials do not always explain to them the reasons why a certain case may be sitting at headquarters for extended periods, and prior to the recent change noted below, Regional Directors did not always feel comfortable introducing this topic for discussion during weekly meetings or through other communication with the Enforcement Directors.

In April 2014, the Enforcement Directors began compiling and sharing with the Regional Directors a list of the cases that are with headquarters for review. The Enforcement Directors update and share the list every week prior to a conference call that they hold with the Regional Directors. This allows both parties to quickly resolve any miscommunication over case progress. Regional Directors have noted that this new process has been helpful in improving communication about the status of cases.

In written communication following our audit exit conference, OCR officials emphasized that cases that require headquarters review are the most complex and often the case law regarding the particular factual scenarios at hand is undeveloped or unclear. They noted the average percentage of cases that came to headquarters for review in FY 2014 was 5 percent.

Increasing Workload and Decreasing Resources Could Have a Negative Impact on Complaint Resolution over Time

We noted that OCR's staffing level has declined between FY 2009 and FY 2013, while the complaint workload has significantly increased during that time (as noted in Table 1). OCR's staffing level spiked in FY 2010 at 568 total staff and has declined every year since. In FY 2013, the staffing level was at 496.⁶ While we found that staff timely and efficiently respond to complaints, they may not be able to maintain current levels of productivity if these trends continue.

OCR management and staff repeatedly noted a lack of sufficient staff resources. Staff explained that resources were already stretched and they are now expected to do more work with the same or fewer resources, as OCR is increasing the amount of work necessary for case resolution in certain cases. Additionally, regional staff have other responsibilities in addition to complaint resolution, such as resolution agreement monitoring, resolution appeal work, providing technical assistance to stakeholders, and conducting compliance reviews and directed investigations. We note that for FY 2016, the Department's budget request for OCR includes a request for an additional 200 FTE.

⁶ Data reviewed was specific to staff in OCR's 12 enforcement offices throughout the country.

Reasons for Timely and Efficient Complaint Resolution

The primary factors that contribute to OCR's timely and efficient resolution of complaints include efficient case resolution methods, consistency in case investigation practices, and effective case tracking and information management systems.

Efficient Case Resolution Methods

We found that OCR uses an array of case resolution methods that allow for timely and efficient resolution of complaints before or during an investigation. These methods include a Rapid Resolution Process for certain types of cases, the ECR process, reaching resolution agreements with recipients prior to OCR's completion of the investigation, and allowing regional autonomy to resolve most of the cases received.

Rapid Resolution Process

In 2013, OCR implemented the Rapid Resolution Process (RRP) as a method of case resolution. Cases eligible for RRP are limited in scope to certain types of single issue disability allegations. Enforcement Directors explained that RRP has the same structure of a normal investigation except that it is expected to be conducted more quickly with fewer administrative requirements. If a Regional Director determines that a complaint is appropriate for RRP, immediate contact is made with the recipient to obtain relevant information and determine if the recipient is interested in immediately resolving or has taken action to resolve the complaint allegation(s).⁷

OCR conducted a pilot of the RRP in four regional offices in 2012 and determined that RRP reduced the resolution time for typical cases that were resolved under this process. Several Regional Directors have noted that the RRP process improves efficiency in their offices.

Early Complaint Resolution

The ECR process facilitates the voluntary resolution of complaints prior to completion of an investigation by providing an early opportunity for recipients and complainants to resolve the allegations, usually prior to investigation activity being conducted by OCR. OCR determines whether the allegations are appropriate for the ECR process and attempts to facilitate an agreement between the two parties.

The ECR process promotes efficiency because when successful, it allows resources that would have been expended investigating and resolving the case to be applied elsewhere. Several Regional Directors have noted that the ECR process improves efficiency.

Resolution Agreement Reached During an Investigation

Regional offices may reach a resolution agreement with a complaint recipient before completing an investigation when the recipient expresses an interest in doing so and OCR determines it to be

⁷ These types of resolutions are coded as either "No Violation or Insufficient Evidence" or "Closure with Change" in OCR's CMS.

appropriate.⁸ This type of resolution can promote timeliness and efficiency because OCR can obtain a resolution agreement with the recipient without spending additional time and resources to conduct a full investigation if one is deemed unnecessary.

In March 2014, OCR implemented a policy change that allows Regional Directors to pursue such a resolution agreement without the approval of an Enforcement Director unless the case involves a sensitive or high-profile area of discrimination.

Regional Autonomy

We determined that regional offices are given autonomy to conduct most of the investigation and resolution activities for the cases they receive. For most cases, the Regional Director, Chief Attorney, Program Manager, or a selected designee, may approve case activities and types of resolution. Cases deemed by OCR senior management to be sensitive or high-profile in nature require higher levels of approval but the general autonomy given to the regions increases timeliness by allowing for fewer administrative requirements and fewer layers of review.

Consistency in Case Investigation Practices

We found that OCR's case investigation and resolution policies, procedures, and guidance contribute to efficiency at headquarters and throughout the regions by providing a consistent framework for conducting investigations and resolving the different types of complaints received. Those policies, procedures, and guidance are as follows.

Case Processing Manual

OCR's CPM is the primary guidance that regional offices use to resolve complaints. The CPM provides staff with procedures to promptly and effectively evaluate and investigate complaints, issue findings, and secure resolution agreements that remedy discriminatory policies or practices identified by OCR. The CPM includes instruction involving activities necessary for each type of case resolution. The CPM is periodically revised and updated for clarification purposes based on new information or circumstances, but the document primarily remains a stable source of guidance for regional offices.

Supplementary Discrimination-Specific Guidance, Resolution Agreements, and "Dear Colleague" Letters

In addition to the CPM, OCR has developed supplementary guidance specific to OCR's approach to Title IX sexual violence cases and Title VI discipline cases. Guidance on the approach for these specific areas provides staff with further clarity and details on how senior management expects these cases to be conducted. OCR officials explained that if there is a discrimination issue that is new to OCR and becomes a priority area, OCR will create policy guidance specific to that issue to ensure regional staff have a framework for handling the case. We noted this guidance is also periodically revised and updated when necessary.

⁸ These types of resolutions are coded as "Closure with Change" in OCR's CMS.

