

Achieving Simple Justice



*Highlights
of Activities,
Office for Civil
Rights*

2009-
2016



U.S. Department of Education
Office for Civil Rights

Introduction

In 1963, President John F. Kennedy stated, when describing the bill that would become the 1964 Civil Rights Act: “Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in . . . discrimination.” One of the Obama Administration’s highest priorities has been to deliver that simple justice by safeguarding students’ access, and reducing discriminatory barriers, to educational opportunity. Over the past eight years, the U.S. Department of Education’s Office for Civil Rights (OCR) has significantly contributed to this priority through vigorously enforcing federal civil rights laws, collecting comprehensive data on equity and opportunity gaps in schools, issuing timely civil rights policy guidance, and enhancing the public’s awareness of civil rights and of OCR’s work. This document provides select highlights of those activities from 2009 to 2016.

OCR ensures equal access to education for our nation’s students by enforcing federal civil rights laws and implementing regulations that 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. The laws OCR is responsible for enforcing include:

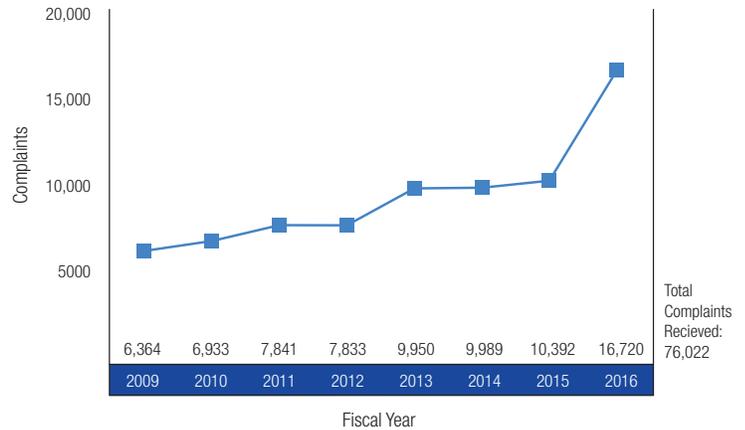
- ▲ Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination)
- ▲ Title IX of the Education Amendments of 1972 (prohibiting sex discrimination)
- ▲ Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination)
- ▲ Age Discrimination Act of 1975 (prohibiting age discrimination)
- ▲ Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination in state and local government services – whether or not programs receive federal financial assistance)
- ▲ Boy Scouts of America Equal Access Act of 2001 (prohibiting public elementary and secondary schools, local educational agencies, and state educational agencies from denying equal access or a fair opportunity to meet, or discriminating against, any group officially affiliated with the Boy Scouts of America or any other youth group listed as a patriotic society in Title 36 of the United States Code)

These laws and their implementing regulations represent the Congressional mandate that is the basis for all of OCR’s work.

Enforcement

OCR received more than 76,000 and resolved more than 66,000 civil rights cases between fiscal years (FY) 2009 and 2016¹ (see **Figures 1 and 2**). OCR also initiated more than 200 proactive investigations (which are referred to as compliance reviews) during

Figure 1: Complaints Received Per Year, 2009-2016



Facts and Figures, 2009-2016 (Fiscal Year - Oct. 1 to Sept. 30)

- Complaints received: 76,022
- Total case resolutions: 66,102
- Compliance reviews initiated: 204
- Policy guidance documents issued: 34
- Civil Rights Data Collection releases: 3

this period to investigate potential civil rights violations. During this period, OCR ensured that the scope of investigations allowed for a comprehensive examination of the issues, as well as comprehensive relief for complainants, including systemic remedies, as necessary. OCR monitored, on average, about 2,000 resolved cases per year to ensure compliance with resolution agreements (see **Figure 3**). OCR also improved its internal management – including new case processing and investigatory protocols and self-auditing of its investigations – to increase the efficiency and consistency of its enforcement work.

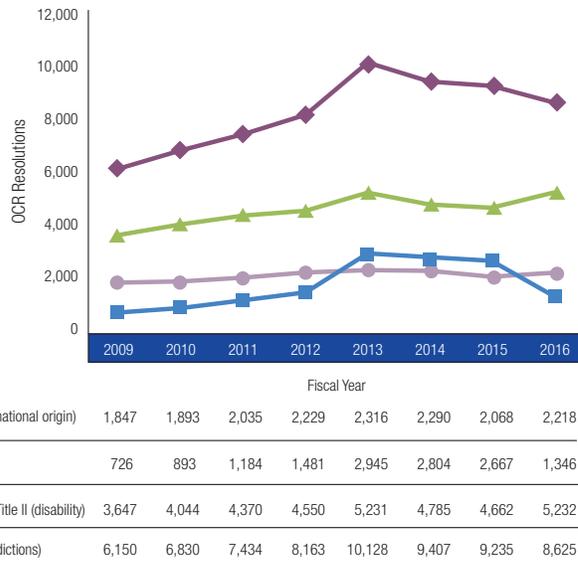
Civil Rights Data Collection (CRDC)

OCR administered and released the results for three **CRDC** surveys between fiscal years 2009 and 2016 (surveys covering the 2009-10, 2011-12, and 2013-14 school years) and began collection for a fourth survey (covering the 2015-16 school year). The **2009-10** survey covered 85 percent of the nation’s K-12 students, while the **2011-12**, **2013-14**, and **2015-16** surveys were universal collections covering nearly every public school and district in the nation. In the past eight years, OCR has revamped and expanded the CRDC to be more widely accessible to the public (instead of primarily a resource within government) and to be more inclusive of key indicators of equity and opportunity related to student discipline, access to and enrollment in courses and accelerated programs, early learning access, student absenteeism, education in juvenile justice facilities,

HIGHLIGHTS OF OCR ACTIVITIES, 2009-2016

Office for Civil Rights

Figure 2: OCR Resolutions, 2009-2016*



* These figures include resolution agreements, Early Complaint Resolutions, resolutions requiring action by institutions without a resolution agreement, findings of no violation, and administrative closures or dismissals.

Enhancing Transparency

During the Obama Administration, OCR has taken aggressive steps to make its activities transparent. This enhanced transparency provides a resource for institutions and the public to see the data OCR collects or the way OCR interprets and applies the law to particular facts. Now the public can:

- find **civil rights data** on dozens of topics for individual schools and districts;
- look up **resolution agreements** by name of institution, statute, or issue area;
- find out which institutions have requested and received **exemptions** from Title IX, the one law OCR enforces that provides for exemptions; and
- learn more about which institutions are subject to pending **sexual violence investigations**, at the elementary/secondary and postsecondary levels, by OCR.

civil rights coordinators, and much more. OCR also increased its technical assistance and support to districts, created new automated data quality checks during the data submission process, and followed up with districts that did not submit data to ensure that the CRDC provides an accurate and comprehensive view of the equity health of public schools nationwide.

