



US Department of Education
Office for Civil Rights

**Annual Report to the
Secretary, the President,
and the Congress**

Fiscal Year 2019

US Department of Education Office for Civil Rights

Kenneth L. Marcus, Assistant Secretary

July 2020

This report is submitted under Section 203(b)(1) of the Department of Education Organization Act of 1979, Pub. L. No. 96–88, which provides: “The Assistant Secretary for Civil Rights shall make an annual report to the Secretary, the President, and the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems as to which such Office has made a recommendation for corrective action and as to which, in the judgment of the Assistant Secretary, adequate progress is not being made.” 20 U.S.C. §3413(b)(1).

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Message from the Assistant Secretary for Civil Rights

Over the last two years, it has been my honor to direct the talented and committed staff of the US Department of Education's Office for Civil Rights (OCR) under the leadership of President Donald Trump and Secretary Betsy DeVos. There are few more important tasks than educating our children and few nobler efforts than to ensure that we protect the students in our nation's schools. It is my belief that OCR has discharged this duty in a manner that has strengthened educational opportunities for all.

Throughout my tenure, OCR has reinforced its status as a neutral, impartial civil rights law enforcement agency that fully and faithfully executes the laws as written—no more and no less—focusing carefully on the needs of each individual student. The data demonstrate that this approach works. Thanks to the hard work of OCR's talented staff, we have achieved remarkable things during challenging times, including resolving thousands of civil rights complaints with change and greatly reducing OCR's backlog.

Last year, my Annual Report to the Secretary, the President, and the Congress for fiscal years (FYs) 2017–2018 showed how much we had improved civil rights enforcement throughout our educational system. During the first two fiscal years under the Trump Administration, we nearly doubled the number of complaints resolved per year and achieved a 60 percent increase in complaints resolved with change compared to the previous eight years under the prior administration. In this year's Report, you will see that we have built on those successes investigating individual cases at a heightened pace and achieving historic rates of change throughout OCR's enforcement caseload. At the same time, OCR accomplished several additional milestones during FY 2019:

- Launching over three times more proactive investigations in just one year than the prior administration launched in all eight years combined: over 700 proactive investigations in two national initiatives focused on improving outcomes for students with disabilities;
- Reducing the number of complaints older than 180 days in every one of OCR's 12 regional offices for the first time in at least the last 10 years (if not ever);
- Resolving one of the most extensive investigations that the Office has ever conducted in American higher education, requiring Michigan State University to make sweeping changes to the way it addresses sexual assault in light of its mishandling of sexual misconduct by Dr. Larry Nassar and others;



- Completing the largest investigation that the Office has ever conducted into systemic sexual assault problems in an urban public school system, requiring Chicago Public Schools to substantially reform its handling of reports of student-on-student sexual harassment and employee-on-student sexual harassment;
- Establishing the National Web Accessibility Team, a nationwide team of dedicated OCR staff, including attorneys, investigators, and information technology experts to resolve technology accessibility problems in educational institutions and help recipients achieve compliance with federal disability laws;
- Improving the quality of OCR's authoritative Civil Rights Data Collection by instituting a number of reforms facilitated through a newly expanded partnership with the Department's National Center of Education Statistics; and
- Conducting game-changing regulatory reform by issuing a Notice of Proposed Rulemaking to initiate the formal rulemaking process and codify, for the first time, a recipient's obligations under Title IX with respect to claims of sexual misconduct.

In the pages that follow, we summarize OCR's 2019 achievements and show how they advance progress made throughout the first three fiscal years of the Trump Administration. As this Report will demonstrate, OCR has substantially reduced the substantial backlog of pending complaints inherited from the prior administration while resolving significantly more complaints with change compared to the prior three years. Just during FYs 2018 and 2019, OCR:

- Resolved a total of 24,718 complaints alleging one or more violations of federal civil rights laws, which is 6,834 more resolutions than the Obama Administration obtained during their last two years in office;
- Resolved nearly 1,000 more allegations of discrimination by requiring corrective action protective of students' civil rights than the previous administration in FYs 2015 and 2016; and
- Achieved a 45 percent increase in the total number of Title VI allegations resolved with change and a 78 percent increase in the total number of Title IX allegations resolved with change compared to the last two fiscal years under the previous administration.

Over the course of FYs 2017, 2018, and 2019, OCR:

- Closed 6,431 of the 7,854 complaints inherited in January 2017;
- Resolved 42,515 complaints—nearly 15,000 more resolutions than the previous administration achieved during FYs 2014, 2015, and 2016 combined; and
- Achieved a total of 4,656 complaint resolutions with change over three years, or 1,507 resolutions with change more than the previous administration achieved during FYs 2014, 2015, and 2016.

At the conclusion, of this Report, we summarize a few 2020 achievements that have already advanced the protection of students' rights:

- Upon the issuance of President Trump's historic Executive Order on Combating Anti-Semitism in December 2019, OCR recommitted to vigorous enforcement of Title VI.
- In January 2020, OCR launched the Outreach, Prevention, Education, and Non-Discrimination Center, or OPEN Center, to focus on outreach and proactive compliance with federal civil rights laws.
- In February 2020, OCR commenced a new nationwide Title IX enforcement initiative to combat the troubling rise of assault in K-12 public schools, correct noncompliance, and raise public awareness of the issue.
- That same month, OCR, together with the Office for Career and Technical Adult Education, released an updated Memorandum of Procedures that allows state agencies to coordinate their civil rights activities under the Carl D. Perkins Career and Technical

Education Act with their civil rights activities under the Methods of Administration *Guidelines*, resulting in greater flexibility for state education agencies.

- In February and March 2020, OCR resolved two more major systemic Title IX investigations—one against the University of Southern California and the other against Pennsylvania State University—after concluding that the universities failed to appropriately address reports of sexual misconduct and requiring each university to make sweeping changes to their Title IX policy and procedures for responding to complaints of sexual assault.
- On March 4, 2020, I issued a Letter to Education Leaders reminding them of their obligations to prevent and address potential anti-Asian discrimination associated with COVID-19.
- In response to the COVID-19 pandemic, OCR continued to provide crucial guidance and technical assistance to recipients and students in the form of webinars, fact sheets, letters, and *Questions and Answers* documents to ensure recipients were aware of their continuing civil rights obligations during these unprecedented times.
- On May 6, 2020, the Department released its Title IX Final Rule, marking a historic step to strengthen Title IX protections for survivors of sexual misconduct and restore due process in campus proceedings to ensure all students can pursue education free from sex discrimination.
- OCR established a separate team of dedicated Freedom of Information Act (FOIA) professionals to facilitate the expeditious processing of FOIA requests for OCR records.

As I look back at what OCR has accomplished over the last few years, I am deeply proud to have been a part of this work and grateful to my hardworking and dedicated colleagues who enforce the federal civil rights laws on behalf of our nation's students and their families. Together we have made a real difference in so many areas and, more importantly, in the lives of so many students. As a result of our focus on enforcement and fidelity to the law, we have in fact achieved better results for our nation's children. As the following Report demonstrates, if a child had faced a violation of his or her civil rights during any time in recent years, that child would have been best served if the Trump Administration were in office at the time.

Respectfully submitted,

Kenneth L. Marcus

Assistant Secretary for Civil Rights

Executive Summary and Report Highlights

During the first three fiscal years of the Trump Administration, the US Department of Education's Office for Civil Rights (OCR) has launched major nationwide proactive compliance initiatives, improved the quality of data submitted and reported by the Civil Rights Data Collection (CRDC), reduced the backlog of unresolved civil rights complaints, strengthened resolutions of new complaints, clarified obligations under civil rights laws, and restored local flexibility through regulatory reform and technical assistance.

In January 2019, the Department announced a major nationwide initiative to protect students with disabilities from the inappropriate use of restraint and seclusion in public elementary and secondary schools.¹ This ongoing initiative encompasses compliance reviews by OCR's enforcement division, CRDC data quality reviews (DQRs) by OCR's program legal division, and technical assistance by OCR and the Office of Special Education and Rehabilitative Services (OSERS).

Beginning in December 2018, OCR launched a second national initiative to increase online and website accessibility for students with disabilities. OCR opened over 600 directed investigations of elementary, secondary, and postsecondary schools and forged an innovative, nationwide team of experienced civil rights attorneys, investigators, and information technology experts to address technology accessibility issues. The value of this project was underscored during the COVID-19 outbreak as educational institutions increasingly moved their services online. As one educational institution stated, "The trainings/policies we put in place as part of [our] Resolution Agreement [with OCR] were extremely valuable with the unexpected shift to entirely remote learning this semester."

In addition, OCR dedicated substantial resources and focused large efforts on addressing sexual misconduct in our nation's schools. During FY 2019, OCR enforcement offices proceeded with a number of major sexual violence investigations that OCR ultimately resolved with agreements requiring the schools to overhaul their organizational structures and Title IX procedures, among other changes, benefitting hundreds of thousands of students.

More generally, OCR continued in 2019 to improve its processing of civil rights complaints. In November, OCR issued a revised Case Processing Manual which promotes transparency, due process, and First Amendment protections. OCR's number of case resolutions continued to outpace the number of complaints received. Over the course of FYs 2017, 2018, and 2019, OCR received a total of 35,267 complaints and resolved a total of 42,515 complaints—7,248 more than OCR received and nearly 15,000 more resolutions than the previous administration achieved during its last three fiscal years combined. By the end of the third year under the current administration, OCR has resolved a total of 4,656 complaints with change over three years, or 1,507 resolutions with change more than the previous administration achieved during its last three years in office.

At the same time, during FY 2019, OCR significantly strengthened systems for ensuring the accuracy of data collected through the CRDC. During FY 2019, OCR conducted targeted outreach to school districts with potentially anomalous data submissions to the 2015-16 and 2017-18 collections, worked with school districts to ensure that detailed written corrective action plans were put into place if needed, allocated significant resources to increasing technical assistance and support to recipients, increased its collaboration with the Department's National Center for Education Statistics (NCES), and clarified proper understandings of reporting requirements for recipients. In addition, OCR proposed changes to the 2020-21 collection to reduce the administrative burden of collecting and reporting civil rights data and further OCR's ongoing mission of protecting students' civil rights.

Finally, in FY 2019 the Department began the formal rulemaking process to amend the Title IX regulations to provide greater clarity on schools' obligation to respond to reports of sexual harassment. After more than a year of research and outreach to stakeholders, in November 2018, the Department published a Notice of Proposed Rulemaking which would, *inter alia*, define sexual harassment, including sexual assault, as unlawful sex discrimination for the first time under the Department's regulations. Over the course of FY 2019, the Department reviewed over 124,000 public comments on the proposed rule before issuing the Title IX Final Rule on May 6, 2020.

"Never again should incidents of sexual misconduct on campuses—or anywhere—be swept under the rug. Students, faculty, and staff must all feel empowered to come forward, know that they will be taken seriously, and know that the Department of Education will hold schools accountable."

US Secretary of Education Betsy DeVos

The Office for Civil Rights: Overview

OCR's Mission

The mission of OCR is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of the federal civil rights laws.

The laws OCR enforces protect millions of students attending or seeking to attend our nation's education institutions from unlawful discrimination. OCR's work to eliminate discriminatory barriers to education directly supports the US Department of Education's mission to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Jurisdiction

OCR is responsible for enforcing the following five federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age by recipients of federal financial assistance:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination based on sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability;
- The Age Discrimination Act of 1975, which prohibits age discrimination; and
- Title II of the Americans with Disabilities Act of 1990, which prohibits disability discrimination by public entities (e.g., public elementary and secondary school systems, postsecondary schools, and vocational education programs) regardless of whether or not they receive federal financial assistance.

OCR also enforces the Boy Scouts of American Equal Access Act. Under the Act, no public elementary school, public secondary school, or state or local education agency 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 otherwise discriminate 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*.