OCR also publishes case resolution agreements and “Dear Colleague” Letters on its website to highlight specific investigation or resolution work of which it wants regional staff to be aware for consistency purposes. OCR senior management also disseminates these documents to staff by email and the documents serve as a template for the investigation of similar cases. Similar to the guidance specific to discrimination type, these documents provide staff with clarity and detail on the conduct of certain types of cases.

Effective Case Tracking and Information Management Systems

Another factor contributing to the timely and efficient resolution of discrimination complaints is OCR’s use of case management and documentation systems. OCR uses two information systems for storing and retrieving case documentation and data -- the CMS and the Document Management System (DMS). OCR has developed user guides for these systems and currently uses the CMS and DMS in combination with traditional paper files to maintain evidence and track case progress. Case documents in DMS are associated with the case record in CMS.

The CMS allows regional staff to record key case dates and track case movement, record investigation status changes, produce progress reports, and track monitoring activities. Regions also use the CMS to track case progress against internally established timeframes. These include timeframes for completion of complaint evaluations, sending letters of notification, scheduling meetings, and providing draft findings to the Team Leader, Program Manager, or Chief Attorney. Regions produce reports using CMS data for discussion at weekly meetings with senior management where case timeframes and planned next steps are discussed. Access to this type of information improves timeliness by allowing all involved with a case to be aware of case progress.

The DMS allows regional staff to maintain key case documentation in an electronic format, which contributes to efficiency by ensuring that relevant case documents are readily accessible to staff at all levels for analysis, editing, review, and approval. Staff can also use the DMS to locate documents for cases that are not their own, if they are given access. Reviewing such documents could improve efficiency by providing templates for similar cases under investigation.

Why Workload is Increasing and Resources are Decreasing

OCR has noted that its public outreach activities combined with the increase in electronic access among the public has contributed to the significant growth in complaints. OCR has developed a Pre-Complaint Online Screening Process designed to help potential complainants understand the scope of OCR’s authority and reduce the number of complaints filed that do not fall under OCR’s authority. Even so, OCR projects the number of complaints it receives will continue to increase.

It appears that OCR’s staffing decreases are caused by attrition and flat-lined budgets that have not allowed for regions to replace the staff they have lost. Additionally, it appears that investigations are becoming increasingly more time-consuming. For example, in 2014, OCR increased its number of high-profile investigations addressing sexual violence on college campuses in response to the White House Task Force to Protect Students from Sexual Assault.

These cases are generally more complex and time-consuming as they are focused on investigations and remedies that are comprehensive and systemic in nature as opposed to investigations focused on an individual basis. OCR has also received an increasing number of multi-jurisdictional cases that involve more than one statute under OCR's jurisdiction.

Overall Effect on Complaint Resolution

By resolving complaints in a timely and efficient manner, OCR is able to respond to complainants quickly and provide prompt relief to complainants who need it. Regional offices' ability to resolve complaints before or during an investigation, and without prior approval from senior management in many cases, allows OCR to better allocate resources to cases that require a full investigation in order to be resolved effectively.

However, the increased workload and decreased staffing levels, along with pressure involving timeliness may lead to more stress on staff and less thorough resolution products. While we found no evidence of this in the cases we reviewed, under the current work conditions staff may decide to dismiss or administratively close a complaint even if the allegations may require a more thorough investigation. As we noted above, a large majority (69.9 percent) of the complaints OCR received were dismissed or administratively closed. Additionally, we noted that the percentage of dismissals has increased over the past few years. An Enforcement Director explained there are legitimate reasons for the increase in the percentage of dismissals, such as a large increase in Title IX complaints that are dismissed due to investigations already being conducted at the schools in question, a significant increase in the amount of complaints that do not include victim consent, and an increase in the number of instances where one complainant submits similar complaints against hundreds of schools without sufficient evidence of discrimination. However, this Enforcement Director did express concern that the overall numbers of dismissals may be too high because regions may not be using appropriate discretion when dismissing some cases, specifically those that require judgment as to whether they are sufficiently grounded in fact. This Enforcement Director stated that staff may feel overworked and, as a result, may decide to dismiss cases when they should not be dismissed. The Enforcement Directors have recently begun conducting a monthly internal review process (discussed further in Finding 2) to determine if cases are being handled appropriately.

In written communication following our audit exit conference, OCR officials added that for the fiscal years covered in our audit, more than 70 percent of the dismissals and administrative closures fell into non-discretionary categories, meaning that OCR was administratively barred from investigating the claims. This includes OCR lacking jurisdiction over the institution or allegation, the complainant withdrawing the complaint, or the same complaint being filed by the complainant in state or federal court or with another civil rights agency. They also noted that for the limited circumstances where OCR can exercise discretion in determining whether to dismiss or administratively close complaints, there are clear criteria in OCR's CPM to assure that OCR's determinations are supported.⁹

⁹ Our review included a determination of whether reasons noted for discretionary dismissals or administrative closures included in our sample were in accordance with CPM criteria. It did not include an evaluation as to the appropriateness of OCR's decisions.

Recommendation

We recommend that the Assistant Secretary for OCR:

- 1.1 Continue the practice of sharing and discussing with the regions the list of cases pending review with headquarters to ensure they are tracked and processed efficiently.

OCR Comments

In its response to the draft audit report, OCR agreed with the recommendation. OCR explained that it gives autonomy to its regional offices to conduct most of the investigation and resolution activities for the cases they receive and noted that while fewer layers of review can result in a more expeditious resolution, developing a high-quality and consistent product is just as important as timeliness. OCR stated that the Enforcement Directors are involved in reviewing cases that involve some of the most complex or novel issues facing OCR. In those situations, OCR agrees that it is critical for there to be clarity over which cases are with headquarters, so that there is no confusion about who is responsible for moving the cases forward. OCR noted that it initially made information about cases pending review with headquarters available to Regional Directors in February 2013 through the dashboard accessible on their computer desktop, and began sending out this information through a weekly email to the Regional Directors in April 2014, which it will continue to do.

OCR also noted that to further its dual interest in timeliness and quality, it has recently hired two additional staff to perform the duties and responsibilities of Enforcement Directors, doubling OCR's capacity in this area. OCR explained that in conjunction with the autonomy already possessed by the regions and the sharing and discussing on a regular basis the list of cases pending in headquarters for review, doubling the number of Enforcement Directors will further contribute to OCR resolving discrimination complaints in a timely, efficient, and effective manner.