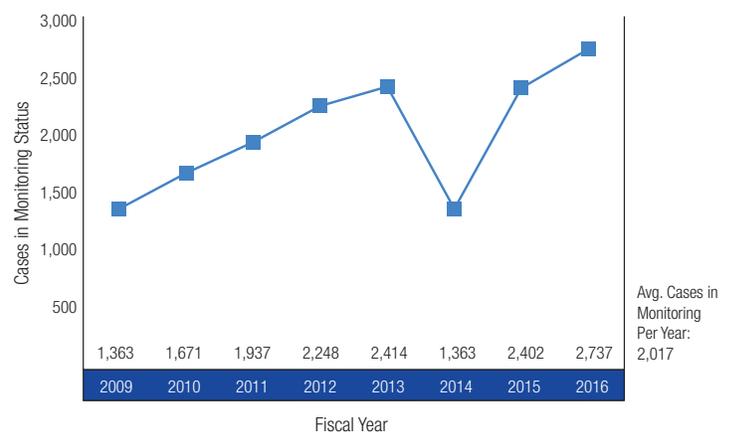
Policy Guidance

OCR issued 34 **policy guidance documents** between fiscal years 2009 and 2016 on a range of civil rights topics (see **Figure 4**). These documents serve to assist schools and other educational institutions receiving federal financial assistance in understanding how OCR interprets and enforces federal civil rights laws set forth by Congress. This document includes descriptions of a selection of these policy guidance documents.

Public Engagement and Transparency

Each year, OCR provides technical assistance to institutions and the public and responds to thousands of phone calls, letters, requests for information or data, and media inquiries. These activities help complainants, institutions, the media, and other members of the public better understand civil rights laws and obligations and address civil rights concerns. While OCR does not have public engagement statistics going back to 2009, in the last year alone (FY 2016), OCR conducted 295 technical assistance activities, responded to 5,025 incoming correspondence inquiries, answered 8,019 hotline calls, distributed 701 copies of OCR publications, processed 1,244 Freedom of Information Act (FOIA) requests, and responded to more than 1,200 individual press inquiries.

Figure 3: Cases in Monitoring Status Per Year, 2009-2016



* These figures include all resolved cases that OCR was monitoring for compliance during the fiscal year.

Ensuring Equal Educational Opportunity and Fostering Racial Diversity

OCR has worked to ensure that students have equitable access to educational resources and opportunities – including access to science, technology, engineering, and math (STEM) and college preparatory courses and curricula – regardless of their race, ethnicity or national origin, and that schools adhere to federal law in admissions and desegregation efforts.

Policy Guidance

October 2014 *Dear Colleague* letter and fact sheet on resource equity

- ▲ provide information regarding the obligations of states, districts, and schools under Title VI of the Civil Rights Act of 1964 (Title VI) not to intentionally treat students differently based on race, color, or national origin in providing educational resources, and not to implement policies or practices for providing educational resources that disproportionately affect students of a particular race, color, or national origin without legally sufficient justification

December 2011 *Dear Colleague* letter on voluntary use of race in K-12 schools and postsecondary institutions to pursue racial diversity or to reduce racial isolation, and three *Dear Colleague* letters

CRDC Fast Fact²: Nationwide, only 48 percent of high schools offer calculus. Access to high school math and science courses is even lower for students of color, students with disabilities, and English learners. For example, just 33 percent of high schools with high enrollment of black and Latino students offer calculus, compared to 56 percent of high schools with low enrollment of black and Latino students.³

in **2013, 2014, and 2016** explaining and reaffirming use of race principles after the *Fisher I*, *Schuette*, and *Fisher II* decisions (with the U.S. Department of Justice (DOJ))

- ▲ The 2011 *Dear Colleague* letter explains ways that K-12 and postsecondary institutions may lawfully and voluntarily pursue racial diversity, and for K-12 schools, also reduce racial isolation
- ▲ The *Dear Colleague* letters (and a *Questions and Answers* document) between 2013 and 2016 explain the continued viability of OCR’s 2011 guidance following recent U.S. Supreme Court decisions that explored the question of race in the context of education or the political process

Figure 4: OCR Policy Guidance, 2009-2016



HIGHLIGHTS OF OCR ACTIVITIES, 2009-2016

Office for Civil Rights

Investigation/Enforcement Summary

Between 2009 and 2016 (fiscal years), OCR received 414 complaints⁴ related to resource equity and comparability and access to STEM/college preparatory courses and curricula (Title VI), and 750 complaints related to admissions or desegregation (Title VI). During this period, OCR resolved 1,161 complaints in these areas.⁵

Illustrative Cases

Beaufort County School District (SC): In July 2009, OCR entered into an agreement with the district to amend the district's March 1970 Title VI Desegregation Plan to address the district's proposal to open a new charter school that would have been racially identifiable and exacerbated the racial isolation of students in the district, in violation of the plan. The revised desegregation plan permitted the district to open the new charter school only if it took desegregative measures related to student recruitment and admission, curriculum and course offerings, faculty and staff diversity and recruitment, school leadership and governance diversity, de-tracking, cultural competence and community relations training, and transportation. Today, the district has implemented an aggressive recruitment plan approved by OCR, aimed at attracting a diverse applicant pool for the charter school, resulting in an increase in diversity among applicants and a 2016-17 enrollment that complies with the revised desegregation plan.

Lee County Schools (AL): OCR's investigation of this rural district revealed that, although the district's student population was 23 percent black, one of its four high schools that served more than 90 percent black students had never, until 2008, offered a single Advanced Placement (AP) course, while three predominantly white high schools offered a wide range of AP and other high-rigor courses. The September 2013 resolution agreement requires the district to offer comparable high-rigor courses to all high school students regardless of their race or national origin.

Cleveland Metropolitan School District (OH): In January 2014, OCR concluded an investigation that found seats going unfilled in STEM schools. Yet, the district was not advertising the course availability in Spanish, the home language of 80 percent of the district's English learner (EL) students. The resolution agreement ensures EL students have equal access to the high-rigor courses in the district.

Princeton University (NJ): In September 2015, OCR resolved a compliance review examining whether the university discriminated against Asian and Asian American applicants on the basis of race or national origin in its undergraduate admissions policies and practices. OCR reviewed years of admissions data and policies as well as other documents and conducted interviews with current and former staff, and determined that the university pursues a compelling interest in student body diversity and that to the extent it considers race or national origin in admissions, it does so in a narrowly tailored and nondiscriminatory manner in pursuit of that interest.

Figure 4 (continued): OCR Policy Guidance, 2009-2016

Use of Race/Diversity – Clarifies permissibility of use of race to achieve diversity after *Schutte* case
Plyler v. Doe – Replaces 2011 OCR/DOJ guidance on nondiscrimination in student enrollment in public schools based on race, color, national origin, citizenship, immigration status
Charter Schools – Reminder that charter schools are subject to same federal civil rights obligations as traditional public schools
Resource Equity – On providing equal access to educational resources without regard to race, color, national origin
Bullying of Students with Disabilities – Discusses schools' obligations to respond to bullying of students with disabilities

Effective Communication – Addresses interplay of IDEA with Title II requirement to ensure effective communication for students with hearing, vision, or speech disabilities
Single-Sex Classes – Clarifies Title IX requirements for offering single-sex non-vocational classes or activities
Juvenile Justice Facilities – Reiterates applicability of federal civil rights laws to juvenile justice residential facilities
Ebola – Clarifies how schools can implement the CDC's Ebola guidance without discriminating against students

English Learners – On ensuring equity for EL students and LEP parents
Measles Prevention – Clarifies how schools can implement CDC's measles prevention recommendations without discriminating against students
Title IX Coordinators – On obligation to designate and role/importance of Title IX coordinators
Voluntary Youth Service Organizations – On how schools may work with outside organizations that provide single-sex programming

Transgender Students – On the protection of transgender students under Title IX
Career and Technical Education – Reiterates that students must have equal access to full range of CTE programs regardless of sex
ADHD – On providing equal educational opportunity under Section 504/Title II to students with attention-deficit/hyperactivity disorder
Use of Race/Diversity – Clarifies permissibility of use of race to achieve diversity after *Fisher II* case

2014

2015

2016

Expanding Equity for Students of All Abilities

Through its enforcement work, OCR continued to ensure that students with disabilities have equitable access to instruction, opportunities, and resources, and receive appropriate accommodations for themselves and their families.