Together these laws represent a national commitment to end discrimination in our nation's schools. These laws apply throughout the nation and extend to all education entities and programs that receive federal financial assistance, including:

- All state education agencies;
- All public local educational agencies (LEAs), also known as public school districts;
- Elementary and secondary schools receiving federal financial assistance, including juvenile justice facilities, charter schools, alternative schools, and schools serving only students with disabilities;
- Most colleges and universities;
- Adult education and career and technical education (CTE) institutions, such as community colleges, high schools, and technical centers; and
- Other entities, including libraries, museums, and vocational rehabilitation agencies.

Since most education institutions receive some type of federal financial assistance, these laws protect millions of students attending or seeking to attend our nation's elementary, secondary, and postsecondary institutions. In certain situations, the laws also protect persons who are employed or seeking employment at education institutions from unlawful discrimination.

Organizational Structure and Functions

OCR is composed of a headquarters office, located in Washington, DC, and 12 regional enforcement offices located throughout the United States. The headquarters office provides overall leadership, policy development, and coordination of enforcement activities. It consists of the immediate office of the Assistant Secretary for Civil Rights, OCR's Program Legal Group, OCR's Resources and Management Group, and, as of January 2020, OCR's Center for Outreach, Prevention, Education, and Non-Discrimination

Figure 1: OCR Enforcement Jurisdiction Timeline

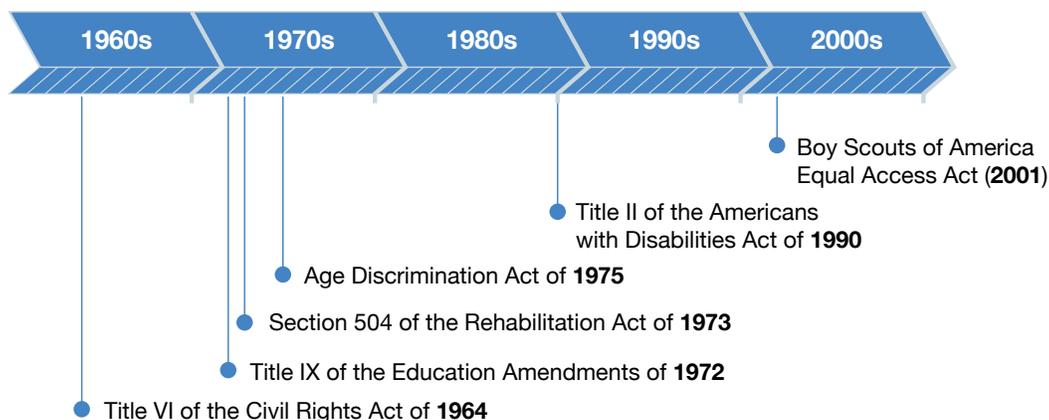
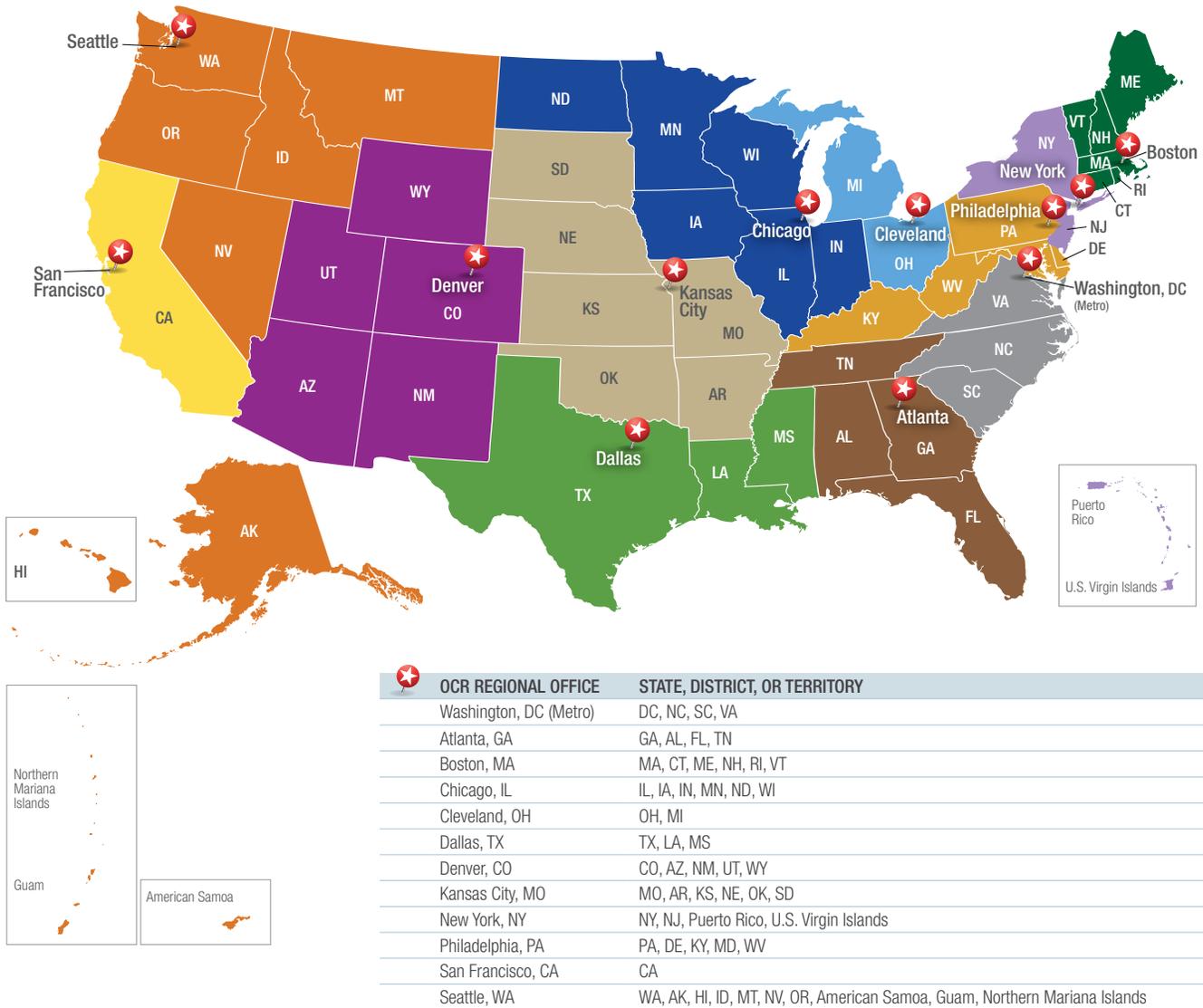


Figure 2: Map of OCR Regional Offices



(OPEN Center). The immediate office is led by the Assistant Secretary for Civil Rights, the Principal Deputy Assistant Secretary for Civil Rights, the Deputy Assistant Secretary for Enforcement, and the Deputy Assistant Secretary for Policy and Development (who oversees OCR’s Program Legal Group).

The Program Legal Group develops legal and policy guidance on the laws enforced by OCR and also regularly coordinates with and provides direct case-specific legal support to the Assistant Secretary and OCR’s 12 enforcement offices on cases of first impression, cases that raise controversial issues, or matters of nationwide significance. The Program Legal Group is also responsible for conducting the Department’s CRDC, a biennial data collection on civil rights indicators in primary and secondary schools. The Resources and Management Group is comprised of OCR’s budget, human resources, customer service, and technology staff. The OPEN Center, discussed more fully in “Looking Ahead,” provides support

and technical assistance to schools, educators, families, and students to promote greater awareness of the requirements and protections of federal civil rights laws. The OPEN Center is a dedicated team of OCR attorneys and led by a director, which provides technical assistance and support to recipients by responding to email inquiries, creating webinars, and issuing technical assistance documents.

The 12 enforcement offices are responsible for investigating and resolving complaints of discrimination, conducting proactive investigations, monitoring corrective action agreements, and providing technical assistance to schools and other state and local education agencies. The bulk of OCR’s enforcement activities consist of investigating over 10,000 complaints filed with OCR, on average, each year. Therefore, the majority of OCR’s staff is assigned to the various enforcement offices, which are located in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, Seattle, and Washington, DC.

OCR's Caseload

OCR's enforcement caseload from year to year consists of individual complaints and appeals filed with OCR, compliance reviews and directed investigations initiated by OCR, and monitoring recipients' compliance with resolution agreements. In addition, OCR's enforcement offices provide technical assistance to recipients throughout the year. OCR's approach to enforcement follows certain guiding principles that have allowed OCR to be not only more efficient but also more effective in its handling of civil rights complaints. These principles are reflected in recent changes to OCR's Case Processing Manual (CPM) and proceed from the belief that OCR is a neutral, impartial law-enforcement agency that faithfully executes the laws as written, no more and no less, and focuses on the needs of each individual student. As a result, over the last three fiscal years OCR has simultaneously reduced its backlog of pending complaints, achieved a greater number of case resolutions—including resolutions with change—and launched an unprecedented number of proactive investigations.²

Complaints

OCR carries out its responsibilities in large part by investigating and resolving the large number of complaints that are filed each year. Any person who believes there has been a violation of the civil rights laws enforced by OCR may file a complaint with the appropriate enforcement office. The individual or organization filing the complaint does not need to be a victim of the alleged discrimination but may file a complaint on behalf of another person or group.³ Upon receiving a complaint, OCR's primary objectives are to investigate the allegations of discrimination promptly, determine whether a civil rights violation has occurred, and, where a violation is established, remedy the violation by requiring recipients to take corrective action or make substantive changes to address civil rights violations and compliance concerns (i.e., resolutions with change).⁴ In FY 2019, OCR received 9,990 new civil rights complaints and resolved 10,644 complaints—654 more complaints than OCR received. Of the 10,644 complaint resolutions, 1,214 resolutions were considered resolutions with change.

Reducing the Backlog of Pending Complaints

Resolving civil rights complaints in an effective and timely manner is important for both students and schools. As Secretary DeVos has emphasized, "Justice delayed is justice denied." Despite an increasing caseload and fluctuating staff levels, OCR has continued to prioritize the timely and effective resolution of complaints.

When the Trump Administration took office on January 20, 2017, OCR had a backlog of 7,854 pending civil rights complaints. Of these pending complaints, 3,397 were over 180 days old. By the end of FY 2019, OCR had resolved 6,431 of the inherited complaints and reduced the overall number of pending complaints to 4,718. Over the course of the last three years, OCR has reduced the number of pending complaints older than 180 days to 2,817 (see figure 4). For the first time in at least the last 10 years, in FY 2019, every one of OCR's 12 regional

BY THE NUMBERS

In FY 2019, OCR

- Received 9,990 complaints
- Resolved 10,644 complaints
- Resolved 1,800 total allegations in 1,214 complaints with change

This was the third consecutive year in which OCR's resolved complaints have outpaced the number of complaints received.