OIG Response

We appreciate the efforts noted by OCR to further contribute to the timely, efficient, and effective resolution of discrimination complaints. As a result of OCR's comments, we did not make any changes to the audit finding or the related recommendation.

FINDING NO. 2 – OCR Generally Resolves Discrimination Complaints in Accordance with Applicable Policies and Procedures

We determined that OCR generally resolves discrimination complaints in accordance with applicable policies and procedures, which include requirements from the CPM and other established policy.

Case Processing Manual Procedures

We determined that OCR's case resolution practices were generally in compliance with the CPM.¹⁰ We reviewed a nonstatistical sample of 72 cases for evaluation against CPM procedures.¹¹ Our sample consisted of a random selection of one case from each of the five resolution types from each of the 12 regional offices as well as one case from each office that was still open and older than 180 days. We evaluated compliance with procedures applicable to all cases as well as those specific to each resolution type. We reviewed case file documentation maintained electronically and in hard copy and discussed cases with applicable case teams and headquarters officials. Overall, we found OCR's case resolution practices to be in compliance with the CPM for 40 of the 43 (93 percent) procedural requirements we evaluated (see Attachment 2). We noted that the most significant area of noncompliance involved the maintenance of ECR files. The ECR process facilitates the resolution of complaints by providing an early opportunity for the parties involved to voluntarily resolve the complaint allegations. We also found notable inconsistencies among regions with regard to how one procedural requirement was documented.

ECR Files

We found that two regions do not always maintain separate ECR-specific case files as required by the CPM. Staff from one region explained that it is the practice of the office to maintain a separate, ECR-specific file only if the OCR facilitator determines that some or all of the records are especially sensitive. Staff from another region explained that if ECR fails and it is deemed appropriate to assign the case to a new OCR investigative case team, the region may, depending on the circumstances of the case, create a new file so that the new case team does not have access to the ECR documents. Staff from this region further explained that if the case is successfully resolved through ECR, the case file would technically become an ECR-specific case file at that point. An OCR official stated that ECR records should be kept separate from investigative case files regardless of the sensitivity of the ECR records, or whether or not the case is successfully resolved through ECR, and noted that this is an important procedure that must be followed in order to maintain ECR confidentiality.

In addition, we found that it is the practice of one region to destroy ECR records after the case is resolved, another region mistakenly destroyed the ECR-specific file for the case we reviewed, and ECR records for another case we reviewed were missing. Staff from one region explained that the OCR facilitators may maintain personal notes regarding their work on a specific ECR

¹⁰ OCR has recently revised the CPM, as of February 2015. The January 2010 version was in effect during the time period covered by our review. Changes made in the revised version are noted where necessary.

¹¹ Cases selected for our sample were opened between July 1, 2012 and June 30, 2013.

case but those records are destroyed once ECR is terminated. Staff from the region stated they are aware of confidentiality requirements for ECR but it was just the practice of staff to discard notes taken during ECR once the case is resolved. The Regional Director stated that it was expected that this information was being kept in a separate file. Staff from another region explained that the region does maintain all ECR records in a file that is separate from the investigative file; however, for the case we selected for review, that separate ECR-specific file was mistakenly destroyed several months after the case was closed. Management from the region explained that they are not aware of this occurring in any of the region's other ECR cases, and they have addressed the matter with staff to ensure that the separate files are maintained long term for all ECR cases.

Section 203 of the CPM, Confidentiality of the ECR Process, states that in order to maintain confidentiality of the ECR process, any notes taken during ECR by the facilitator and/or any records or other documents offered by either party to the facilitator during ECR will be kept in a separate file and will not be shared with the staff member(s) assigned to investigate the complaint.¹²

“Guidance for ECR Process in OCR Regions,” issued on January 16, 2009, states that all records that are generated or obtained by the facilitator during the course of ECR must be maintained in a file that is separate from the investigative file and under no circumstances are these records to be discarded or destroyed. It also states that ECR information stored in the DMS will be maintained in such a fashion that ensures such information is not accessible to OCR staff unless the facilitator is notified of a need for such access by the office director or his/her designee, or in the case of a Freedom of Information Act request.

The records retention and disposition schedule specific to OCR, which was approved in July 2010,¹³ states that records received or created in response to discrimination complaints for all case files other than administratively closed complaints will be maintained for twenty years.¹⁴

Minor Noncompliance Issues

We found one instance where OCR did not appear to inform the complainant of the recipient's interest in a Section 302 resolution.¹⁵ A regional staff member acknowledged that the region did not contact the complainant regarding this issue as required. We also found three instances where OCR did not maintain a case file index of documents as required.¹⁶ Regional staff acknowledged that an index of documents was not maintained for these cases. We determined that the causes for OCR's minor noncompliance issues with the CPM involve negligible staff oversights.

¹² OCR has the discretion to suspend its investigation for up to 30 calendar days to facilitate an agreement between the parties. If an agreement has not been reached, OCR will resume its investigation.

¹³ The Department is required to develop and implement records retention and disposition schedules to assure compliance with National Archives and Records Administration directives.

¹⁴ Records for administratively closed complaints need to be maintained for 6 years.

¹⁵ Section 302 of the CPM states that allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.

¹⁶ The CPM updated in February 2015 does not include this requirement.

Inconsistency in Case Planning Documentation

While we found that regional offices appear to be conducting required case planning, we noted that there were inconsistencies across regional offices in how case planning was documented. Some regional offices use templates specifically designed to document the required case planning elements, to include discussion of the allegations, jurisdiction, legal issues, investigation strategy, and resolution agreement. Other regional offices rely on documents that are used for other purposes but also contain case planning information, such as a final statement of the case.

Section 301 of the CPM, Case Planning, states that the following essential elements of case planning will be addressed in every OCR case and placed in the file (unless inapplicable):

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

It also states that the case file will contain documentation that supports the decisions made with respect to each of the applicable essential planning elements.¹⁷ The Enforcement Directors explained that it has been their personal preference to have a document in the case files that shows how the case team reached its conclusions, what it reviewed, and how it reached its conclusion regarding case resolution. They expect staff to think about planning throughout the case and to see elements of case planning in case files, but noted that this was not intended to turn into a paper exercise for staff.