Policy Guidance

June 2010 *Dear Colleague* letter and **May 2011** *Questions and Answers* document on accessibility of emerging technologies

- ▲ explain that Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (Title II) require schools and colleges to ensure that the technology they use is fully accessible to individuals with disabilities or otherwise to provide equal access to the educational benefits and opportunities afforded by the technology

January 2013 *Dear Colleague* letter on equity in athletics for students with disabilities

- ▲ clarifies that students with disabilities have the right under Section 504 to receive an equal opportunity to participate in extracurricular athletic programs and provides concrete examples of how districts may modify policies, practices, and procedures in support of students with intellectual, developmental, physical, and other disabilities

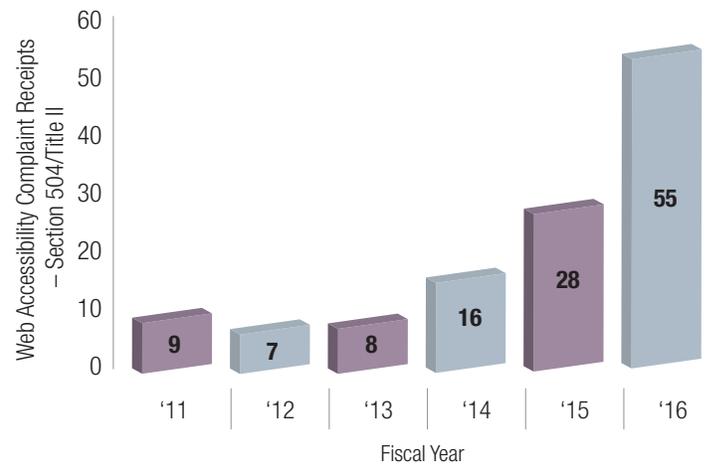
November 2014 *Dear Colleague* letter, *Frequently Asked Questions* document, and fact sheet on effective communication with students with hearing, vision, or speech disabilities (with the Office of Special Education and Rehabilitative Services and DOJ)

- ▲ clarify obligation of schools to facilitate effective communication with students with hearing, vision, or speech disabilities and provide an overview of relevant laws, including the Individuals with Disabilities Education Act (IDEA), Title II, and Section 504

Investigation/Enforcement Summary

Between 2009 and 2016 (fiscal years), OCR received 36,790 disability-related complaints overall, including 818 complaints related to accessibility of technology (including web accessibility – see **Figure 5**); 2,484 complaints related to accessibility of programs and facilities; 6,927 complaints related to different treatment/exclusion or denial of benefits; 589 complaints related to admissions and recruitment; and 14,937 complaints related to providing a free appropriate public education (FAPE). The number of complaints we received in these areas collectively increased by 76 percent from FY 2009 to FY 2016. During this period, OCR resolved 21,722 complaints in these areas.

Figure 5: Increase in Number of Complaints Over Time Involving Web Accessibility for Students with Disabilities*



* OCR's case management database did not track this discrete issue prior to FY 2011.

Illustrative Cases

Shenendehowa Central Schools (NY): OCR determined that the district applied a modified grading formula to downgrade the grades of students with disabilities by 0.69, thereby treating students differently on the basis of disability in violation of the law. In the January 2014 resolution agreement, the district agreed to cease this practice and to restore unadjusted grades to all students with disabilities whose grades had been adjusted downward.

Ohio High School Athletic Association (OH): In February 2014, OCR resolved a complaint against the Ohio High School Athletic Association (as well as a complaint against a school district and directed investigations against four additional school districts within the same athletic conference) to ensure that a student who uses a wheelchair was provided an equal opportunity to participate on his school's track team. After OCR started its investigations of the Association and member districts, the Association clarified that its policies did not prohibit the student's participation, and the school districts worked together to allow the student to participate in mixed heat races and earn points for his team at regular season track meets.

Shaw University (NC): The complaint alleged that the university rescinded a student's admission after meeting the student at freshman orientation because the student's needs due to cerebral palsy were, in the university's words to the student, "beyond the scope of what the university can reasonably provide." The investigation revealed that the university did not admit any student with a disability where there was a concern it might not be able to meet the student's disability-related needs. In June 2015, the university committed to revise its policies and procedures and review the applications of students with disabilities whose admission was denied or rescinded to offer them a chance to enroll if they qualified



for admission – and to report to OCR for review regarding these decisions.

University of Phoenix (AZ): In June 2015, the University of Phoenix, the largest online education provider in the United States, entered into a resolution agreement to resolve a complaint that the university’s online learning management program and other web-based services were inaccessible to students with disabilities who use assistive technology. The resolution agreement requires the university to give the complainant the opportunity to complete her degree tuition-free, to provide reimbursement for courses in which she did not have an equal opportunity to participate, and to create a plan to ensure its new online technology is accessible and that students who use assistive technology are supported.

CRDC Fast Fact: Students with disabilities served by IDEA represent 11 percent of all students in schools that offer AP courses, but fewer than 2 percent of students enrolled in at least one AP course.

Yonkers Public Schools (NY): In November 2016, OCR resolved an investigation of whether the district discriminated against students with disabilities, who comprised 16 percent of the district’s approximately 26,000 enrolled students, by failing to place them in the regular educational environment unless it was demonstrated that placement in the regular education environment, even with the use of supplementary aids and services, could not be achieved satisfactorily. OCR found that 81 percent of students with disabilities spent some time out of the regular education classroom, and that of these, half were placed outside of the regular education classroom for 75 percent or more of each school day. OCR also found that students’ special education files often lacked documentation of interventions attempted prior to, or individualized rationales to support, placement in self-contained classrooms. The resolution agreement commits the district to ensure appropriate documentation, staff training, and placement of students with disabilities.

Rethinking Discipline, Resisting Restraint and Seclusion

OCR’s policy guidance and enforcement efforts endeavor to end discriminatory discipline in schools, contributing to the national conversation this Administration has led about rethinking discipline and ending the school-to-prison pipeline. OCR has also worked to redress the discriminatory use of restraint and seclusion in schools.