Figure 3: OCR Allegations Received in FY 2019 Complaints, by Statute

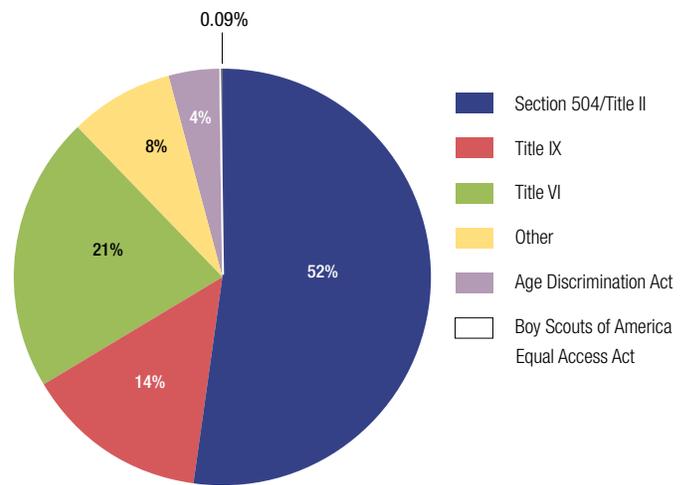
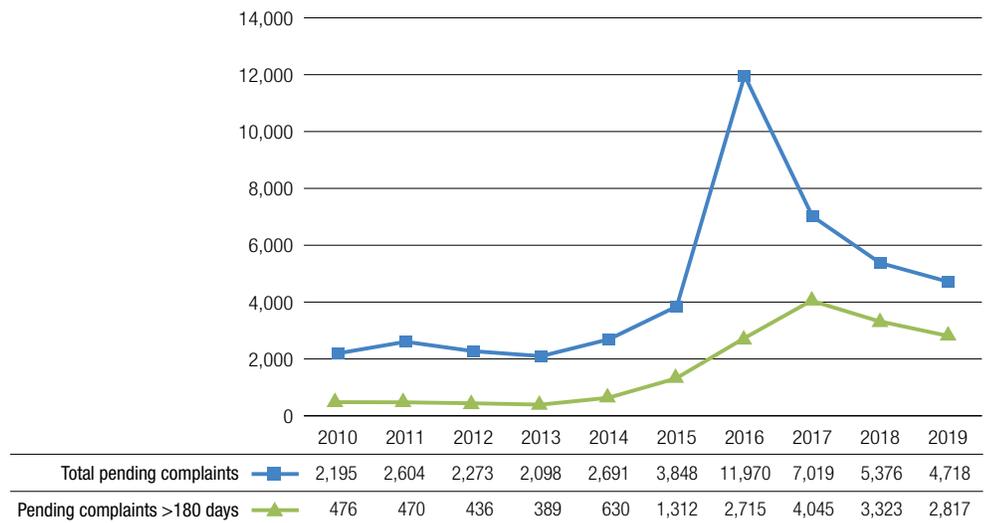


Figure 4: Complaint Backlog at the End of Each FY



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offices reduced its number of complaints older than 180 days (see figure 5). Collectively, in FY 2019, the regional offices reduced the number of complaints older than 180 days by 510, resulting in the lowest overall number of complaints older than 180 days in three years.

After two years of digging out from the backlog of cases, including cases older than 180 days, in FY 2019, OCR began to focus on reducing the number of pending complaints older than two years. As a result or by-product of this new focus, in FY 2019, OCR achieved a reduction in the number of aged cases (cases older than one year). As demonstrated by figure 6, in just one year, OCR reduced the total number of pending complaints older than 356 days by 336 complaints. As explained more

fully below, OCR has done this while processing the 10,000+ complaints received in FY 2019 and opening record numbers of proactive investigations to ensure equal access for students with disabilities. See figures 4, 5, and 6 for more information on OCR's complaint backlog from year to year.

Strengthening Case Resolutions

In addition to the backlog inherited by the current administration, in recent years there has been an increase in the annual number of complaints filed with OCR. For instance, OCR received 6,936 complaints in FY 2010 compared to 9,990 complaints in FY 2019, which is a 44 percent increase in the number of annual complaints received. Comparing other fiscal years to FY 2010 would reveal an even more dramatic increase.

Based on more efficient case processing, in recent years, OCR case resolutions have substantially outpaced the number of complaints received.⁵ During FYs 2017, 2018, and 2019, OCR received a combined total of 35,267 complaints. A comparable number of complaints were received during the previous three years (37,153). However, during FYs 2017, 2018, and 2019, OCR resolved a combined total of 42,515 complaints, compared to only 27,291 complaints resolved during FYs 2014, 2015, and 2016 combined. As illustrated by figure 7, OCR previously struggled to keep pace with the number of complaints received, but the Office resolved 7,248 more complaints than it received during FYs 2017, 2018, and 2019.

Figure 5: OCR Regional Offices Each Year that Reduced the Number of Cases 181+ Days Old

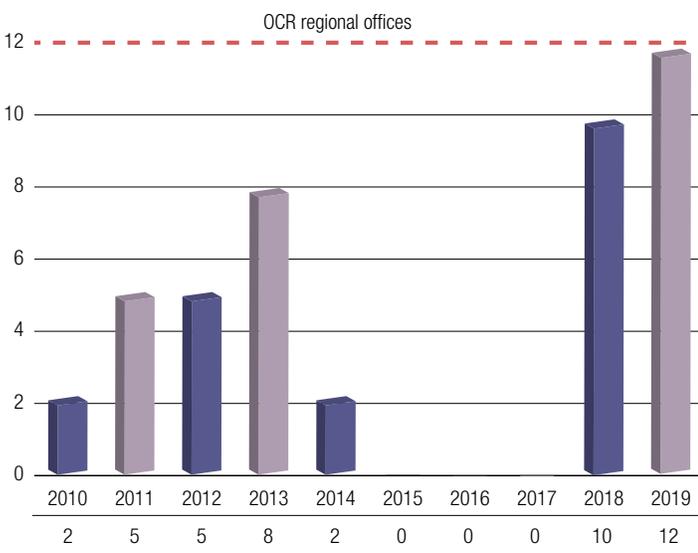


Figure 6: Pending Complaints > 365 Days at the End of Each FY

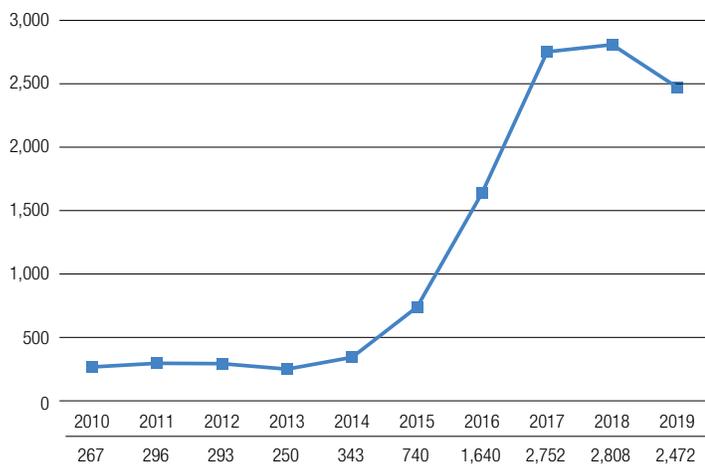
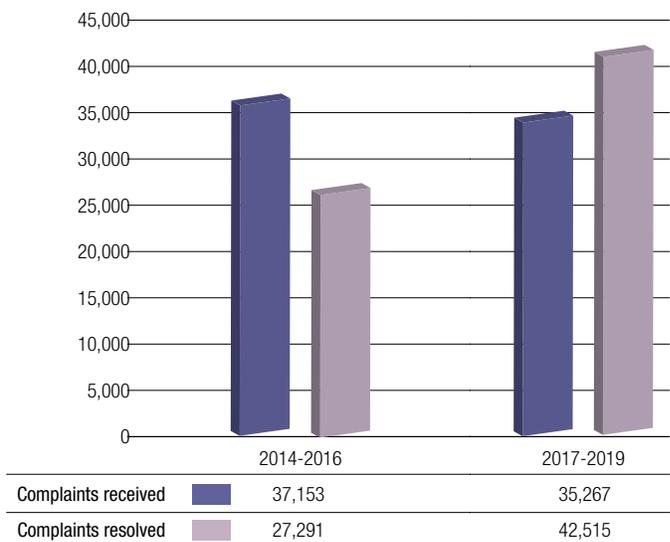


Figure 7: Complaints Received and Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration



OCR has also increased the number of resolutions with change. Comparing the number of resolutions with change achieved in FY 2010 to the number of resolutions with change achieved 10 years later, in FY 2019, reveals a 20 percent increase in the annual number of resolutions with change. Significantly, during the last three years, OCR resolved a combined total of 4,658 complaints with change, or 1,509 more complaints than OCR resolved the prior three years. Specifically, the current administration resolved 6,957 allegations of discrimination with change—nearly 2,000 more allegations resolved with change than OCR achieved during FYs 2014, 2015, and 2016 (see figure 8).

Achieving Timely Complaint Resolutions

Under the Government Performance and Results Act of 1993, OCR’s goal has been to resolve at least 80 percent of new complaints within 180 days of receipt. In FY 2019, each of OCR’s 12 regional offices achieved this goal for the first time since FY 2014, resulting in OCR’s regional offices collectively resolving 92 percent of its cases within the 180-day timeline—the highest percentage since FY 2014 (see figure 9).

Proactive Investigations

OCR is required by regulation to initiate “periodic compliance reviews” to assess the practices of recipients to determine whether they comply with the anti-discrimination laws enforced by OCR,⁶ although these regulations afford OCR broad discretion to determine the substantive issues for investigation and the number and frequency of the investigations. OCR also has the authority to initiate directed investigations when information indicates a possible failure to comply with the civil rights laws and regulations, the matter warrants attention, and the compliance concern is not otherwise being addressed through OCR’s complaint, compliance review, or technical assistance activities. Together, the compliance reviews and directed investigations comprise OCR’s “proactive investigations.”

Figure 8: Complaints Resolved with Change: Last Three Years of Prior Administration and First Three Years of Current Administration

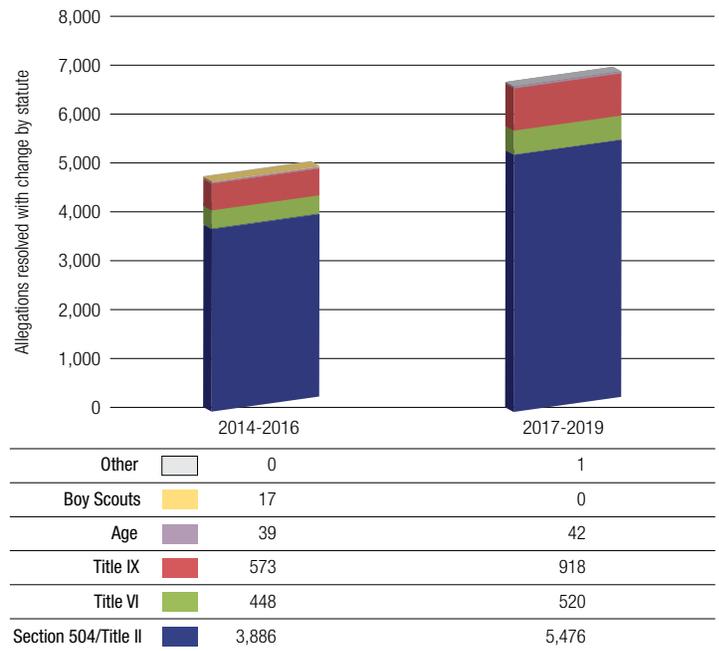
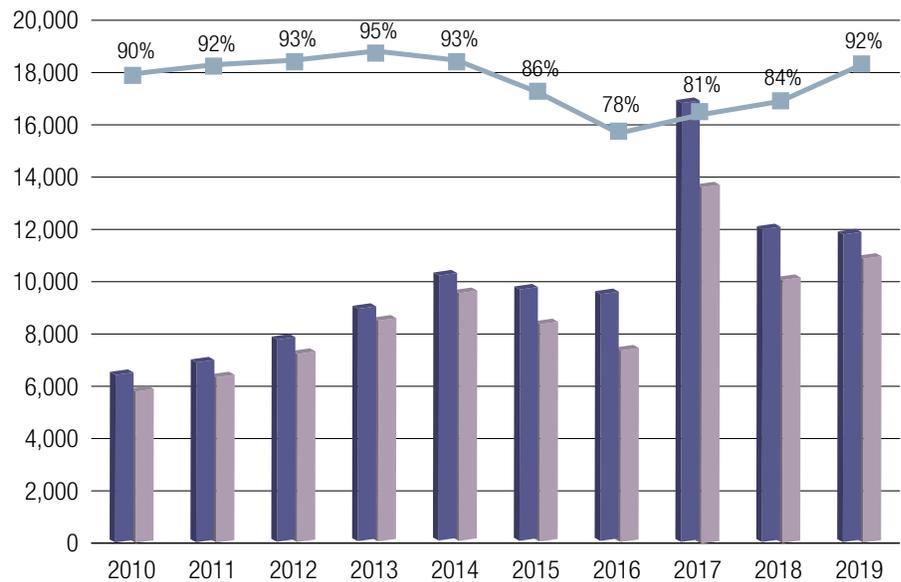


Figure 9: Percentage of OCR Cases Resolved Within 180 Days



Complaints reaching day 180 by end of FY	6,671	7,159	8,051	9,251	10,551	10,004	9,823	17,476	12,453	12,250
Complaints resolved by day 180	6,025	6,580	7,491	8,790	9,864	8,649	7,625	14,185	10,474	11,303

During the last few years, especially 2018 and 2019, OCR has taken on an ambitious proactive agenda. Over the course of FYs 2017, 2018, and 2019, OCR initiated 703 proactive investigations—over 10 times the number of proactive investigations launched over the course of FYs 2014, 2015, and 2016 and over three times the number of investigations launched by the prior administration in all eight years combined (see figure 10). In FY 2019, OCR launched compliance reviews across all of its 12 regional offices as part of a nationwide initiative to address the inappropriate use of restraint and seclusion against students with disabilities, which is discussed at greater length below. Additionally, and in response to media reports of three universities grossly mishandling reports of sexual misconduct on their campuses, in FY 2018, at the direction of Secretary DeVos, OCR launched three directed investigations focused on addressing sexual violence at postsecondary institutions. Finally, in FY 2019, OCR initiated 674 directed investigations to determine whether recipients were violating the civil rights laws by failing to make their online programs and websites accessible to students with disabilities, also discussed further below.