Regional staff explained that some planning documentation is developed throughout the life of the case, and that the final versions of the living document that began as the planning documentation become fact sheets used for reporting on the collected evidence necessary for case resolution.

Policy Specific to Postsecondary Education Sexual Violence Cases

During our audit, OCR became heavily involved in a new, high-profile initiative focused on sexual violence at postsecondary institutions. As a result, we included in our review an additional nonstatistical sample of 19 cases of this case type to assess compliance with applicable OCR guidance specific to this issue as well as applicable procedures in the CPM. We determined that all of the cases we reviewed were opened and/or resolved in accordance with the OCR policy guidance specific to postsecondary education (PSE) sexual violence cases and with the applicable procedures in the CPM.

¹⁷ The February 2015 version of the CPM includes clarifying language involving the documentation requirements for case planning investigation strategy. The policy now requires that the documentation necessary includes what data and/or information are necessary to resolve the case and the means and methods OCR will employ to obtain the relevant data and/or information.

OCR's "Approach to Title IX PSE Sexual Violence Cases," dated January 28, 2014, states that OCR will generally approach the investigation and resolution of PSE sexual violence cases in a broad fashion. OCR will review the adequacy and implementation of institutions' policies and procedures; training for administrators, staff, and students; the overall campus climate; and student awareness of resources and complaint policies and procedures. The guidance notes that OCR will not address sexual violence issues one complaint at a time but will use a class-wide approach to investigating and resolving both individual and class sexual violence complaints. It also notes that the investigation will include examination, determination, and/or resolution, as appropriate, regarding any individual allegation.

The 19 cases we reviewed consisted of a random selection of 10 PSE sexual violence cases opened since October 1, 2013, to determine if these cases were opened in accordance with applicable procedures. To obtain insight on how OCR approaches decisions on opening cases when the same school already has an open sexual violence case or compliance review, we also judgmentally selected one case that was opened during this time period after another sexual violence case at the same school was closed, and three sexual violence compliance reviews at schools that also had open sexual violence cases. Additionally, we judgmentally selected a sample of five PSE sexual violence cases and compliance reviews resolved since October 1, 2013, to determine if they were resolved in accordance with applicable procedures.

To perform our analysis we reviewed electronic and hardcopy case files and discussed the cases with applicable case teams to determine whether there were any concerns with the case approach and resolution. We noted that each of the cases opened for investigation was conducted with a class-wide approach, which generally means that OCR reviews the school's response to all complaints of sexual assault or sexual violence within a specified time frame, usually 3 years. In general, when OCR receives a complaint it will review only the issues specific to that individual complaint, but for certain types of complaints, such as those alleging sexual violence at a postsecondary institution, OCR will look more broadly at the practices of the entity under review.

Reasons for General Compliance with Procedures

We determined that OCR has generally developed clearly defined procedures that allow regional staff to follow established policy when resolving the different types of discrimination complaints and allow management to provide clear direction to regional staff when complications or questions arise. Clearly defined procedures also allow senior management to appraise office practices quickly and effectively to ensure compliance with established policy and procedures.

We determined that OCR management has created a control environment that ensures the investigative teams understand the importance of compliance with policies and procedures. The Enforcement Directors explained they communicate regularly with senior management and have almost daily communication with the Regional Directors. They explained there is a weekly call held with all Regional Directors to ensure OCR direction and consistency in operations. Enforcement Directors also stated that their key day-to-day responsibilities include overseeing the progress and operating procedures of regional offices and working with OCR senior

management in developing and providing direction to regions on implementing OCR strategic goals and initiatives.

We noted that OCR policy requires certain resolution products to be reviewed by management at multiple levels. Discrimination-specific guidance, including sensitive issue guidance, requires that certain case resolution activities be reviewed and approved by senior management.

We noted that the Enforcement Directors began performing monthly internal reviews of regional cases in March 2014. The Enforcement Directors explained the purpose of these reviews is to determine if cases are being handled in accordance with policies and procedures. They noted that the status of the case plays an important role in the depth of review, as some cases in evaluation status are only reviewed for a few specific items while cases with resolution agreements in place may require a more comprehensive review. The Enforcement Directors stated that they review a total of 60 cases each month, which are compiled from each of the 12 regions.¹⁸ They said these are high level reviews that generally do not interfere with the work of the regional teams.

The Enforcement Directors noted that the benefits of the reviews include the correction of issues involving timely entries into the CMS and DMS systems and process improvements involving complaint evaluation and contacting complainants for consent forms and other information. They said the reviews also provide an opportunity to consult with the region to correct the direction of an investigation or see if investigations are stuck and how to get them moving again. One Regional Director noted that a review identified issues related to complaint intake procedures. As a result, the Regional Director addressed the issue through staff training on intake procedures.

With regard to maintenance of ECR-specific case files, we noted that regional staff appear to believe they were satisfying the intent of the policy through their practices. We also noted that some regional staff did not appear to be aware of ECR-specific policy guidance and records management policy. After learning of these practices, OCR senior management took immediate action to begin correcting the issue. In written communication following our audit exit conference, OCR officials noted that the Regional Directors of the two regional offices that had these problems were informed that they must develop and implement training for all staff to ensure they have a clear understanding of the requirement to maintain ECR notes, records, and documents. Accordingly, the Regional Directors were required to develop and implement training for all staff that clarifies the requirement and submit a plan detailing when and how often such training will be conducted, as well as an assurance that all regional office staff will receive the training. Further, all 12 regional offices have been required to report how they will monitor their office's ECR practices to ensure they remain consistent with the CPM.

¹⁸ Cases reviewed include 44 selected at random, 8 cases with resolution agreements, and 8 cases with an ongoing investigation status.

Overall Effect of General Compliance with Procedures

As a result of general adherence to the CPM and other policies, OCR is able to ensure that complaints are processed and resolved consistently, efficiently, and effectively across regions, in line with OCR's statutory and regulatory responsibilities. However, failure to separate ECR records from investigative files may compromise the confidentiality of the ECR process and may impact the impartiality and objectivity of the staff investigating the complaint should ECR fail. This may affect OCR's ability to provide fair treatment to the complainant or recipient during the investigation and resolution process for related or separate cases. Failure to retain ECR records can provide the appearance that OCR is not competently managing the information it receives when resolving discrimination complaints.