Policy Guidance

January 2014 *Dear Colleague* letter, issued jointly with DOJ, on student discipline

- ▲ explains how schools can meet their obligations under federal law to administer school discipline without discriminating on the basis of race, color, or national origin

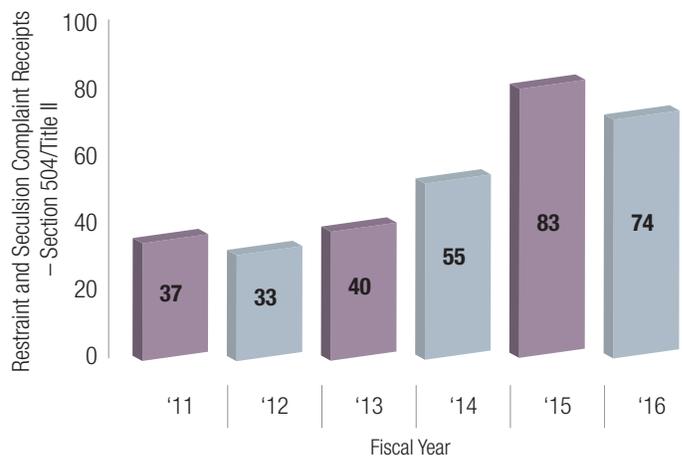
Investigation/Enforcement Summary

Between 2009 and 2016 (fiscal years), OCR received 4,213 discipline-related complaints (Title VI and Section 504) and 328 complaints⁶ related to restraint and seclusion (Section 504) (see **Figure 6**). During this period, OCR resolved 3,875 discipline-related complaints (Title VI and Section 504) and 223 restraint and seclusion-related complaints (Section 504).

Illustrative Cases

John Doe School⁷: In January 2014, OCR reached a resolution agreement with a North Carolina charter school after the school discriminated against an elementary school student on the basis of his disability by improperly using manual restraints (more than

Figure 6: Increase in Number of Complaints Over Time Involving Restraint and Seclusion* of Students with Disabilities**



* Restraint is a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely, or it is the use of any device or equipment to restrict a student’s freedom of movement. Seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.

** OCR’s case management database did not track this discrete issue prior to FY 2011.



211 times in one school year totaling almost 23 hours) without ever discussing the use of restraints with his Individualized Education Program (IEP) team or reflecting the use of restraints in the student's behavior intervention plan. The school entered a resolution agreement that obligates the school to conduct training on Section 504 procedural requirements, comply with the Department's restraint and seclusion resource document, and pay for counseling services for the student.

ED's Discipline Reform Initiative

ED issued a **School Discipline Guidance Package**, which includes the OCR/DOJ *Dear Colleague* letter, as part of the #RethinkDiscipline campaign to increase awareness about the detrimental impacts of exclusionary discipline. In addition to the *Dear Colleague* letter, the Guidance Package contains:

- a *Guiding Principles* document that describes key principles and related action steps that can guide efforts to improve school climate and school discipline;
- a *Directory of Federal School Climate and Discipline Resources*; and
- a *Compendium of School Discipline Laws and Regulations* for each of the 50 States, District of Columbia, and Puerto Rico.

Tupelo Public School District (MS): OCR's investigation revealed that, in school years 2010-11 and 2011-12, black students at the three schools in the district constituted 78-81 percent of discipline referrals while making up 48-49 percent of enrollment. Additionally, the district's discipline codes included undefined terms such as "improper behavior at school" and "other misbehavior as determined by the administration." The district entered into a resolution

CRDC Fast Fact: Black K-12 students are 3.8 times as likely to receive one or more out-of-school suspensions as white students, and students with disabilities served by IDEA (12 percent) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities (5 percent).

agreement to address these concerns in 2014, committing the district to employ a range of corrective measures before referring students to disciplinary authorities or law enforcement, revise its discipline policies and practices to remove ambiguities, and establish a discipline review team to evaluate and assess discipline practices and reforms.

Oakland Unified School District (CA): In June 2016, OCR found that a nine-year-old student faced discrimination on the basis of disability when school officials at the non-public school in which the district placed the student restrained him 92 times over an 11-month period starting in April 2013 and continuing through February 2014. The investigation confirmed that, in total, the student was held face down for 2,200 minutes. OCR found the district in violation of Section 504 and Title II for its failure to implement the student's IEP. The resolution agreement commits the district to cease contracting with non-public institutions that condone prone restraint and to develop a master contract for all non-public schools it contracts with regarding use of restraint; evaluate the student to assess the adverse effects related to the use of prone restraint; convene an IEP team to develop a plan for compensatory education and services for the student; and train staff regarding the adverse effects of restraint and successful alternative intervention methods.

Lodi Unified School District (CA): In August 2016, OCR resolved a complaint alleging that a black student was discriminated against on the basis of race when he was disciplined more harshly than a white student. OCR's investigation raised concerns because the district had identified the behaviors as having similar consequences but a harsher punishment was applied to the black student. Additionally, black students were almost seven times more likely than white students to receive in- or out-of-school suspensions for tardiness or truancy in 2014-15, even though suspending students for these reasons is not permitted by California state law. Among other remedies, the agreement requires the district to provide student-focused supports and interventions; identify the root causes for the district's racial disparities; develop a way to distinguish between disciplinary infractions to be handled by school staff and serious threats to school safety or criminal conduct to be handled by law enforcement; revise its Memoranda of Understanding with local police departments to include clear definitions and limits to the role of school resource officers (SROs) in their interactions with students; and collect data on SRO involvement in discipline.

Enforcing Equal Access to Programs and Activities on the Basis of Sex

OCR has issued guidance and investigated schools to preserve the prohibition under Title IX of the Education Amendments of 1972 (Title IX) against sex discrimination, which applies to all aspects in education – such as the treatment of pregnant and parenting students, sex-segregated classrooms, affording equitable athletic opportunities, and nondiscrimination in career and technical education programs.

Policy Guidance

April 2010 *Dear Colleague* letter on providing equitable opportunity in athletics

- ▲ articulates the standards for assessing compliance with Part Three of the “Three-Part Test” used to determine whether institutions are meeting the Title IX regulatory requirement to accommodate students’ athletic interests and abilities

June 2013 *Dear Colleague* letter and pamphlet on treatment of pregnant and parenting students

- ▲ clarify that schools must treat pregnant and parenting students equitably and appropriately with respect to participation in educational programs and activities, services offered or provided, and excused absences because of pregnancy or childbirth

December 2014 *Questions and Answers* document on non-vocational single-sex classes and extracurricular activities

- ▲ clarifies the requirements under Title IX regulations for single-sex classes and activities, including that schools must demonstrate that the single-sex nature of a class is substantially related to an important objective, ensure that enrollment is completely voluntary, offer a substantially equal coeducational class in the same subject, and avoid relying on gender stereotypes

June 2016 *Dear Colleague* letter on gender equity in career and technical education

- ▲ explains that all students, regardless of their sex, must have equal access to the full range of career and technical education programs offered

Investigation/Enforcement Summary

Between 2009 and 2016 (fiscal years), OCR received 737 complaints related to athletics⁸; 199 Title IX complaints related to pregnancy and parenting; and 30 complaints related to single-sex education. The number of complaints OCR received in these areas collectively increased by 21 percent⁹ from FY 2009 to FY 2016. During this period, OCR resolved 898 complaints in these areas.¹⁰

Illustrative Cases

Chicago Public Schools (IL): In July 2015, OCR resolved a case involving the provision of equal athletic opportunities to female stu-



dents at Chicago Public Schools high schools. OCR’s investigation revealed substantial disparities between the enrollment of female students and their participation in high school interscholastic athletics at the majority of district high schools, and that at one district high school, 477 additional athletic participation opportunities would be available if girls’ enrollment and participation were proportionate. The district committed to provide, on a school-by-school basis, an equal opportunity for high school girls to participate in interscholastic athletics at all high schools.