Over the last three years, OCR has not only launched more proactive investigations but has also resolved more proactive investigations compared to the prior three-year period. During the last three years, OCR resolved a total of 103 proactive investigations—more than double the number resolved during FYs 2014, 2015, and 2016 combined. Of the 103 proactive investigations resolved, 65 were compliance reviews—21 more than OCR resolved during FYs 2014, 2015, and 2016. This is a 48 percent increase in the total number of compliance reviews closed over a three-year period. In FY 2019 alone, OCR resolved 36 directed investigations, including several related to website accessibility and at least one major Title IX investigation (see figure 11).

Figure 10: Proactive Investigations Initiated: Last Three Years of Prior Administration and First Three Years of Current Administration

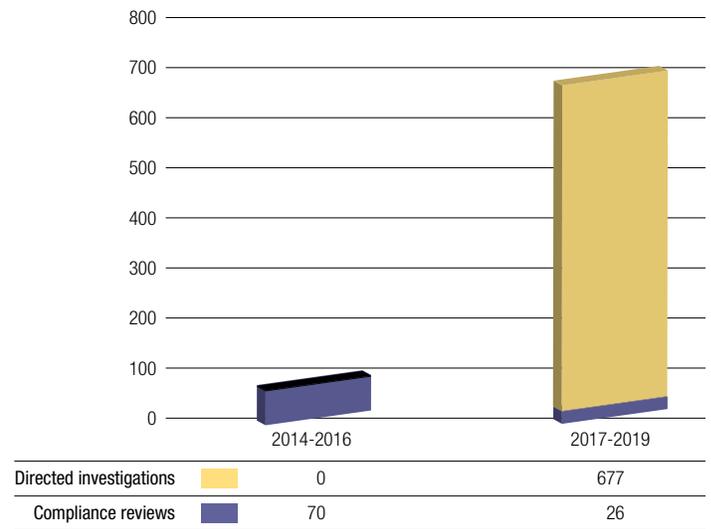
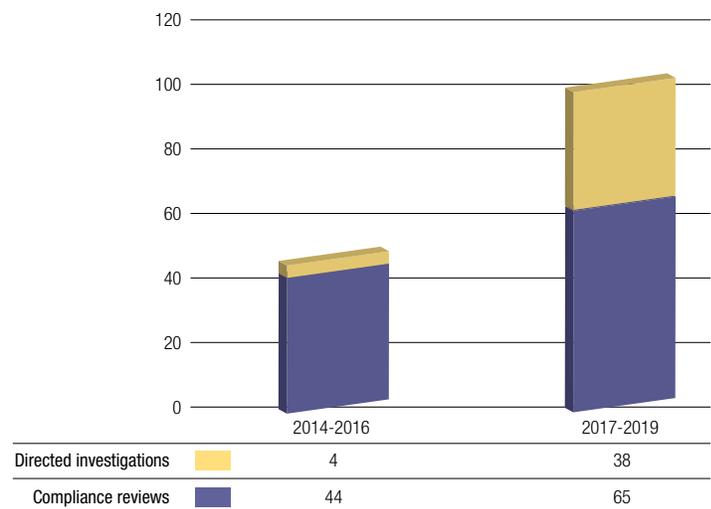


Figure 11: Proactive Investigations Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration



Promoting Free Inquiry

On March 21, 2019, President Trump signed Executive Order 13864, “Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.”⁷ With the issuance of this executive order, the administration sought to promote free and open debate on college and university campuses, provide greater access to critical information regarding the prices and outcomes of postsecondary education, and increase institutional accountability by encouraging institutions to take into account likely employment outcomes when establishing the cost of their degrees. In an effort to hold institutions of higher education accountable for both student outcomes and for the promotion of First Amendment principles on college and university campuses, the executive order:

1. Instructs federal agencies to “take appropriate steps, in a manner consistent with applicable law, including the First Amendment, to ensure institutions that receive Federal research or education grants promote free inquiry, including through compliance with all applicable federal laws, regulations, and policies;” and
2. Directs the Secretary of Education to collect and make available additional program-level and institution-level information concerning costs and employment outcomes.

The First Amendment and Case Processing

On November 19, 2018, OCR announced revisions to its CPM consistent with the White House’s efforts to promote free, fair, and open debate in education. The CPM describes OCR’s procedures for evaluating and investigating complaints, compliance reviews, and directed investigations, as well as the actions OCR will take when it finds civil rights violations or to effect voluntary compliance.⁸ The revised CPM replaced the previous March 2018 CPM and included, *inter alia*, a provision committing OCR to consider First Amendment principles throughout its enforcement of federal civil rights laws.

Specifically, OCR added Section 109, which states in part, “OCR will not interpret any statute or regulation to impinge upon rights protected under the First Amendment or to require recipients to encroach upon the exercise of such rights.” By requiring OCR staff to consider the First Amendment when evaluating, investigating, and resolving civil rights complaints, the CPM now clarifies that OCR’s regulations do not restrict activities that are protected under the First Amendment and ensures that all actions taken by OCR—or required of institutions under resolution agreements with OCR—must comport with First Amendment principles. It also signals to schools that, in regulating the conduct of students and faculty to prevent or redress discrimination, schools “must formulate, interpret, and apply their rules in a manner that respects the legal rights of students and faculty, including those court precedents interpreting the concept of free speech.”⁹



In this important way, OCR furthers the President’s executive order on “Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.” Moreover, recent complaint resolutions highlight the importance of the new First Amendment provisions:

Case 1: OCR dismissed a complaint alleging that a university failed to appropriately respond to harassment on the basis of race and sex, explaining that the alleged harassment constituted protected speech under the First Amendment. The complaint alleged that a fellow student harassed a student group by asking offensive questions, attempting to engage the group in a debate, posting offensive comments on the group’s social media pages, and suggesting that the college invite a speaker on campus who made members of the student group uncomfortable. In its dismissal letter, OCR explained that the specific facts of the case raised First Amendment concerns and that OCR has long recognized that “the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes OCR enforces.”

Case 2: OCR resolved a complaint alleging that a university discriminated against students of Jewish descent by failing to appropriately respond to anti-Semitic harassment, contributing to a hostile environment on campus. The university entered into a voluntary resolution agreement with OCR to resolve the allegations, which requires the university to take a number of actions to address the hostile environment and to make clear to the campus community that harassment based on students’ actual or perceived ancestry or ethnic characteristics may constitute prohibited discrimination. The parties provided, in an important new provision, that “all actions taken pursuant to this agreement are consistent with the First Amendment of the US Constitution.”

Improvements to Case Processing

Revisions to the Case Processing Manual

In FY 2019, OCR revised its CPM to reflect its commitment to protecting First Amendment rights, fostering greater transparency, and safeguarding due process throughout OCR's investigatory process, including robust, newly reinstated appeals processes that have been coupled with a reinstated process for conducting Quality Assurance Reviews.

In addition to the new First Amendment provisions in Section 109, the revised CPM also contains several revisions that foster traditional notions of transparency and due process:

- The explicit requirement that recipient institutions must receive a copy of the complaint and/or appeal at the outset of an investigation or appeal process (see Revised CPM, §§ 111 and 307);
- Additional provisions setting forth a robust appeals process, which provides complainants the opportunity to submit a written appeal within 60 days of OCR's determination and provides recipient institutions with an opportunity to submit a written response (see Revised CPM, §307);
- Clarifications that OCR will no longer dismiss allegations in a complaint solely because the complainant failed to raise the allegations in a currently pending proceeding in another forum that is based on the same operative facts as the complaint filed with OCR; and
- An additional provision indicating that OCR will no longer dismiss complaints that are a continuation of a pattern of complaints previously filed with OCR by an individual or group.

With these revisions to the CPM, OCR demonstrates its renewed commitment to transparency and due process. For example, automatically providing a recipient with copies of any complaints or appeals promotes open communication and ensures that a recipient receives sufficient notice of the nature of the allegations against them and can properly prepare for an OCR investigation. In a similar vein, revisions made to the bases for dismissals and to clarify the appropriate use of statistical data in complaints give rise to greater transparency in OCR's case processing, especially its process of evaluating complaints on their face.

OCR's revised CPM also promotes procedural due process by reinstating and expanding complainants' right to appeal certain adverse determinations. This process serves as an essential safeguard against inconsistent or erroneous case outcomes and thereby increases confidence in OCR's determinations.



Quality Assurance Reviews

To complement the revisions to the CPM, in FY 2019, OCR also introduced post-case resolution Quality Assurance Reviews to ensure consistency and quality in case processing among OCR's 12 regional enforcement offices, to identify best practices, and to pinpoint areas where further training or instruction may be necessary. Under this new procedure, designated teams of OCR staff review select cases to ensure that case outcomes comply with the requirements of federal civil rights laws and to determine whether findings of fact, analysis, and/or legal conclusions can be materially enhanced.

Post-case resolution Quality Assurance Reviews ensure that OCR policies and procedures are implemented uniformly nationwide to the benefit of complainants and recipient institutions alike. In addition, they may assist the Assistant Secretary, headquarters staff, and regional directors in identifying best practices or areas for additional training which, in turn, can lead to greater efficiency in case processing across the 12 regional offices. Most importantly, this new initiative ensures that in every case OCR meets the needs of each individual student consistent with the protections afforded by the federal civil rights laws.

National Initiative: Inappropriate Use of Restraint and Seclusion

On January 17, 2019, Secretary DeVos announced the Department's initiative to address the inappropriate use of restraint and seclusion in our nation's public elementary and secondary schools.¹⁰ In some cases, the use of restraint and seclusion may result in unlawful discrimination against students with disabilities in violation of federal civil rights laws. For example, inappropriate seclusions can result in hours of lost educational instruction for students, and the inappropriate use of restraints has resulted in injury and even death in extreme cases.

As with most compliance initiatives, this initiative was prompted in part by a sudden increase in the number of restraint and seclusion complaints and data collected by the CRDC. Beginning in FY 2015, OCR saw a sharp increase in the annual number of restraint and seclusion complaints filed with OCR and in the years since, OCR has continued to receive restraint and seclusion complaints at or near FY 2015 levels (see figure 12). According to the 2015-16 CRDC, approximately 124,500 students were physically restrained, mechanically restrained, or secluded. During that period, students with disabilities represented 12 percent of all students enrolled but 71 percent of all students restrained and 66 percent of students secluded.