Recommendations

We recommend that the Assistant Secretary for OCR:

- 2.1 Continue the practice of internally reviewing cases each month, and consider occasionally tailoring the monthly reviews to specifically review certain procedures, such as complaint dismissals.¹⁹
- 2.2 Ensure that regions are made aware of and understand all policy involving the maintenance of ECR-specific files and the maintenance of ECR records.
- 2.3 Develop a mechanism to ensure consistency in documenting case planning, such as standard templates with required information.

OCR Comments

In its response to the draft audit report, OCR agreed with the recommendations. In response to Recommendation 2.1, OCR explained that the recent addition of two Enforcement Directors will result in double the resources devoted to reviewing cases as well as to day-to-day oversight of the progress and operating procedures of the regional offices. OCR further explained that its monthly internal case reviews already encompass complaint dismissals, but it intends to both continue and expand its internal case reviews and continue to occasionally tailor them to review certain procedures when appropriate.

In response to Recommendation 2.2, OCR described the specific actions it has taken to resolve the variance from the ECR requirements. OCR noted that in the two regions where the ECR problem was detected by OIG, the Regional Directors were required to develop training for all their staff to ensure that they have a clear understanding of the existing ECR requirements, to submit a plan to headquarters detailing when such training was implemented and how often such training will be conducted, and to submit an assurance that all their staff receive such training. In addition, OCR noted that all 12 regional offices were required to report on how they will monitor their office's ECR practices to ensure they remain consistent with the CPM. OCR also

¹⁹ See related concerns in Finding 1.

noted that it intends to continue training about consistency with the CPM, including ECR-specific file requirements, as part of its on-going training of staff.

In response to Recommendation 2.3, OCR stated that the CPM was written to allow regional offices flexibility in how they document their case planning. However, OCR did note that consistent with our recommendation, it will provide the regional offices with guidance that will help ensure more consistent manners of documenting the case planning that is already taking place.

OIG Response

We appreciate the efforts noted by OCR to improve compliance with the policies and procedures for the discrimination complaint resolution process. As a result of OCR's comments, we did not make any changes to the audit finding or the related recommendations.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of our audit was to determine whether OCR resolves discrimination complaints in a timely and efficient manner and in accordance with applicable policies and procedures.

To accomplish our objective, we gained an understanding of internal control applicable to OCR's process for resolving discrimination complaints. We reviewed applicable laws and regulations, GPRA performance measures, and the Government Accountability Office's (GAO) "Standards for Internal Control in the Federal Government." We reviewed OCR's complaint resolution policies and procedures, to include OCR's CPM as well as applicable internal guidance, including guidance pertaining to OCR's processes for resolving complaints specific to discrimination types. We also reviewed OCR's organizational structure, staffing level, and budget requests. To identify potential vulnerabilities, we reviewed prior Office of Inspector General (OIG) and GAO audit reports with relevance to our audit objective.

We conducted discussions with OCR officials in Washington, D.C. and with Regional Directors and staff involved in the complaint resolution process. We also reviewed data maintained in OCR's CMS, DMS, and hardcopy files with regard to specific cases included in our review as well as overall, as further described below.

Complaint Resolution Timeliness

To assess OCR's timeliness of complaint resolution, we analyzed data maintained in OCR's CMS for cases opened in FY 2009 through FY 2013. We determined the number of complaints received in each FY as well as overall and calculated the percentage of those complaints resolved within 180 days in each FY as well as overall. We further analyzed the data to determine timeliness by complaint resolution type. We calculated the percentage of cases resolved within 180 days and the median number of days for resolution by resolution type in each FY and

overall. We also calculated the percentage of cases resolved by resolution type for each FY and overall.²⁰

In addition, we analyzed OCR's backlog of unresolved cases. We calculated the percentage of complaints still unresolved from each FY. We also determined the total number of complaints still unresolved as of September 30, 2013 that have been pending for more than 180 days, regardless of FY received.

Complaint Resolution Efficiency

In order to assess the efficiency of OCR's complaint resolution process, we reviewed resolution policies and procedures, evaluated OCR's complaint workload as calculated for the FYs noted above in conjunction with applicable staffing data, and discussed the process with OCR management and staff.

In order to determine reasons for untimely resolution and identify any potential systemic efficiency issues, we selected a nonstatistical sample of 20 complaints. We identified a universe of 1,090 complaints from OCR's CMS that were opened between July 2008 and June 2013, were unresolved for more than 1 year, and met either of the following criteria: 1) complaints that were never in the ECR process at any time or 2) complaints that were in the ECR process for 6 or more months. We decided to focus on ECR versus non-ECR cases because of the potential impact the ECR process could have on resolution timeliness and efficiency if not monitored properly. From the pool of non-ECR complaints, we randomly selected 10 cases from two subgroups: 5 cases from the 699 which were open for longer than 1 year but less than 2 years and 5 cases from the 291 cases open for 2 or more years. From the pool of ECR complaints, we randomly selected 10 cases from two subgroups: 5 cases from the 72 that were in ECR status 6-12 months and 5 cases from 28 that were in ECR status for more than 12 months.

We reviewed information contained in the DMS and CMS specific to each of our sampled complaints and contacted OCR staff responsible for processing, investigating, and resolving the selected complaints to discuss specific barriers to timely resolution.

Adherence to Policies and Procedures

To determine whether OCR resolves discrimination complaints in accordance with applicable policies and procedures, we compared resolution activity for selected cases against applicable resolution policies and procedures.

We selected a nonstatistical sample of 72 cases received between July 1, 2012 and June 30, 2013. The universe of cases received during this time period was obtained from OCR's CMS and consisted of 9,161 complaints. We categorized the universe by office and for each of the 12 offices divided cases into 6 groups first separating open cases that were older than 180 days and then by the 5 resolution types. We randomly selected 1 case from each of the

²⁰ If a complaint contains multiple allegations and is resolved using two or more resolution types, the "highest" resolution type is used for coding in CMS.

72 categories for evaluation against CPM procedures. We evaluated compliance with CPM procedures applicable to all cases as well as those specific to each resolution type. We reviewed case file documentation maintained electronically and in hard copy and discussed cases with applicable case teams and headquarters officials.