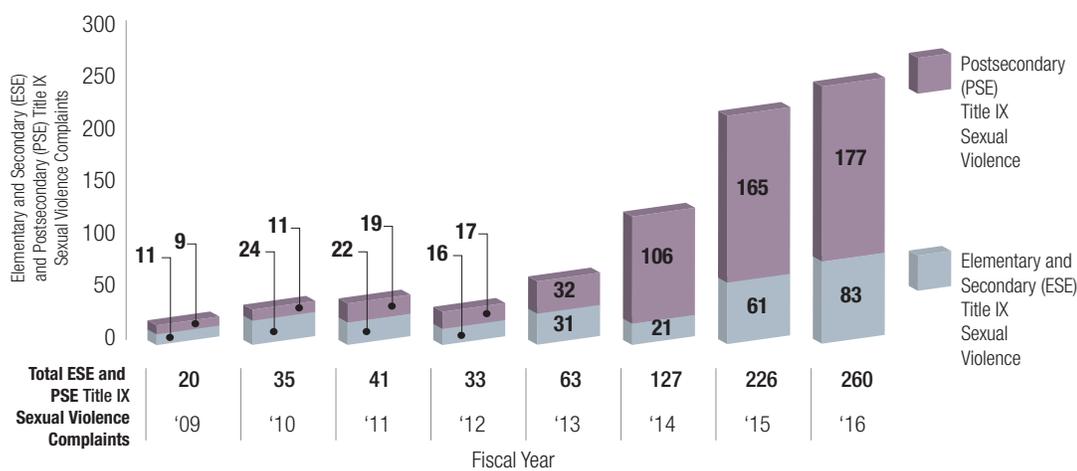
Virginia Military Institute (VA): In May 2014, OCR found Virginia Military Institute (VMI) in violation of Title IX because VMI’s marriage and parenthood policy rendered pregnant cadets ineligible to participate in VMI’s program. Under VMI’s policy, pregnant and parenting cadets were required to resign or face separation from the school. Working with OCR, VMI revised its policy to allow pregnant cadets to remain enrolled as long as they are able to perform their duties and to provide them with the same opportunity to take medical leave as is available to cadets with other temporary medical conditions.

Broward County Public Schools (FL): In August 2016, OCR resolved a complaint alleging that schools in the district fostered sex discrimination by instituting single-sex programs in the schools’ English, math, science, and social studies classes. OCR found that the schools implementing single-sex education violated Title IX because they lacked justification or sufficient information to demonstrate why single-sex education helped the district achieve its academic goals, enrollment in the single-sex curriculum was not voluntary, and the district did not offer a substantially coeducational alternative. The agreement commits the district to discontinue offering single-sex classes at all schools and to notify students’ parents and guardians of this discontinuation.

Preventing and Responding to Sexual Violence

In the last eight years, the issue of sexual violence on campuses has gained greater national attention and galvanized action across the Administration and by the public. OCR has worked to enforce the Title IX requirement that no student suffer discrimination on the basis of sex, including sexual harassment and sexual violence, in educational programs.

Figure 7: Increase in Number of Complaints Over Time Involving Sexual Violence*



* OCR's case management database did not track this discrete issue prior to FY 2009.

Policy Guidance

April 2011 *Dear Colleague* letter and **April 2014** *Questions and Answers* document and *Know Your Rights* fact sheet on Title IX and sexual violence

- ▲ explain the legal obligations under Title IX to address and respond to sexual violence, and provide further information about topics such as maintaining confidentiality; training, education, and prevention; the intersection among Title IX, the Clery Act, and the Violence Against Women Reauthorization Act; designating a Title IX coordinator; disseminating a notice of nondiscrimination; evidentiary standards in campus disciplinary proceedings; and schools' obligation to provide interim relief to complainants

Investigation/Enforcement Summary

Between 2009 and 2016 (fiscal years), OCR received 265 sexual violence-related complaints at the elementary and secondary education level and 534 such complaints at the postsecondary level (see Figure 7). The number of complaints we received in this area increased by 1,170 percent from FY 2009 to FY 2016. During this period, OCR resolved 371 sexual violence complaints at the elementary and secondary and postsecondary levels.

Illustrative Cases

State University of New York (NY): OCR reviewed 159 individual cases of alleged sexual harassment from four campuses of SUNY, the largest comprehensive statewide system of public higher education in the United States, and determined that the vast majority of these complaints involved reports of sexual violence incidents sufficiently serious to create a sexually hostile environment for the affected students. In the October 2013 resolution agreement, SUNY committed to widespread distribution of Title IX coordinator

contact information; significant revisions to the SUNY-wide Discrimination Complaint Procedure; designation and comprehensive training of Title IX coordinators; and development, distribution, and analysis of annual climate surveys to gauge the educational environment.

West Contra Costa Unified School District (CA):

In November 2013, OCR resolved a compliance review of the district that OCR launched after a gang rape at a district high school. OCR's investigation revealed that sexually harassing behavior among students permeated the district's elementa-

ry and secondary schools. OCR's resolution agreement committed the district to designate a Title IX coordinator; revise and implement grievance procedures for promptly and equitably addressing sexual and gender-based harassment; develop a comprehensive plan for educating students, parents, and employees to ensure that they are aware of Title IX's prohibition against sex discrimination; and ensure appropriate supervision of students during times the students are on campus but not in class.

Wesley College (DE): In September 2016, OCR resolved a complaint that the college discriminated against a student who had been accused of sexual misconduct. OCR determined that the college violated Title IX by failing to provide the student and three other accused students with essential procedural protections and to adhere to the safeguards provided for in its own disciplinary policies and procedures. Among other issues, the accused students were not afforded an opportunity for an interview and thus were not given the opportunity to provide witnesses or other evidence during the investigation. In the resolution agreement reached with OCR, the college committed to determine whether it had engaged in a sufficient level of inquiry prior to imposing an interim suspension on the accused students, to complete its investigation of the incident, and to re-investigate or address investigative deficiencies and provide further remedies, as warranted.

Removing Barriers to Opportunity Due to Language or National Origin

OCR continued its strong enforcement measures to ensure equitable access to instruction, opportunities and resources for English learners (ELs), as well as effective communication with limited English proficient (LEP) parents or guardians.