OCR, together with OSERS, oversees the initiative which includes three components that draw on the work and expertise of OCR and OSERS:

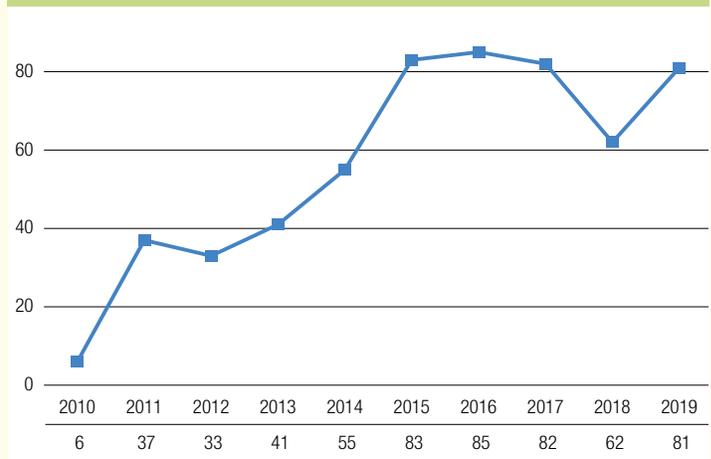
1. Compliance reviews conducted by OCR enforcement offices to examine various recipients' use of restraint and seclusion;
2. DQRs by OCR to improve the quality of restraint and seclusion data submitted as part of the CRDC; and
3. Technical assistance provided by OCR and OSERS to schools, districts, and LEAs.

In addition to helping schools and districts understand how federal law applies to the use of restraint and seclusion, the Department is also supporting schools seeking resources and information on the appropriate use of interventions and supports to address the behavioral needs of students with disabilities. In these ways, the initiative focuses on providing support to schools, districts, and LEAs while also strengthening enforcement activities in order to better protect students with disabilities and their families.

Compliance Reviews

In January 2019, OCR's 12 regional offices collectively launched 23 compliance reviews focused on recipients' restraint and seclusion of students with disabilities. These compliance reviews focus on the possible inappropriate use of restraint and seclusion, and the effect of such practices on the school's obligation to provide a free appropriate public education (FAPE) for all students with disabilities. In the course of each review, the OCR regional offices work to identify any potential compliance concerns and, if identified, work with the recipient to appropriately address the concern. Although many of these compliance reviews are ongoing,

Figure 12: Restraint and Seclusion Complaints Received



OCR enforcement staff has been encouraged to learn that some school districts have detailed policies and procedures in place governing the use of restraint and seclusion, provide extensive staff training on the use of interventions and supports, and require regular team assessment following incidents of restraint and seclusion.

To identify recipients for review within each region, the 12 regional offices and the Assistant Secretary reviewed various sources of information, including reported data on the number of incidents of restraint or seclusion within school districts; information from students, parents, advocacy groups, and community organizations; and news reports concerning the inappropriate use of restraint and seclusion in certain localities. For instance, a 2018 news report indicating that a 12-year-old student died following the inappropriate use of restraint prompted the inclusion of one school district. The 12-year-old student was restrained by three staff members for 90 minutes and, although the student told the staff he was going to be sick, the student slipped into an unconscious state while restrained, was taken to the hospital, and died the following day.

As part of the compliance reviews, OCR reviews information provided by recipients and conducts on-site visits to evaluate a recipient's compliance with the requirements of Section 504 and Title II. In addition to reviewing data on the number of incidents of restraint and seclusion, recipients' policies and procedures, and any training materials used by recipients, OCR has also conducted public forums for parents of students who had experienced restraint or seclusion and issued online surveys to parents of students with disabilities in the districts. OCR has selected schools for on-site visits based upon higher numbers of restraint and seclusion incidents, geographic diversity in the district, economic diversity, special programs, grade levels, and school population numbers. When reviewing the data and information gathered from parents, recipients, and on-site visits, OCR examines the events or circumstances under which the restraint or seclusion occurred or which led to the use of restraint or seclusion, the system or practice in place for monitoring and evaluating the use of restraint and seclusion of students, and any safeguards that are in place to ensure the use of restraint or seclusion does not discriminate against students on the basis of disability.



As it pertains to each individual student who is reportedly restrained or secluded, OCR investigates the student's grade level and school, whether the student has a disability, the frequency with which that student was subjected to physical restraints or secluded, and the events or circumstances under which such restraint or seclusion occurred. For instance, in one case, OCR found that restraint times ranged from one minute to as many as 126 minutes and some students experienced 10 or more under-15-minute restraints during a period of approximately 90 minutes. In the same case, OCR also discovered that seclusion times ranged from one minute to as many as 315 minutes. In this case, OCR concluded that restraint and seclusion occurred across a broad array of students, but 54 students—all of whom were students with disabilities—had at least 15 restraint or seclusion incidents cumulatively during the two-year review period. After gathering information about incidents of restraint or seclusion, OCR examines the students' Individualized Education Programs (also known as IEPs), Section 504 plans, Functional Behavior Assessments, and Behavior Intervention Plans (also known as BIPs), if any, as well as all documents relating to each incident of restraint or seclusion.

The compliance reviews initiated by OCR are focused on correcting non-compliance with federal civil rights laws. Where violations are found as a result of OCR's investigation, the Office works with the recipients to ensure that any discrimination is addressed and recipients gain a better understanding of their obligations under Section 504 and Title II with respect to the restraint and seclusion of students with disabilities.

Data Quality Reviews

In a pioneering initiative to improve civil rights data quality, OCR reached out to 50 school districts that had reported anomalous data to the CRDC. For the first time, DQRs involved OCR examining districts' data submission for a particular data module, in this case the restraint and seclusion data module, and determining if anomalous data were submitted. As a result of this outreach, OCR had a large majority of the school districts submit amended restraint and seclusion data. Through DQRs and technical assistance, OCR is assisting school districts with the timely and accurate submission of data for future collections.

In order to conduct the DQRs, Assistant Secretary for Civil Rights Kenneth L. Marcus contacted 50 school districts whose recent CRDC restraint and seclusion submissions raised data quality concerns. Two criteria were used to select the 50 school districts for the DQRs: 1) school districts with total enrollment greater than 10,000 students that reported no instances of students subjected to mechanical restraint, physical restraint, and seclusion, and 2) school districts with repeated counts for the number of instances of mechanical restraint, physical restraint, and seclusion. As a result, nearly two-thirds of these school districts worked with OCR to submit amended data.¹¹

Technical Assistance

The Department is also proactively providing restraint and seclusion technical assistance to state education agencies (SEAs) and school districts to ensure they are collecting and reporting accurate data to the CRDC and understand the legal requirements of Section 504, Title II, and the Individuals with Disabilities Act, also known as IDEA. Beginning in July 2019, OCR and other Department staff led a number of presentations on the topic of collecting and reporting accurate restraint and seclusion data. OCR and OSERS launched a webinar, "Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools," to ensure that the schools who serve those students are aware of their legal obligations under federal civil rights laws. Viewers have seen this webinar nearly 18,000 times. In addition to the webinar, technical assistance was provided via departmental presentations:

- *Civil Rights Data Collection Overview and Data Quality* (July 25, 2019), Institute of Education Sciences, NCES, STATS-DC Data Conference (see [PDF](#) [563K])
- *When Zeros Are Really Zeros: Ensuring High Quality Data in the 2017-18 Civil Rights Data Collection* (July 25, 2019), Institute of Education Sciences, NCES, STATS-DC Data Conference (see [PDF](#) [553K])
- *Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools* (July 23, 2019), 2019 Office of Special Education Programs Leadership Conference (see [PDF](#) [3.8MK])
- *Civil Rights Data Collection: Technical Assistance for Reporting Quality Restraint and Seclusion Data* (July 21, 2019), 2019 Office of Special Education Programs Leadership Conference (see [PDF](#) [2.3M])

Between the compliance reviews conducted by the regional offices, CRDC DQRs conducted by the headquarters office, and the provision of technical assistance, OCR will interact with countless recipients and help them to better understand their obligations under Section 504 and Title II, address any data quality concerns, and correct violations of federal disability laws.

National Initiative: Website Accessibility

Beginning in December 2018, OCR launched over 600 directed investigations nationwide to increase website and online accessibility for students with disabilities and bring long-lasting change in schools. In June 2019, OCR organized a dedicated national team of enforcement staff, supported by technology consultants, to ensure that more schools achieve compliance in this area. Today, more than ever, education has moved online and is delivered through digital technology. Students and parents visit websites for up-to-date information, correspond with educators through online portals, obtain and turn in assignments through learning management systems, and rely on the convenience of mobile applications.

National Team

In June 2019, OCR created its first full-time dedicated National Web Accessibility Team (the Team), which includes experienced civil rights attorneys, investigators, and information technology experts dedicated to technology accessibility. Each of OCR's 12 regional offices has representation on the Team, supported by senior headquarters enforcement and policy experts. OCR brought on information technology accessibility consultants to add a depth of knowledge in the areas of testing and remediation. Team members immediately began establishing themselves nationally as solution-oriented, leading subject matter experts in a time when technology accessibility challenges and solutions are constantly evolving.

The Team goes beyond traditional investigations, offering recipients in-depth technical assistance. Team members use consistent, validated protocols to achieve impactful and long-lasting change. They help schools, libraries, and their vendors better understand how to remediate—or avoid altogether—technological barriers to access for individuals with disabilities. They begin by testing a sample of the recipients' websites and online programs to identify barriers, then hold video conference calls to explain the impact of the identified concerns on the recipients' pages. Schools, libraries, and vendors remove barriers identified by OCR, learn during the process, and affirm their commitment to maintaining a high degree of accessibility for all students. Recipients that need more time to achieve compliance enter into short-term resolution agreements.

Typically, for investigations involving general allegations that a recipient's website or other online programs are inaccessible, Team members test a variety of high-traffic web pages of importance to students, parents, and members of the public. For school districts and charter schools, these include pages with topics such as the district home, special education, disability grievance processes, and school board policies. For colleges and universities, these include pages such as admissions, athletics, library services, and disability services. For libraries, these include pages such as the home page, the card catalog, and the calendar of events.

The Team's testing protocols include, but are not limited to:

- Checking for keyboard access at standard resolution at a point of reflow, to ensure people who are unable to use a computer mouse have access to all content and functionality;
- Manually checking for adequate color contrast, to ensure people with low vision have access to content;

- Checking for accurate form labels, so people who use audible screen readers are able to understand the purpose of form fields;
- Verifying the presence of meaningful alternative text labels for graphic images and photographs, and for appropriate heading structure, for screen reader users;
- Where videos are present, checking for accurate video captioning; and
- Verifying document accessibility.

The mere presence of technological barriers to access does not mean recipients have violated Section 504 or Title II. When Team members identify technological barriers, they perform a secondary analysis to determine whether the barriers impede individuals with disabilities from having an equal opportunity to enjoy recipients' digital programs, services, or activities. If, for instance, the same information or functionality is provided in an accessible way, or equally effective alternate access is provided, recipients are in compliance with the laws enforced by OCR despite the presence of a technological barrier to access.

Before resolving its investigations, OCR also looks for indications that the recipient has an effective strategy for maintaining compliance.

Results

Although launched in June 2019, the Team quickly improved access to education for individuals with disabilities by:

- Resolving 24 investigations through a rapid resolution process, where recipients removed barriers to access for people with disabilities;
- Resolving seven investigations through voluntary resolution agreements; and
- Pursuing 643 other systemic investigations of recipients' online programs.

Two specific examples of the Team's success are provided below:

OCR collaborated with a statewide assistive technology program, which hosted a three-day digital accessibility training for all libraries, school districts, charter schools, and postsecondary institutions throughout the state. On the first day, OCR was a highlighted speaker, and an in-depth technical training was provided for all participants the other two days. As a result of its participation, OCR educated a large number of recipients on the requirements of Section 504 and Title II and helped recipients achieve proactive compliance, benefitting thousands of students with disabilities who receive education in the state.

OCR had multiple directed investigations against public universities in the same state, all of which were represented by one state assistant attorney general. The Office worked closely with the assistant attorney general, explaining why some universities would need to sign resolution agreements while others, having already developed stronger foundations in the area of technology accessibility, could remediate their barriers more quickly.