In order to assess compliance with OCR guidance and CPM procedures for handling of sexual violence complaints or reviews at postsecondary institutions, we reviewed a nonstatistical sample of 19 cases from a universe of 111 PSE Title IX sexual violence complaints or compliance reviews which were either opened (87) or resolved (24) since October 1, 2013 in CMS. Of the 87 opened cases in the universe, 79 were complaints and 8 were compliance reviews. From the 79 opened complaints we selected 11 complaints, 10 selected randomly and 1 additional complaint we judgmentally selected due to the complaint being opened at a school with a prior open case. From the 8 opened compliance reviews, we judgmentally selected 3 reviews at schools that also had open sexual violence cases. Of the 24 resolved cases in the universe, 23 were complaints and one was a compliance review. We selected all 5 cases (4 complaints and 1 compliance review) from the 24 resolved cases having resolution types of: Early Complaint Resolution, No Violation or Insufficient Evidence, or Closure with Change.

For the randomly selected opened complaints, we determined if these cases were opened in accordance with applicable procedures. For the judgmentally selected open cases at schools with prior cases, we sought to obtain insight on how OCR approaches decisions on opening cases when the same school already has an open sexual violence complaint or compliance review. For the resolved cases, we selected cases with specific resolution types to assess compliance with resolution procedures. We decided to review cases with these resolution types as these cases would include findings and produce information necessary to more completely assess compliance with resolution procedures. For all selected cases, we reviewed electronic and hardcopy case files and discussed the cases with applicable case teams to determine whether there were any concerns with the case approach and resolution.

Because there is no assurance that the three nonstatistical samples used in our audit were representative of their respective universes, the results should not be projected over the unsampled complaints or compliance reviews.

To achieve our audit objective, we relied, in part, on computer processed-data from CMS, OCR's case management information system. We used CMS data for the purposes of analyzing case resolution timeliness for FY 2009 through 2013 and defining the universes for the sample selections used in our audit, as described above. We verified the completeness and accuracy of the data by comparing CMS records to information found in OCR's DMS and hardcopy case files. We also reconciled the public list of postsecondary institutions that had pending Title IX sexual violence investigations as of August 13, 2014, with CMS records. Additionally, we tested the completeness of the CMS data file provided to us by OCR by running several queries within OCR's active CMS database and reconciling the queries to data in the CMS data file provided for our analysis. We considered the main file complete as a result of the reconciliation. Based on our assessment, we concluded that the computer-processed data were sufficiently reliable for the purposes of our audit.

We conducted fieldwork at Department offices in Washington, D.C., from January 2014 through May 2015. We provided our audit results to OCR officials during an exit conference conducted on May 21, 2015.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

ADMINISTRATIVE MATTERS

Corrective actions proposed (resolution phase) and implemented (closure phase) by your office will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System. Department policy requires that you develop a final corrective action plan (CAP) for our review in the automated system within 30 days of the issuance of this report. The CAP should set forth the specific action items, and targeted completion dates, necessary to implement final corrective actions on the findings and recommendations contained in this final audit report.

In accordance with the Inspector General Act of 1978, as amended, the OIG is required to report to Congress twice a year on the audits that remain unresolved after 6 months from the date of issuance.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the OIG are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

We appreciate the cooperation given us during this review. If you have any questions, please call Michele Weaver-Dugan at (202) 245-6941.

Sincerely,

Patrick J. Howard /s/
Assistant Inspector General for Audit

Overview of the Laws Enforced by OCR (from OCR website)

Sex Discrimination:

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs and activities that receive federal financial assistance. Examples of the types of discrimination that are covered under Title IX include sexual harassment; the failure to provide equal opportunity in athletics; discrimination in a school's science, technology, engineering, and math courses and programs; and discrimination based on pregnancy. The Title IX regulation is enforced by OCR and is in the code of federal regulations at 34 Code of Federal Regulations (CFR) Part 106.

Race and National Origin Discrimination:

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance. Examples of discrimination covered by Title VI include racial harassment, school segregation, and denial of language services to national-origin-minority students who are limited in their English. The U.S. Department of Education Title VI regulation is enforced by OCR and is in the Code of Federal Regulations at 34 CFR 100.

Disability Discrimination:

OCR enforces two laws that prohibit discrimination based on disability. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in programs or activities receiving federal financial assistance. The U.S. Department of Education's Section 504 regulation is enforced by OCR and is in the federal code of regulations at 34 CFR 104. Title II of the Americans with Disabilities Act of 1990 prohibits discrimination based on disability in public entities. OCR is the agency designated by the U.S. Department of Justice to enforce the regulation under Title II with respect to public educational entities and public libraries. The Title II regulation is in the federal code of regulations at 28 CFR 35. Examples of the types of discrimination prohibited include access to educational programs and facilities, denial of a free appropriate public education for elementary and secondary students, and academic adjustments in higher education.

Age Discrimination:

The Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities that receive federal financial assistance. The Age Discrimination regulation is enforced by OCR and is in the Code of Federal Regulations at 34 CFR Part 110.

Boy Scouts of America Equal Access Act:

On January 8, 2002, President George W. Bush signed the No Child Left Behind Act of 2001. Part of No Child Left Behind is the Boy Scouts of America Equal Access Act, Section 9525 of the Elementary and Secondary Education Act of 1965, as amended by Section 901 of the No

Child Left Behind Act of 2001 (the Boy Scouts Act), which applies to public elementary and secondary schools, local educational agencies (LEAs), and State educational agencies (SEAs) that receive Federal funds made available through the Department of Education. Under the Boy Scouts Act, which became effective on January 8, 2002, no such public school, LEA or SEA that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 of the United States Code as a patriotic society, that wishes to meet at the school.