Policy Guidance

May 2014 *Dear Colleague* letter (superseding the **May 2011** *Dear Colleague* letter) on schools' enrollment procedures and the obligation to enroll all students of school age regardless of their race, color, national origin, immigration, or citizenship status

- ▲ clarifies that districts may not require information from students or their parents—such as birth certificates and Social Security numbers—that have the purpose or result of denying the students access to public schools on the basis of their or their parents' immigration or citizenship status

January 2015 *Dear Colleague* letter and two fact sheets on educational equity for EL students and LEP parents (issued jointly with DOJ)

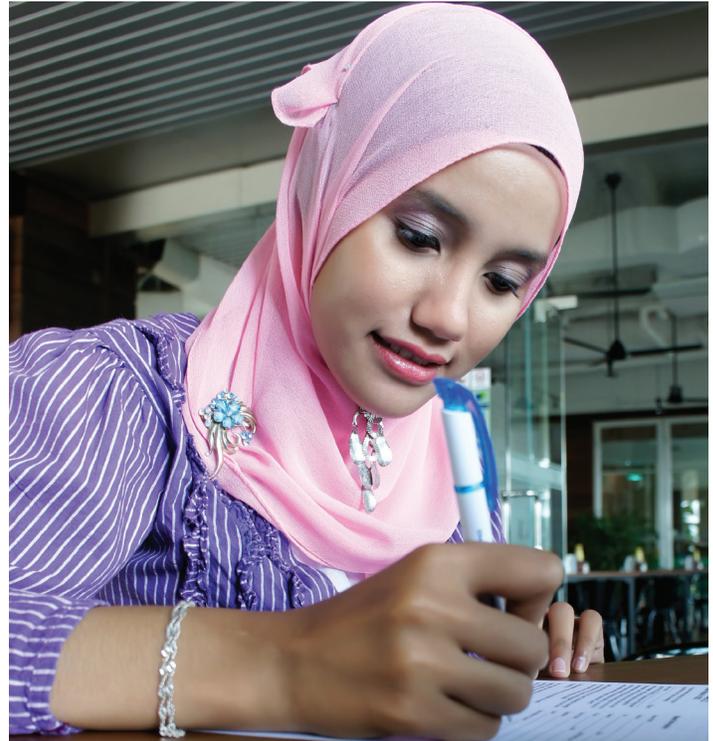
- ▲ outline common civil rights concerns pertaining to EL students such as providing timely, valid and reliable identification and assessment; educationally sound language assistance with qualified staff and sufficient resources; meaningful access to all curricular and extracurricular programs; appropriate evaluation of and services for EL students with disabilities; and meaningful communication with LEP parents

Resource Tip: The English Learner **Toolkit**, produced by the Office of English Language Acquisition, provides an overview, sample tools, and resources on key issues related to serving EL students.

Investigation/Enforcement Summary

Between 2009 and 2016 (fiscal years), OCR received 681 complaints concerning discrimination based on national origin related to EL students. The number of complaints OCR received in this area increased by 71 percent from FY 2009 to FY 2016. During this period, OCR resolved 599 complaints related to EL students.

CRDC Fast Fact: While English learners are 11 percent of students in schools offering gifted and talented education (GATE) programs, fewer than 3 percent of GATE students nationwide are English learners.



Illustrative Cases

Boston Public Schools (MA): In September 2010, OCR resolved a joint investigation with DOJ into whether the district was taking appropriate action to provide language support services to its EL students. The Departments found that the district had violated Title VI and the Equal Educational Opportunities Act by failing to conduct appropriate English language proficiency assessments for 7,000 students who were previously tested in only listening and speaking but not in reading and writing, or to serve the language needs of students inappropriately designated as “opt outs.” In April 2012, OCR and DOJ found issues of non-compliance concerning the delivery of educational services to EL students, including staffing for EL programs, hours of service for EL students, services to EL students with special needs, and communication with parents of EL students. In April 2012, OCR and DOJ entered into a successor agreement to the 2010 agreement, committing the district to provide all EL students with Sheltered English Immersion in their core content classes; deliver English as a Second Language instruction to all EL students consistent with state guidance; train and hire a sufficient number of teachers to meet the needs of its EL population; ensure that special education EL students are properly assessed and served; monitor the academic performance of current and former EL students; offer compensatory services to EL students who were recently identified and formerly misidentified as “opt outs”; and give parents of EL students the necessary information to make informed decisions regarding their children’s EL services.



CRDC Fast Fact: Ensuring equity and safety is a key responsibility for civil rights coordinators; for the first time, the public can look up the names and contact information for the civil rights coordinators (Title IX coordinators, 504/Title II disability coordinators, and Title VI coordinators) of virtually every school district in the country via the [CRDC website](#) or the [OCR Civil Rights Coordinators website](#).

Orleans Parish School Board (LA): In July 2014, OCR successfully resolved an investigation of the school board regarding allegations of discrimination against Vietnamese- and Spanish-speaking LEP families in three district charter schools. The voluntary resolution agreement obligates the district to implement a comprehensive language assistance plan and to provide annual staff training regarding Title VI obligations to notify LEP parents of school programs and activities that are called to the attention of other parents.

Jersey City Public Schools (NJ): In January 2015, OCR resolved an investigation examining the district's provision of services to EL students and LEP parents. OCR found that the district was not in compliance with Title VI regarding the district's implementation of its alternative language program; exiting and monitoring of EL students; evaluation of its EL program; communication with LEP parents/guardians; exclusion of EL students from certain specialized programs; evaluation and placement of EL students with disabilities; and provision of EL services in the least segregative

manner possible. To remedy these issues, the district committed to provide English language services and instruction to all EL students in all educational settings, including special education; address the needs of students who have exited the alternative language program; evaluate teachers who provide EL instruction; and engage parents in a language they understand about the district's alternative language program.

Arizona Department of Education (AZ): In April and May of 2016, OCR and DOJ jointly entered into two resolution agreements with the Arizona Department of Education (ADE) ensuring correct identification of EL students as well as language support services to students who had been either prematurely exited or incorrectly identified as not requiring these services. In 2012, OCR and DOJ had found that thousands of EL students in the state were prematurely classified as English proficient and removed from EL services or were incorrectly labelled as English proficient and denied services altogether. The 2012 resolution agreement expressly contemplated evaluation of progress during monitoring and securing additional steps as necessary, and in the course of this monitoring OCR's and DOJ's analysis showed that, without additional remedies, thousands of EL students across the state each year would not be served effectively. The 2016 resolution agreements require ADE to raise its proficiency criteria for English proficiency tests, retest and provide support services for potentially affected students, and submit testing reports and results to OCR and DOJ for the next three years.

Protecting Students' Right to Equitable, Safe, and Supportive Learning Environments

Over the last several years, OCR committed to protecting all students' right to attend safe and supportive schools, including protecting students from bullying, harassment, or discrimination.

Policy Guidance

October 2010 *Dear Colleague* letter on bullying and harassment

- explains that the civil rights laws OCR enforces require that if an institution knows or has reason to know about student-on-student harassment based on race, color, national origin, sex, or disability, it must take immediate and effective action to eliminate the harassment, prevent its recurrence, and, where appropriate, address its effects on the harassed student and the school community

October 2014 *Dear Colleague* letter and fact sheet on bullying of students with disabilities

- explain the obligation under Section 504 and Title II and their implementing regulations for schools to respond appropriately to bullying of students with disabilities, including remedying the effects of bullying on the services that a student with a disability receives (such as special education or other disability-related services), to ensure that the student continues to receive a free appropriate public education (FAPE)

April 2015 *Dear Colleague* letters to schools and to Title IX coordinators and a resource guide on the importance and role of Title IX coordinators

- remind schools (K-12 and postsecondary) of their obligation to designate a Title IX coordinator and provide an overview of

Title IX's requirements in several key areas, including recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; employment; and retaliation

May 2016 *Dear Colleague* letter on schools' Title IX obligations regarding transgender students (issued jointly with DOJ)¹¹

- explains schools' obligation to respond promptly and effectively to sex-based harassment of all students, including harassment based on a student's actual or perceived gender identity, transgender status, or gender transition, and to treat students consistent with their gender identity even if their school records or identification documents indicate a different sex