OCR's bold move to supplement its regional enforcement offices by creating this specialized Team helps LEAs and SEAs meet the technological challenges of our evolving educational landscape. The Team manifests OCR's commitment to ensuring equal access to education for people with disabilities while adhering to consistent, validated enforcement protocols.

Title IX: Discrimination Based on Sex

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in education program and activities that receive federal funds. Title IX states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX applies to all recipients of federal financial assistance, including, among others, colleges and universities, public school districts, charter schools, alternative schools, vocational schools, and proprietary schools. Cases that OCR investigates under Title IX include those involving sexual harassment, sexual violence, different treatment in athletic programs, bullying and harassment based on sex that is not sexual in nature, and retaliation for filing a complaint.

Key Facts

In FY 2019, OCR received 1,802 complaints containing 2,418 alleged Title IX violations and resolved 2,713 Title IX allegations in 2,005 complaints. Of these resolutions, 250 Title IX allegations raised in 180 complaints were resolved with change. The largest number involved claims of sexual harassment (excluding sexual violence), different treatment based on sex, retaliation, and sexual violence. See figure 13 for more specific information on the variety of Title IX allegations received and resolved by OCR during FY 2019. In addition, OCR resolved one 2016 compliance review involving

BY THE NUMBERS

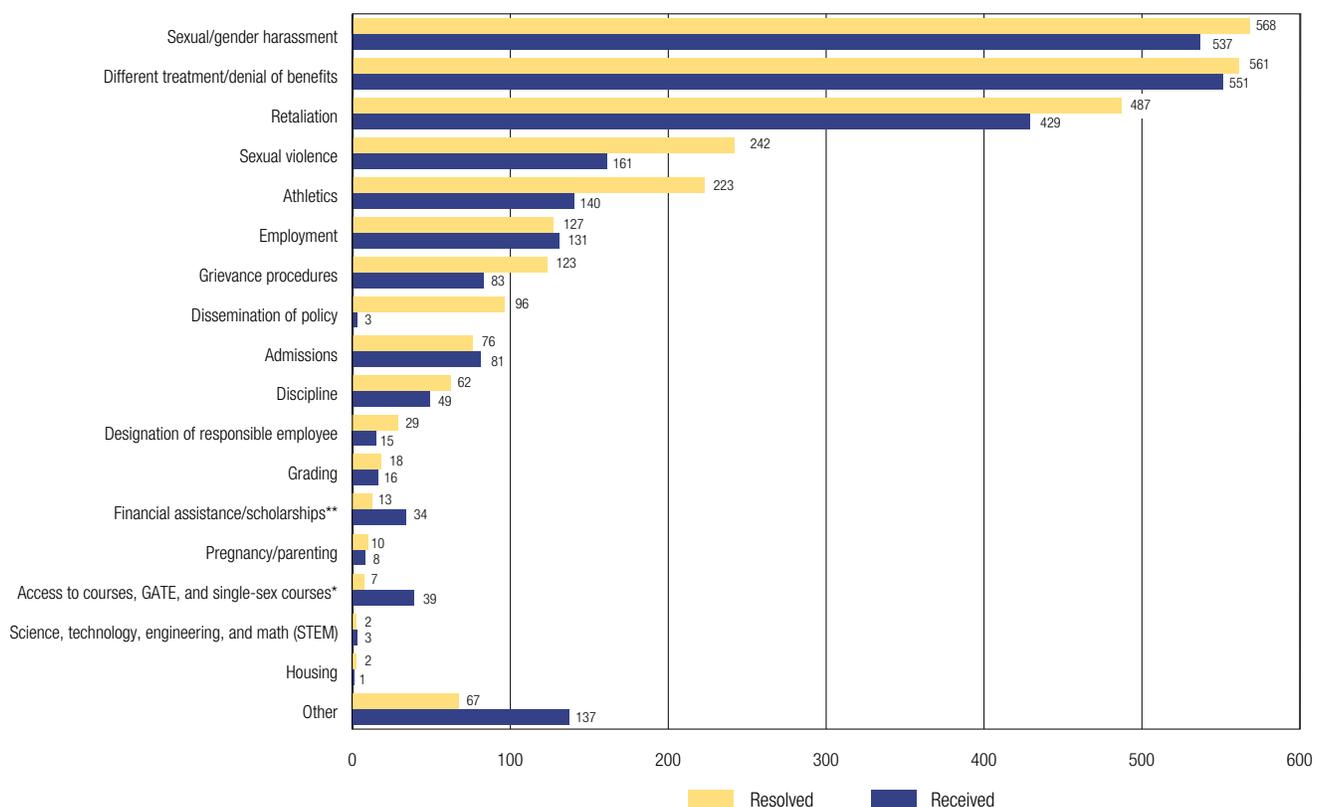
In FY 2019, OCR

- Received 1,802 Title IX complaints
- Resolved 2,005 Title IX complaints
- Resolved 250 Title IX allegations in 180 complaints with change

issues related to athletics and two major sexual violence investigations, one against Michigan State University and one against Chicago Public Schools.

During the first three years of the current administration (FYs 2017–2019), OCR increased Title IX resolutions and resolutions with change when compared to the last three years of the previous administration. In FY 2019, OCR resolved more Title IX allegations with change than in FYs 2014, 2015, and 2016. Just in the last two fiscal years, FYs 2018 and 2019, OCR resolved 106 more Title IX allegations with change than during FYs 2014, 2015, and 2016 combined. When comparing the last three years under the prior administration to the first three years of the current administration, the difference in the number of resolutions with change is more striking. In FYs 2017, 2018, and 2019 combined, OCR resolved a total of 918 Title IX allegations with change—345 (or 60 percent) more than those resolved with change in FYs 2014, 2015, and 2016 combined (see figure 14). In FY 2018, OCR resolved 47 more Title IX allegations with change than in FYs 2015 and 2016 combined. These increases occurred across Title IX issue areas, the most notable of them being sexual violence and sexual harassment.¹²

Figure 13: Title IX Allegations Received and Resolved in FY 2019



During the first three years of the current administration, OCR resolved over three times the total number of sexual violence allegations resolved in the last three years of the prior administration. During FYs 2017, 2018, and 2019, OCR resolved 790 sexual violence allegations, compared to 222 during FYs 2014, 2015, and 2016. OCR also achieved a sevenfold increase in resolutions with change in the category of sexual violence. In FYs 2017, 2018, and 2019, OCR resolved a total of 158 sexual violence allegations with change—134 more sexual violence allegations resolved with change than achieved during FYs 2014, 2015, and 2016 combined (see figure 15). In 2018 alone, OCR resolved more sexual violence allegations by requiring corrective action to protect students' civil rights than the prior administration resolved in eight years.

The total number of resolved sexual harassment (excluding sexual violence) allegations increased 89 percent during the first three years under the current administration compared to the total number of sexual harassment allegations resolved during last three years under the prior administration—from 974 sexual harassment allegations resolved in FYs 2014, 2015, and 2016 to 1,836 in FYs 2017, 2018, and 2019. The number of sexual harassment allegations resolved with change nearly doubled. During FYs 2014, 2015, and 2016, OCR resolved 109 sexual harassment allegations with change. By contrast, in FYs 2017, 2018, and 2019, OCR achieved a total of 209 sexual harassment allegations resolved with change (see figure 16).

The complaints and compliance reviews summarized below are a small but representative sampling of the types of Title IX investigations conducted by OCR and the remedies that were obtained as a result of the investigations. The remedies imposed were deemed appropriate for the facts of the specific case.

Case Summaries

Combating Sexual Harassment in K-12

Case 1: OCR resolved a complaint alleging that a school failed to adequately respond to allegations that a coach of a combined middle and high school volleyball team sexually harassed female volleyball players and that the school violated Title IX with respect to its policy on sex discrimination, grievance procedures, and failure to designate a Title IX coordinator.

During its investigation, OCR reviewed the school's relevant policies and procedures, emails exchanged between both parties, meeting notes regarding the allegations, and information relating to the school's initial investigation and the complainant's subsequent grievance. OCR found evidence that the school inadequately investigated the matter due to the failure to interview all witnesses, an imposition of a gag order that limited the ability of the parties to obtain and present evidence, and failure to provide the complainant with a copy of a written report provided to the coach. OCR also discovered that the school's investigation of the complaint's subsequent grievance was defective because the investigator lacked training on investigating complaints and sex discrimination, may not have been impartial during the investigation, and failed to adequately summarize the evidence or identify the evidentiary or the legal standards that were used.

To remedy the matter, the school agreed to a resolution agreement in which it agreed to report to OCR on all complaints of sex discrimination, provide staff with training on sex discrimination, designate an adequately trained Title IX coordinator, and revise its procedures on responding to complaints of sex discrimination.

Figure 14: Title IX Allegations Resolved with Change: Last Three Years of Prior Administration and First Three Years of Current Administration

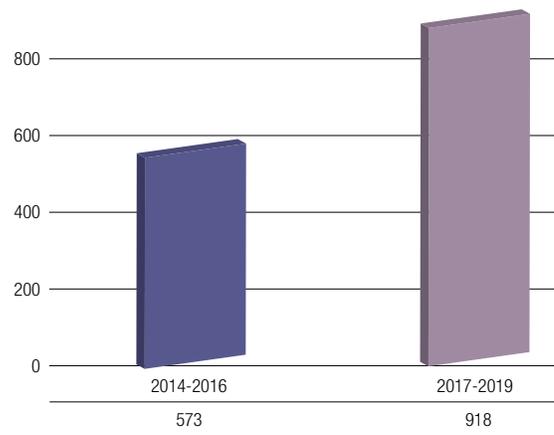


Figure 15: Allegations of Sexual Violence Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration

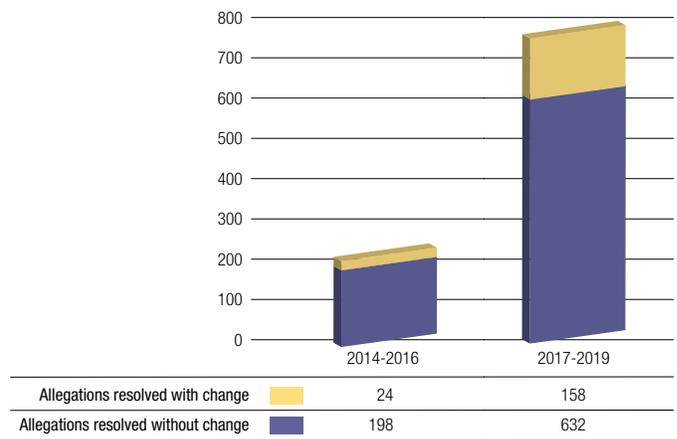
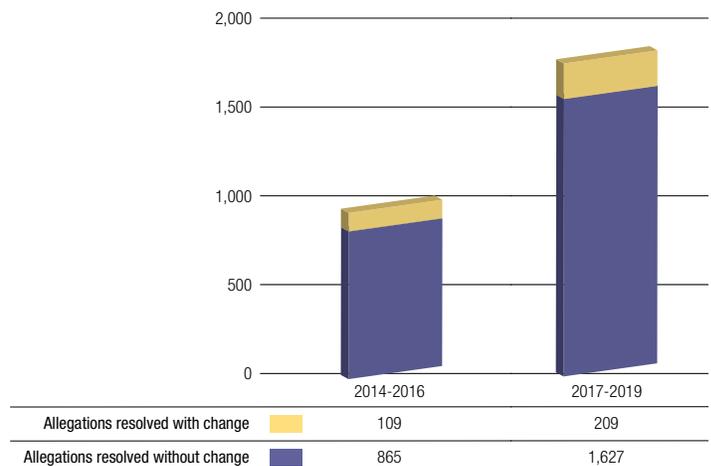


Figure 16: Allegations of Sexual Harassment or Bullying Based on Sex Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration



Case 2: OCR resolved a complaint alleging that a school district failed to promptly and equitably respond to a report that a female student was sexually assaulted by a teacher when the student was dually enrolled in both the district and a technical institute.