Case Processing Manual Requirements Reviewed

1. Was a case file established?
2. Was the complaint included in the case file?
3. Did OCR promptly acknowledge the complaint and provide the necessary information to the complainant upon receipt of the complaint?
4. Was a signed consent form provided by the complainant and secured by OCR when disclosure of the identity of the complainant was necessary?
5. Did OCR have subject matter jurisdiction of the case?
6. Were any special intake procedures applied in accordance with Section 601 for applicable types of discrimination complaints?²¹
7. Did OCR have personal jurisdiction of the case?
8. If the complaint was investigated, was the complaint filed within 180 days of the date of the last act of alleged discrimination, or was a waiver granted or another allowing circumstance recognized?
9. If the allegation was determined to be filed in an untimely manner, as described in the requirement above, did OCR notify the complainant of the opportunity to request a waiver?
10. If the allegation was determined to be filed in an untimely manner and the complainant requested a waiver, did OCR determine if a waiver should be granted?
11. If the case was investigated, did OCR issue letters of investigation notification to the complainant and the recipient?
12. Did case planning take place?
13. Did the case file contain documentation that supports the decisions made with respect to each of the applicable essential planning elements:
 - (a) Allegation(s)
 - (b) OCR's jurisdiction over subject matter and parties
 - (c) Legal issue(s)
 - (d) Investigation strategy
 - (e) Resolution agreement

²¹ These include (a) age discrimination complaints for employee complaints and service complaints; (b) Title VI complaints against proprietary schools; (c) Title VI and Title IX employment complaints; (d) Title II Americans with Disabilities Act complaints (other than Employment); (e) Section 504 and Title II disability employment complaints for referral or deferral and for retention.

14. If there were interviews held applicable to the case, were interview records maintained in the case file?

15. Did OCR obtain consent before interviewing a minor or legally incompetent individual for the case?

Dismissal

16. Was the reason for the dismissal allowed by the CPM?

17. Did OCR wait at least 20 days after the date of the request for consent was sent to the complainant before it dismissed the case due to lack of consent form provided by the complainant?

18. Did OCR assist the complainant with understanding the necessary information to the investigation before dismissal if it dismissed the case due to the complainant not providing the information necessary to OCR's investigation?

19. Did OCR wait at least 20 days after the date of the request for information necessary to the investigation before it closed the case, if it dismissed the case due to insufficient detail provided by the complainant, or an allegation too speculative, conclusory, or incoherent in nature that it is not sufficiently grounded in fact for OCR to infer that discrimination or retaliation may have occurred or is occurring?

20. Did OCR dismiss the case after appropriate approval?

21. Did OCR notify the complainant of the dismissal of the case?

Administrative Closure

22. Was the reason for the administrative closure allowed by the CPM?

23. Did OCR administratively close the case after appropriate approval?

24. Did OCR notify the complainant and recipient of the administrative closure of the case?

Early Complaint Resolution

25. Did Director or designee determine that ECR was appropriate?

26. Did OCR ensure that both parties agreed to participate in ECR?

27. Did OCR facilitate discussion between parties during ECR?

28. Did OCR monitor ECR proceedings to ensure timeliness?

29. Did OCR terminate ECR proceedings as soon as it was clear that the parties would not succeed in resolving the complaint through the ECR process?
30. Did OCR ensure that the confidentiality agreement involving the ECR process was either signed or acknowledged by the ECR facilitator and both parties?
31. Did OCR obtain a copy of the settlement agreement signed by the complainant?
32. If allegations were resolved through ECR, did OCR notify the parties in writing that the allegation(s) has or have been resolved; and that other outstanding issues, if any, are to be resolved through the investigation and resolution process.
33. Did OCR's investigation resume after ECR was terminated to ensure a resolution as timely as possible?
34. Were any notes taken during ECR by the facilitator and/or any records or other documents offered by either party to the facilitator during ECR kept in a separate file and not shared with other staff members?

No Violation/Insufficient Evidence, and Closure with Change

35. If the complaint was resolved during investigation, did OCR resolve the case after appropriate approval?
36. If the complaint was approved for resolution during investigation, did OCR notify the complainant of the recipient's interest in doing so?
37. If the complaint was investigated, did OCR make a determination at the conclusion of its investigation and issue letters of findings and/or resolution agreements as applicable?
38. Did the letter of findings have appropriate approval before being disseminated to both parties?
39. Did the letter of findings include all necessary information applicable to the case?
40. If a resolution agreement was necessary per OCR's case resolution process, was a copy of the resolution agreement included with the resolution letter or letter of findings disseminated to both parties?
41. If a noncompliance determination was made, did OCR propose a resolution agreement and perform negotiations with the recipient and maintain documentation as applicable?
42. Did the resolution agreement have appropriate approval?
43. Did the case file include an index of documents in the file and a key referencing by tab of the evidence relied upon in making the determination.

**Abbreviations, Acronyms, and Short Forms
Used in this Report**

CAP	Corrective Action Plan
CFR	Code of Federal Regulations
CMS	Case Management System
CPM	Case Processing Manual
Department	U.S. Department of Education
DMS	Document Management System
ECR	Early Complaint Resolution
FMCS	Federal Mediation and Conciliation Service
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GPRA	Government Performance and Results Act
LEA	Local Educational Agency
OCR	Office for Civil Rights
OIG	Office of Inspector General
PSE	Postsecondary Education
RRP	Rapid Resolution Process
SEA	State Educational Agency



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

October 20, 2015

Mr. Patrick J. Howard
Assistant Inspector General for Audit
U.S. Department of Education
Office of Inspector General
400 Maryland Avenue, S.W.
Washington, DC 20202-1500

Dear Mr. Howard:

Thank you for the opportunity to comment on the Office of Inspector General's draft audit report, titled *The Resolution of Discrimination Complaints by the Department's Office for Civil Rights* (ED-OIG/A19N0002). The Office for Civil Rights (OCR) appreciates the work and care that went into this audit report and the cooperative manner in which OIG staff worked with OCR staff across the nation as OIG studied "whether OCR resolves discrimination complaints in a timely and efficient manner and in accordance with applicable policies and procedures."

OCR is pleased that the draft audit report concludes that OCR generally resolves discrimination complaints in a timely and efficient manner, and in accordance with applicable policies and procedures. We agree with each of your specific recommendations for sustaining improvements to our practices, policies, and procedures. The grounds for our concurrence with each recommendation follow.

Recommendation 1.1

Your report recommends that OCR continue the practice of sharing and discussing with the regions the list of cases pending review with headquarters (e.g., with the Enforcement Directors in OCR's Office of the Assistant Secretary) to ensure they are tracked and processed efficiently. OCR concurs that this practice, which was started in February 2013 and was established in its current form in April 2014, should continue.