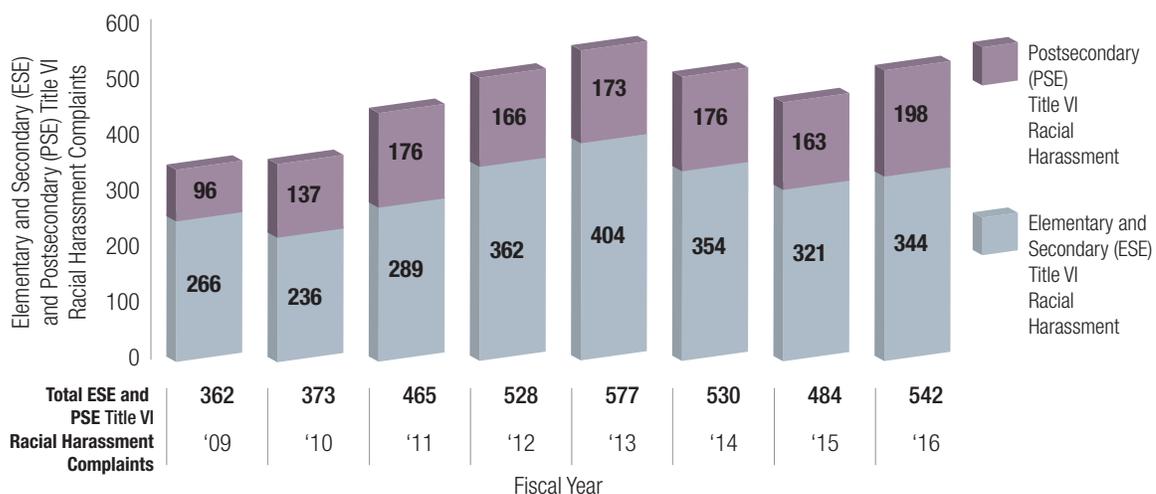
Investigation/Enforcement Summary

Between 2009 and 2016 (fiscal years), OCR received 10,122 complaints related to bullying or harassment on the bases of race (see **Figure 8**), sex, or disability and 140 complaints¹² related to transgender discrimination. The number of complaints OCR received in these areas collectively increased by 122 percent from FY 2009 to FY 2016. During this period, OCR resolved 9,144 complaints in these areas.

Illustrative Cases

Hillsborough County Public Schools (FL): In June 2009, OCR resolved a Title IX compliance review of whether the district had a properly trained and designated Title IX coordinator, provided students and employees with contact information for the coordinator, and established nondiscrimination policies and procedures as required by Title IX. OCR also examined the district's responses to a random sample of sexual harassment and assault reports from Spring 2007 through Spring 2009. The resolution agreement commits the district to have Title IX-compliant policies, procedures, and

Figure 8: Increase in Number of Complaints Over Time Involving Racial Harassment



nondiscrimination notices; provide annual training for the coordinator(s); revise its online sexual harassment training; conduct annual climate surveys; review two years of sexual harassment investigations to ensure that the district followed the Title IX statutory and regulatory requirements; develop a system for maintaining records of all complaints of sexual harassment; and provide a summary of students' Title IX rights during all new student orientations.

St. Cloud Area School District 742 and Owatonna Public Schools ISD761 (MN):

In November 2011, OCR, with DOJ, jointly resolved two complaints in Minnesota involving allegations of harassment and/or disproportionate discipline against Somali students. The resolution agreements commit the districts to take reasonable steps to ensure that all students enrolled in their respective districts are not subject to harassment or discrimination on the basis of race, color, or national origin, and to respond promptly and appropriately to all reports of harassment. Among other remedies, the districts also agreed to review and revise their harassment and disciplinary policies and procedures, conduct training of district personnel on discrimination and harassment, meet with the Somali students to discuss the students' concerns, establish a working group to make recommendations regarding the effectiveness of the districts' anti-harassment programs, and develop district-wide orientation programs and student committees at each high school to discuss harassment issues.

Anoka-Hennepin School District (MN): On March 5, 2012, OCR and DOJ filed a complaint-in-intervention and consent decree in federal court resolving allegations of sex-based harassment of middle and high school students in the school district. On March 6, 2012, the U.S. District Court Judge signed the consent decree into effect. OCR and DOJ had jointly investigated allegations that the district had failed to properly address severe and pervasive gender-based harassment of gender-nonconforming students, including LGBT students, who told investigators that they were frequently harassed (some almost daily for years) because of their failure to conform to gender stereotypes. The court-approved consent decree requires the district to take all reasonable steps to prevent and eliminate sex-based harassment, implement policy changes, hire new staff to ensure equity and safety, train students and staff, provide mental health counseling for bullying victims, survey students to assess school climate, and establish a peer-based leadership program.

University of California, San Diego (CA): In April 2012, OCR, jointly with DOJ, resolved an investigation involving allegations of multiple incidents of racial harassment on campus, including public displays of nooses and a Ku Klux Klan-style hood and the hosting of an off-campus party where students were invited to dress as stereotypes of African Americans. OCR reviewed the university's policies and procedures for responding to student complaints of racial discrimination and racially-biased incidents. In the resolution

agreement, among other remedies, the university committed to fully and appropriately resolve complaints of discrimination and harassment; remedy the effects of discrimination and harassment and eliminate any hostile environment that may have resulted; revise its policies and procedures concerning discrimination and harassment to ensure that they are designed to prevent harassment from occurring; and develop a comprehensive plan to train faculty, staff, and students on those policies.

Arcadia Unified School District (CA)¹³: In July 2013, OCR and DOJ jointly resolved complaints alleging that the district was discriminating against a student based on sex by denying him equal access to the district's education program and activities because he is transgender. The resolution agreement committed the district to permit the student to use male-designated facilities at school and on school-sponsored trips, and to ensure that it continues to treat this student and all students, including transgender students, in a nondiscriminatory manner, including by amending its policies and procedures, training staff, and ensuring appropriate support for those who request it.

John Doe School District¹⁴: In January 2015, OCR resolved a complaint alleging that a student's peers harassed him using negative stereotypes about Jews and verbally and physically bullied him for several years. The district agreed to develop a plan to assess and monitor the climate at the school with respect to harassment, provide annual investigative training to district and school administrators, provide age-appropriate student instruction to increase awareness of what constitutes harassment, and convene a meeting of the student's IEP team to ensure that the student continues to receive FAPE.

John Doe School District¹⁵: In August 2016, OCR resolved a complaint involving a teacher who made derogatory comments to a student with multiple mental health diagnoses about the student's prior suicide attempt and, in the presence of other students, urged the student to kill herself. The investigation revealed that the school suspended the student out of school for 10 days for assaulting the teacher in response to the teacher's comments and assigned her to an alternative school. OCR concluded that the school operated a disability-based hostile climate for the student that the district failed to assess or address. The resolution agreement requires, among other remedies, a meeting to determine whether the student's charged offense for assaulting the teacher and other disciplinary incidents during that school year were manifestations of the student's disabilities; investigation of whether the staff subjected the student to any other instances of disability harassment; revision of the nondiscrimination notice and Section 504 grievance procedures; and annual staff training and climate checks with students and staff.