During its investigation, OCR reviewed documentation from the complainant, the school district's Title IX policy manual and grievance procedures, the school district's student handbook, and the school district's notice of nondiscrimination. OCR's investigation discovered that the district's notice of nondiscrimination was incomplete and was not posted on its website, its Title IX coordinator lacked adequate training and experience, its Title IX grievance procedures provided an appeal process to reporting parties but not to the responding parties, and its Title IX policy did not include a statement notifying students that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR, nor did it provide for notice to the responding party of the outcome of the investigation.

To resolve these issues, the district voluntarily entered into a resolution agreement with OCR. Pursuant to this agreement, the district agreed to submit to OCR for its review and approval a revised notice of nondiscrimination and grievance procedures; to adopt, publish, and implement them following OCR's written notification that the procedures and notice are consistent with the requirements of Title IX; and to develop and provide Title IX training to its Title IX coordinator and all district staff who interact with students on a regular basis.

Combating Sexual Harassment in Postsecondary Institutions

Case 1: OCR initiated a Title IX compliance review of a university's response to complaints of sexual violence and other sexual harassment based on a large number of sexual violence complaints and various media reports. OCR conducted an extensive investigation, reviewing the university's sexual harassment and sexual misconduct policies, examining files related to the university's response to these complaints of sexual misconduct, interviewing university staff members, conducting student focus groups, and observing the university in an on-site review.

OCR's investigation indicated that, during a three-year review period, the university received approximately 191 reports of sexual harassment, including at least 104 reports of sexual assaults. OCR discovered evidence of a lack of consistency in providing both parties with notice of the outcome of the Title IX complaint process, a practice of issuing no-contact orders to respondents without first making a case-specific assessment, a failure to provide respondents with adequate information in the initial notice regarding complainants' allegations, and delays at various stages of the Title IX complaint resolution process.

Prior to the completion of OCR's investigation, the university entered into a resolution agreement with OCR under which the university agreed to review its responses to sexual harassment complaints for a nine-month period to ensure that its responses were prompt and equitable, draft a report to OCR identifying any problems relating to those responses, and take prompt and appropriate action to address those problems. The agreement also required the university to revise its notice of nondiscrimination, ensure that it continues to notify employees and students of the name of and contact information for its Title IX coordinator, post notices of its sexual misconduct policies, and maintain a procedure for documenting each report or complaint of sex discrimination.

Case 2: OCR resolved a complaint alleging that a college discriminated against a female student on the basis of sex by failing to promptly and equitably respond to her reports of sexual assault by another student with a voluntary resolution agreement pursuant to CPM Section 302. Specifically, the complaint alleged that the college failed to provide a female student with notice of the timeframes for the investigation of a complaint, did not notify the student when the respondent filed an appeal, and denied the female student appropriate interim measures with respect to housing and no-contact orders, including failing to take action against the respondent for violating the orders. The female student further alleged conflicts of interest in the investigation of the complaint.

In OCR's investigation, it reviewed documents provided by the parties, interviewed the complainant and college personnel, and conducted an on-site review of the college. Based on the evidence obtained, OCR had concerns that the college may not have been in compliance with Title IX with respect to its failures to include sufficient investigatory timeframes in its Title IX policy, provide both parties with counseling and confidential advocacy services, provide the student with notice of its investigative timeframes, provide both parties with access to group academic advisor sessions, and promptly amend a no-contact order.

Prior to the completion of OCR's investigation, the college entered into a resolution agreement in which it agreed to revise its Title IX policy to provide for designated and reasonably prompt timeframes for the major stages of the complaint process, take steps to ensure that it is making individualized assessments regarding interim measures for both complainants and respondents, develop an internal procedure to ensure that no-contact orders issued in Title IX cases are disseminated by the campus safety office to the Title IX team and the associate dean of students or other college officials responsible for student housing, and provide training to its Title IX coordinator, deputy Title IX coordinator(s), Title IX team, campus safety staff, associate dean of students, dean of students, and staff.

Ensuring Equal Opportunities in Educational Programs and Activities

OCR resolved a complaint alleging that a university discriminated against males on the basis of sex through its programs related to financial assistance, internships, mentoring, student groups, employee recruitment, and housing, as well as its outreach to high school students.

OCR conducted an extensive investigation into 47 programs and activities, reviewing materials submitted by both parties, and dismissed allegations related to 31 of them because they either failed to state a violation of the laws OCR enforces, lacked sufficient factual information to support an inference that discrimination may have taken place, or were beyond OCR's jurisdiction.

To remedy issues uncovered with the remaining 16 programs and activities, OCR and the university reached a resolution agreement. Pursuant to the agreement, the university was required to review 16 specific programs and activities as well as all others related to financial assistance, internships, mentoring, and student groups; make all needed changes to bring these programs into compliance with Title IX while reporting those changes to OCR; and provide adequate training to university staff who administer the programs to ensure that administration is consistent with the requirements of Title IX.

Issue Spotlight: Addressing Sexual Violence in Schools

Prohibited discrimination under Title IX can take many forms. One common form it takes is harassment, including sexual violence, based on sex. Over 20 years ago, the US Supreme Court held that a school’s duty not to discriminate on the basis of sex goes beyond just the school itself discriminating against students. It also requires schools to respond appropriately when they learn of sexual violence among students or between an employee and a student. In FY 2019, the Department brought greater awareness to the issue of sexual violence in schools. First, the Department published proposed Title IX regulations that, for the first time, aimed to codify sexual harassment—including sexual assault—as a form of prohibited sex discrimination.¹³ Second, OCR pursued major systemic investigations concerning schools’ handling of sexual violence reports that would result in policy changes impacting hundreds of thousands of students enrolled at a university and one of the nation’s largest K-12 school districts.

Much attention has been given to the issue of sexual violence in postsecondary education (also known as PSE), but OCR’s data demonstrates an alarming increase in the number of incidents in elementary and secondary education (also known as ESE) as well. Sexual violence complaints filed against elementary and secondary schools increased by 208 percent between FY 2010 and FY 2019 (see figure 17). Moreover, according to the 2015-16 CRDC, there were approximately 9,700 incidents of sexual assault, rape, or attempted rape reported in public elementary and secondary schools. This violence against even our youngest and most vulnerable students is of great concern. OCR has proposed to expand the CRDC to collect more detailed data involving sexual violence such as rape, attempted rape, and sexual assault. The proposed survey questions request data on the number of allegations of rape, attempted rape, and sexual assault against school staff or personnel; the number of such allegations that resulted in a finding that the staff member or personnel was responsible; the number of such allegations



that resulted in a finding that they were not responsible; and the number of such allegations against a school staff member that were followed by a duty reassignment prior to final discipline or termination.

These questions promote student safety and further the Department’s commitment to study measures taken by states and school districts to prevent a phenomenon known as “Pass the Trash” (see pp. 35–36, 38 herein). As Secretary DeVos stated, “Students, faculty, and staff must all feel empowered to come forward, know that they will be taken seriously, and know that the Department of Education will hold schools accountable.” OCR’s actions support that empowerment.

Over the last three years (FYs 2017–2019), OCR received nearly the same amount of sexual violence complaints as it did during the last three fiscal years under the prior administration (FYs 2014–2016). OCR received a total of 648 sexual violence complaints during FYs 2014, 2015, and 2016 and a total of 647 sexual violence complaints during FYs 2017, 2018, and 2019 (see figure 18). Despite receiving a comparable number of complaints, OCR’s handling of sexual violence complaints under the current administration has been much more effective. During FYs 2017, 2018, and 2019, OCR resolved 750 complaints involving allegations of sexual violence in educational institutions. In comparison, during FYs

Figure 17: K-12 Sexual Violence Complaints Received

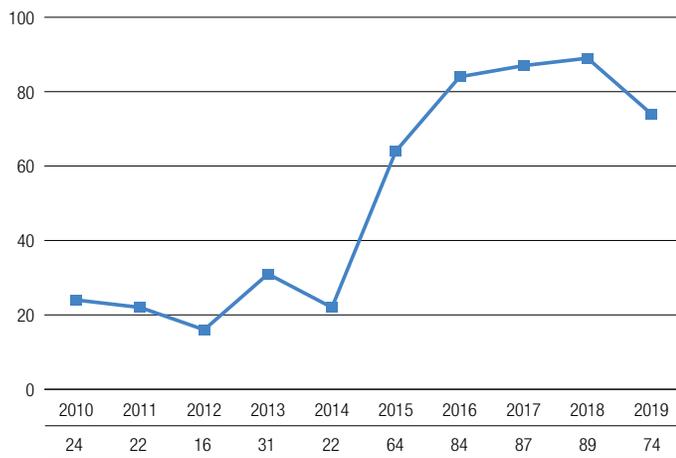
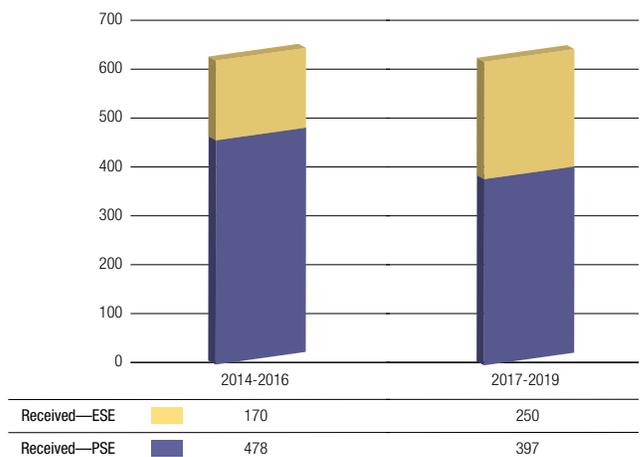


Figure 18: Sexual Violence Complaints Received: Last Three Years of Prior Administration and First Three Years of Current Administration



2014, 2015, and 2016, OCR had only resolved 211 sexual violence complaints (see figure 19). Turning to resolutions with change, during the first fiscal three years under the current administration, OCR resolved 172 sexual violence complaints with change—six times more resolutions with change than the prior administration achieved in FYs 2014, 2015, and 2016, which was 27 (see figure 20).

Title IX Formal Rulemaking

In 1972, Congress enacted Title IX of the Education Amendments Act, which states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” In 1974, formal rules were prepared and published for public comment. After considering those public comments, final regulations were issued in 1975.

In the decades since the regulations were issued in 1975, the Department has not promulgated any Title IX regulations to address sexual harassment as a form of sex discrimination. Instead the Department addressed this subject through sub-regulatory guidance—in a 1997 *Guidance* document, a 2011 *Dear Colleague* letter, and a 2014 *Questions and Answers* document. Legal commentators and scholars criticized both the 2011 *Dear Colleague* letter and the 2014 *Questions and Answers* document for, among other things, “placing improper pressure upon universities to adopt procedures that do not afford fundamental fairness.” Those documents may have been well-intentioned, but they led to the deprivation of rights for many students—not only accused students who were denied fair process but also victims who were denied an adequate resolution of their complaints. Not to mention, the Department’s sub-regulatory guidance on sexual harassment did not have the force and effect of law.

The Department examined how schools were applying Title IX, and prior OCR guidance, to sexual harassment. The Department conducted listening sessions and had discussions with stakeholders expressing a variety of positions for and against the status quo. The Department also reviewed information that included white papers, reports, and recommendations issued over the past several years by legal and public policy scholars, civil rights groups, and committees of nonpartisan organizations.

The Department determined that the guidance on sexual harassment, as a form of sex discrimination, was insufficient to provide clear direction on this subject because it had created confusion and uncertainty among recipients and had not adequately advised recipients on how to uphold Title IX’s nondiscrimination mandate while at the same time meeting requirements of constitutional due process and fundamental fairness. Accordingly, the Department decided to develop an approach to sexual harassment that responds to the concerns of stakeholders and aligns with the purpose of Title IX to achieve equal access to educational benefits, and to do this through a rulemaking process that responds to public comment.