As your report finds, OCR's 12 regional offices are given the autonomy to conduct most of the investigation and resolution activities for the cases they receive. Indeed, as your report notes, in March 2014, OCR implemented a change that allowed Regional Directors to pursue a resolution agreement prior to the completion of OCR's investigation of complaints without the approval of an Enforcement Director, unless the case involves a sensitive or high-profile area of discrimination.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

While fewer layers of review can result in a more expeditious resolution, developing a high-quality and consistent product is just as important as timeliness to OCR. As your report finds, the Enforcement Directors are involved in reviewing cases that involve some of the most complex or novel issues facing OCR. In those situations, OCR agrees that it is critical for there to be clarity over which cases are with headquarters, so that there is no confusion about who is responsible for moving the cases forward.

OCR initially made this information available to Regional Directors in February 2013 through the dashboard accessible on their computer desktop, and began sending out this information, in an additional format, through a weekly email to the Regional Directors in April 2014. These practices should sustain, if not enhance, the trends that your report identifies: the rate at which OCR resolved complaints within 180 days remains at a high level even with a significant increase in the number of complaints received; the percentage of cases categorized as “Closure with Change” resolved within 180 days has increased over the last few fiscal years; and OCR does not have a large backlog of unresolved cases.

Additionally, to further its dual interests in timeliness and quality, OCR has recently hired two additional staff who perform the duties and responsibilities of Enforcement Directors, doubling OCR’s capacity in this area. In conjunction with the autonomy already possessed by the regions and the sharing and discussing on a regular basis the list of cases pending in headquarters for review, doubling the number of Enforcement Directors will further contribute to OCR resolving discrimination complaints in a timely, efficient, and effective manner.

Recommendation 2.1

Your report recommends that OCR continue the practice of internally reviewing cases each month, and consider occasionally tailoring the monthly review to specifically review certain procedures, such as complaint dismissals. OCR concurs that this practice, which OCR initiated in March 2014, should continue.

As your report finds, OCR has clearly defined procedures, including the monthly internal case reviews by the Enforcement Directors, that allow senior management to appraise office practices quickly and effectively to ensure compliance with established policy and procedures. The recent addition of two Enforcement Directors, noted above, will result in double the resources devoted to reviewing cases as well as to day-to-day oversight of the progress and operating procedures of the regional offices.

As your report notes, there was no evidence in the cases you reviewed that OCR staff decided to dismiss cases because of OCR’s increasing workload (both in terms of the absolute number of complaints and the complexity of the cases investigated) despite its decreasing resources (caused by flat-lined budgets that have not allowed for OCR to replace the staff lost to attrition). OCR’s monthly internal case reviews already encompass complaint dismissals and would detect such problems. Indeed, as your report finds, when a review identified issues related to complaint intake procedures in a region, training was provided to staff in that region. OCR intends to both continue and expand its internal case reviews, and will certainly continue to occasionally tailor them to review certain procedures when appropriate.

Recommendation 2.2

Your report recommends that OCR ensure that regions are made aware of and understand all policy involving the maintenance of Early Complaint Resolution (ECR) specific files and the maintenance of ECR records. OCR concurs that additional training about ECR-specific file and records protocols, which was initiated in March 2015 in immediate response to OIG initially bringing the issue to OCR's attention, should continue.

The ECR process seeks to facilitate resolution of complaints through a voluntary process akin to mediation, with a trained OCR employee serving as mediator between the complainant and recipient. This specialized process forms a small fraction of OCR's case work. To encourage candid discussion and negotiation, the parties are told that statements made and records submitted during the ECR process will be kept confidential. Section 203 of OCR's Case Processing Manual (CPM) and OCR's 2009 "Guidance for ECR Process in OCR Regions" require that records of the ECR be kept separate from investigative files and not shared with OCR staff members assigned to investigate the complaint. Your report states, however, that staff reported that their office ECR practices differed from the CPM and the 2009 Guidance. For this reason, OCR concurs that the reported variance from the ECR requirements in two regions warrants further attention.

As your report states, on learning from OIG staff about the variance with the ECR requirements in two regions, OCR senior management immediately took action to begin addressing the issue. In the two regions where the ECR problem was detected by OIG, the Regional Directors were required: to develop training for all their staff to ensure that they have a clear understanding of the existing ECR requirements; to submit a plan to headquarters detailing when such training was implemented and how often such training will be conducted; and to submit an assurance that all their staff receive such training. In addition, all 12 regional offices were required to report on how they will monitor their office's ECR practices to ensure they remain consistent with the CPM.

Apart from the ECR files, your report finds there were only "minor" issues with the CPM, which involved "negligible" staff oversights. In particular, your report finds that with regard to cases involving sexual violence at postsecondary institutions, all of the cases reviewed were opened and/or resolved in accordance with the CPM. OCR has received and is investigating a record number of complaints involving sexual violence on college campuses. As your report notes, there are a variety of intertwined reasons for this increase, such as: OCR's issuance of a "Dear Colleague Letter" about sexual violence in 2011 and a follow-up "Questions and Answers" document in 2014; concerted advocacy by students on the topic, which includes encouraging students to file complaints with OCR; and greater public awareness around the government's efforts to address the issue, as evidenced by the prominent inclusion of OCR's work in the White House Task Force to Protect Students from Sexual Assault (established in January 2014) and its www.NotAlone.gov website (established in April 2014). Because these can be comparatively high-profile cases, it is important that the public can be confident that OCR is providing a consistent framework for conducting these investigations and resolving these complaints, as you find OCR is doing.

Nonetheless, despite this finding and the finding that OCR generally acts in a manner that is consistent with the CPM, OCR intends to continue training about consistency with the CPM, including ECR-specific file requirements, as part of its on-going training of staff.

Recommendation 2.3

Your report recommends that OCR develop a mechanism to ensure consistency in the documentation of case planning, such as having standard templates with required information. Your report finds that the regional offices appear to be conducting the case planning required by Section 301 of OCR's CPM in various formats. The CPM was written to allow regional offices flexibility in how they document their case planning. Consistent with your recommendation, OCR will provide the regional offices with guidance that will help ensure more consistent manners of documenting the case planning that is already taking place.

Thank you again for the opportunity to comment on the draft audit report. OCR remains committed to being a neutral factfinder that processes, investigates, and resolves complaints in an impartial manner, consistent with the CPM and other established procedures, in order to ensure compliance with the civil rights laws it is charged with enforcing. Please let us know if you have any questions or would like to discuss our comments. We look forward to receiving the final report.

Sincerely,



Catherine E. Lhamon
Assistant Secretary
Office for Civil Rights