The Future

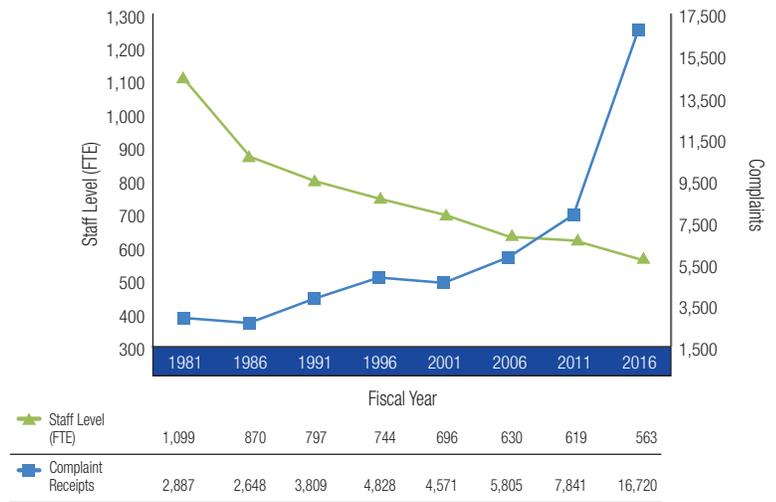
From 2009 to 2016, OCR has strived to ensure that simple justice is achieved and that all students – irrespective of their race, ethnicity, national origin, sex, or ability status – are afforded equity and opportunity in schools, from preschool to postsecondary education.

The thousands of cases we review and investigate each year have taught us that millions of adults act heroically and honorably every day to support and uplift students; yet they also remind us that discrimination persists. We still bear witness to devastating acts of discrimination that would surely have seemed as shocking and retrograde a century ago as they are today. And we encounter new manifestations of discrimination that, while no longer sanctioned by law, still divide students into haves and have nots because of some aspect of who they are.

As we reflect upon the past eight years, the challenges for OCR ahead are clear. First, OCR must continue to enforce the civil rights laws by evaluating, investigating, and monitoring cases with thoroughness, speed, and sensitivity, always remaining attuned to how discrimination manifests in today's schools and today's students and faithful to what the law requires to reach full satisfaction of students' civil rights. Second, the exponential rise in the number of complaints OCR has received is likely to continue and must be addressed by a substantial increase in agency resources and staffing (*see Figure 9*). Third, OCR must continue to find the capacity to be proactive and transparent to respond to the public's need for useful guidance, technical assistance, and information to prevent civil rights violations before they occur. Fourth, OCR must keep pace with the considerable interest in and demand for accurate and timely civil rights data revealing equity and opportunity gaps in schools. And finally, OCR must remain dedicated to supporting and developing its staff, on whom all else depends.

Even with these formidable challenges, OCR's commitment to stand sentinel to protect against discrimination in schools remains strong. We look forward to continuing to enforce the civil rights laws so that all students have an equal opportunity to succeed.

Figure 9: OCR Staff Level (FTE*) and Complaints Received, FY 1981-2016



* Full Time Equivalents

Endnotes

- ¹ Throughout this document, enforcement data for FY 2016 are generally up to date as of October 14, 2016; however, due to the ongoing nature of updates in OCR's case management system, the data in this document may not reflect all issue areas included or addressed in a small percentage of complaints received or resolved in FY 2016.
- ² Throughout this document, CRDC Fast Facts are derived from the 2013-14 Civil Rights Data Collection.
- ³ "High/low black and Latino enrollment" refers to schools with more than 75 percent and less than 25 percent black and Latino student enrollment, respectively.
- ⁴ In FY 2009 and 2010, OCR maintained a broader definition of resource equity and comparability than in subsequent years; therefore, the number of resource equity and comparability cases from those years reflected here may be slightly inflated.
- ⁵ Throughout the enforcement summaries in this document, "resolved cases" include cases that resulted in a resolution agreement, an Early Complaint Resolution, a resolution requiring action by institutions without a resolution agreement, a finding of no violation, and an administrative closure or dismissal.
- ⁶ This paragraph does not reflect restraint and seclusion complaints between FY 2009-10; OCR started tracking complaint volume in this area beginning in FY 2011.
- ⁷ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ⁸ This figure excludes complaints involving Title IX athletics in which multiple complaints were filed by an individual.
- ⁹ This figure excludes complaints involving Title IX athletics in which multiple complaints were filed by an individual.
- ¹⁰ OCR resolved 6,947 complaints in these areas when counting complaints involving Title IX athletics in which multiple complaints were filed by an individual.
- ¹¹ This guidance is the subject of litigation against several federal agencies and officials pending before a federal district court in *Texas v. United States*, 7:16-cv-00054 (N.D.Tex. 2016). On August 21 and on October 18, 2016, the court issued a preliminary injunction and clarification order, respectively, regarding the Departments' ability to rely on parts of the May 13 guidance related to "intimate" facilities. The Departments have appealed the August 21 and October 18 rulings to the Fifth Circuit Court of Appeals. See *Texas v. United States*, No. 16-11534 (5th Cir. Oct. 20, 2016). In the meantime, OCR has taken steps to ensure compliance with the preliminary injunction, as clarified. Since the ruling in *Texas*, several other courts have issued preliminary injunctions in favor of individual transgender plaintiffs under Title IX or denied preliminary injunctions sought against the government. See, e.g., *Students & Parents for Privacy v. U.S. Dep't of Educ.*, No. 16-cv-4945, ECF No. 134 (N.D. Ill. Oct. 18, 2016); *Whitaker v. Kenosha Unified Sch. Dist. No. 1*, No. 16-cv-943, ECF No. 10 (E.D. Wis. Sept. 22, 2016); *Highland Bd. of Ed. v. U.S. Dep't of Educ.*, 2016 WL 5372349, at *11 (S.D. Ohio Sept. 26, 2016); *Carcaño v. McCrory*, No. 1:16-cv-236, ECF No. 127 (M.D.N.C. Aug. 26, 2016). The only court of appeals to consider the issue held that OCR's interpretation of its Title IX regulations was the result of its "fair and considered judgment," and was "in line with the existing guidances and regulations of a number of federal agencies." See *G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 720 (4th Cir. 2016), *mandate recalled and stayed*, *Gloucester Cnty. Sch. Bd. v. G.G.*, No. 16A52 (Aug. 3, 2016), *cert. granted*, No. 16-273 (Oct. 28, 2016).
- ¹² OCR began tracking cases on transgender discrimination in FY 2016, and has retroactively included additional complaints in this category that were received as early as FY 2011. See also Endnote 11.
- ¹³ The treatment of transgender students is the subject of litigation against several federal agencies and officials pending before a federal district court in *Texas v. United States*, 7:16-cv-00054 (N.D.Tex. 2016). See also Endnote 11.
- ¹⁴ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ¹⁵ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.

Availability of Alternate Formats:

Requests for documents in alternate formats such as Braille or large print should be submitted to the Alternate Format Center by calling 202.260.0852 or by contacting the Section 508 Coordinator via e-mail at om_eeos@ed.gov.

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If you have difficulty understanding English, you may request language assistance services for Department information that is available to the public. These language assistance services are available free of charge. If you need more information about interpretation or translation services, please call 1-800-USA-LEARN (1.800.872.5327) (TTY: 1.800.877.8339) or e-mail us at ED.Language.Assistance@ed.gov. You also can write to U.S. Department of Education, Information Resource Center, LBJ Education Building, 400 Maryland Ave. SW, Washington, DC, 20202.

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