After more than a year of work, in November 2018, the Department officially announced its intention to codify schools’ obligations with respect to sexual harassment under Title IX and published a Notice of Proposed Rulemaking in the *Federal Register*.¹⁴ By publishing the notice in the *Federal Register*, the Department formally proposed to amend the regulation implementing Title IX in several important respects.

Figure 19: Sexual Violence Complaints Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration

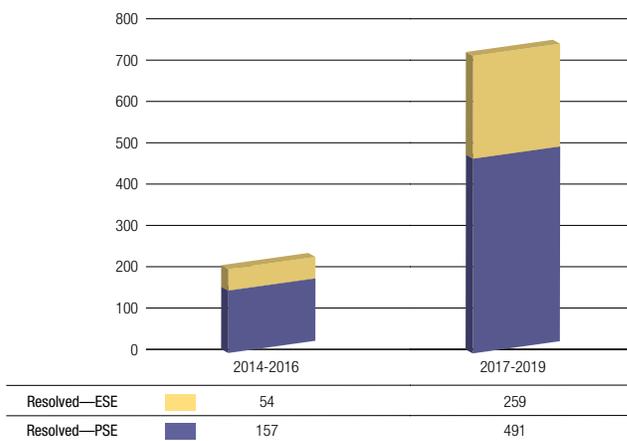
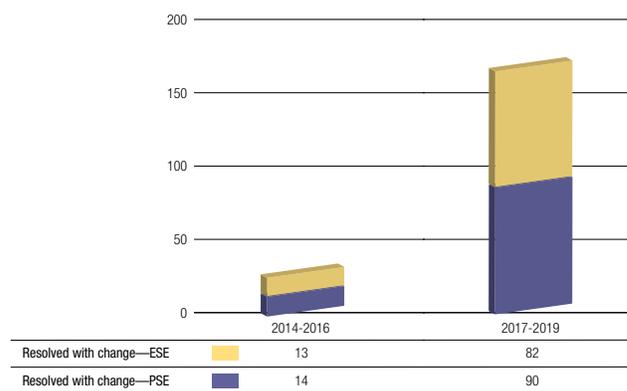


Figure 20: Sexual Violence Complaints Resolved with Change: Last Three Years of Prior Administration and First Three Years of Current Administration



Specifically, the Department proposed to, among other things:

- Define sexual harassment in Title IX regulations for the first time;
- Require schools to respond meaningfully to every report of sexual harassment and investigate every formal complaint; and
- Ensure that basic protections consistent with constitutional due process and fundamental fairness are in place for all students.

The Department extended the original 60-day public comment period twice to allow all interested parties to submit comments. The Department received over 124,000 public comments on the proposed rule. The Department then invested extensive time and resources during most of FY 2019 to review, analyze, carefully consider, and respond to each and every comment. After years of wide-ranging research, careful deliberation, and critical input from survivors, advocates, falsely accused students, school administrators, Title IX coordinators, and the American people, the Department announced its Title IX Final Rule on May 6, 2020.¹⁵

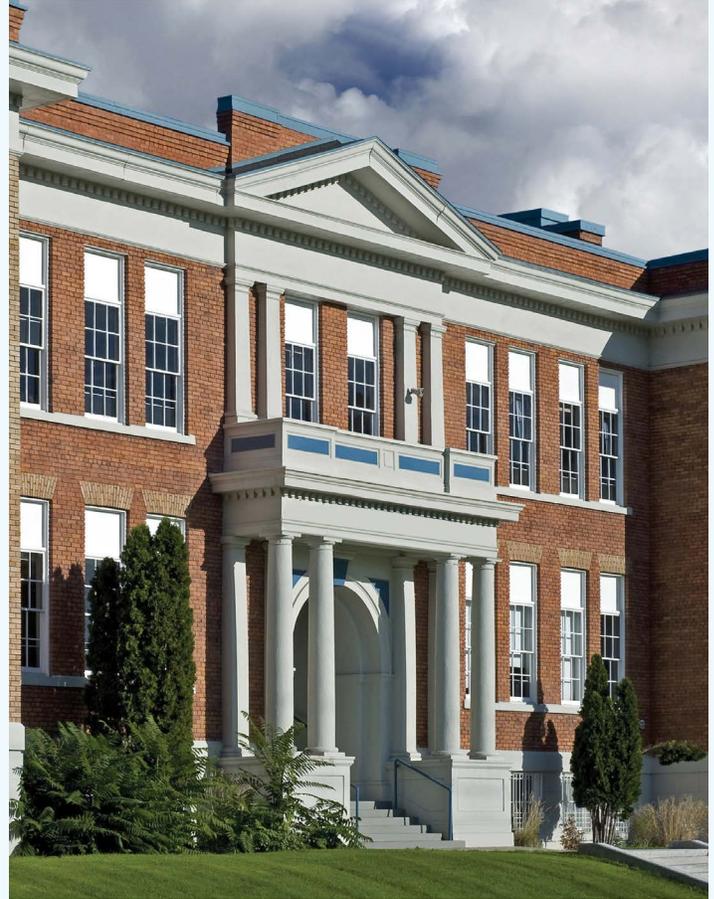
The final rule defines sexual harassment, including sexual assault, as unlawful sex discrimination for the first time ever in the Department's regulations. The final rule also imposes important legal obligations on schools, requiring a prompt response to reports of sexual harassment. Additionally, the final rule improves the clarity and transparency of the requirements for how schools must respond to sexual harassment under Title IX so that every complainant receives appropriate support, respondents are deemed responsible for the alleged conduct only after receiving due process, and school officials serve impartially without bias for or against any party.

Chicago Public Schools

On September 12, 2019, OCR resolved its largest-ever systemic sexual assault investigation involving an urban public school system when it announced a resolution agreement with Chicago Public Schools following a finding of systemic failure to address sexual violence within the school district.¹⁶ OCR received two separate complaints alleging that the Chicago Public Schools (the district) failed to respond to reports of student-on-student sexual harassment and sexual assault and reports of teacher-on-student sexual harassment and sexual assault, respectively. OCR not only opened investigations into both incidents but also initiated a systemic, district-wide investigation into whether the district repeatedly failed to respond to complaints of sexual harassment, including sexual assault, across the district's 644 schools.

The district had been selected for a new multi-year grant under the Magnet Schools Assistance program (MSAP) in 2017. In September 2018, while these sexual violence investigations were pending, the Assistant Secretary determined that based on facts already known due to these investigations, he could not certify that the district would meet its civil rights nondiscrimination assurances under the MSAP statute. Accordingly, consistent with the MSAP's statutory requirement that "no grant shall be awarded" unless OCR's Assistant Secretary determines that the civil rights nondiscrimination assurances "will be met," the Department did not award MSAP funding to the district during FY 2018 (see 20 U.S.C. §7231d(c)). The Department did, however, extend the performance period to provide additional time for the district to take steps to meet these civil rights assurances by resolving its noncompliance with Title IX.

OCR's investigation, which involved OCR reviewing a sample of complaints from over 2,800 student-on-student and over 280 adult-on-student sexual harassment complaints, revealed that the district failed to appropriately respond to complaints of sexual harassment (including rape and sexual assault), did not provide services and remedies to the complainants, did not notify the complainants of investigation outcomes, and did not take effective action to ensure a safe environment for all students free from sexual harassment and sexual assault. Among other findings, OCR's investigation revealed that eight male students allegedly raped a female classmate only to have the incident inadequately resolved and that a high school teacher the district previously found engaged in sexual harassment had sexually assaulted one of his female students. OCR's investigation further revealed that the district failed to adequately address hundreds of incidents involving students who experienced sexual harassment, including egregious sexual misconduct. The investigation also revealed that the district did not have a Title IX coordinator from 1999 to December 2018 and did not have an adequate recordkeeping system for coordinating its Title IX responsibilities.



Based on the Title IX violations uncovered, the district entered into a resolution agreement pursuant to which it agreed to undertake a substantial overhaul to its Title IX reporting structure and procedures, including making the following changes:

- Provide complainants who believe the district mishandled their complaints of sexual misconduct with the opportunity to receive an independent review of those complaints;
- Review the action of current and former district employees who failed to take appropriate responsive action to reports of sexual misconduct and, as appropriate, take responsive action concerning those employees;
- Revise its current Title IX structure to ensure that the Title IX coordinator has full authority to effectively coordinate the district's efforts to comply with Title IX;
- Develop a comprehensive process for responding to all complaints of sex discrimination and fully document responsive actions taken; and
- Change the district's Title IX procedures to ensure impartial investigations of sexual misconduct complaints, including a requirement that attorneys involved in a Title IX investigation recuse themselves from handling the same case against the district.

Chicago Public Schools is the nation's third-largest public school district, and it employs over 36,000 permanent employees and works with over 4,000 active vendors. The corrective actions will have a positive effect on the 370,000+ students enrolled in the district's 644 schools, including 513 district-run schools, 121 charter schools, nine contract schools, and one alternative safe school. In the wake of the resolution, Chicago Public Schools CEO Janice Jackson vowed that the district would be "working to ensure no student ever goes through that again" and praised the resolution agreement that "will help ensure our schools are free of harassment, abuse, and discrimination, and ensure our students have the supports they need to overcome challenges and reach their potential."

Michigan State University

On September 5, 2019, OCR announced that it had reached a resolution with Michigan State University (MSU) to resolve a directed investigation into the university's handling of reports of sexual misconduct by former employee and associate professor Dr. Larry Nassar.¹⁷

At the direction of Secretary DeVos in February 2018, OCR launched a directed investigation into MSU's handling of reports of sexual violence against Nassar. OCR's investigation revealed that MSU failed to adequately respond to reports of sexual misconduct by Nassar and William Strampel (the former dean of MSU's College of Osteopathic Medicine and Nassar's supervisor). OCR's investigation revealed that the university had received over 190 sexual misconduct complaints by or on behalf of Nassar's former patients. Those complaints included allegations going back to 1989, when Nassar allegedly sexually assaulted a pre-teen female gymnast participating in a university program, and continuing until at least 2014, when a student reported to the university that Nassar sexually assaulted her during a medical examination by inappropriately touching her breast and vagina for a prolonged period of time.

OCR's investigation also revealed that top university officials received reports from female students, faculty, administrators, and others that Strampel requested sexual favors in exchange for his academic support, touched them inappropriately, made sexually explicit comments concerning pole dancing, and shared naked pictures. OCR's investigation also found that the university failed to take appropriate interim measures to protect its students while complaints against Nassar and Strampel were pending and failed to take prompt and effective steps to end any harassment, eliminate the hostile environment, and prevent any further harassment from recurring.

To resolve the various Title IX violations discovered, OCR entered into an extensive and comprehensive resolution agreement with MSU. Under this agreement, the university, among other provisions, is required to take the following actions:

- Make substantial changes to the university's Title IX procedures and ensure that certain officials recuse themselves from Title IX matters;
- Take remedial actions to address the impact of the sexual misconduct by Nassar and Strampel on students, faculty, and other staff within the college, the sports medicine clinic, and related facilities, programs, and services;
- Provide a process for those victims of Nassar, who have not otherwise had an opportunity to seek remedy, to come forward and seek remedies to which they might be entitled;
- Review the actions of current and former employees of the university who had notice but who failed to take appropriate action in response to reports of sexual misconduct by Nassar or Strampel and consider appropriate sanctions against those employees;
- Address the campus climate around issues of sexual harassment and sexual violence, strengthen staff training, and assess the need for additional student services; and
- Exercise adequate Title IX oversight of the university's youth programs by notifying youth program participants of its Title IX grievance procedure and that the procedures apply to youth programs.

The major corrective actions required under the resolution agreement will positively benefit the 50,000+ students, including approximately 39,000 undergraduate students and 11,000 graduate students, who attend MSU's 17 degree-granting colleges. In addition to OCR's investigation, the Office for Federal Student Aid simultaneously conducted its own separate investigation into the university's compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). As a result of that investigation, and in addition to the resolution reached with OCR, the university received the largest-ever Clery fine issued by the Department.

Title VI: Discrimination Based on Race, Color, or National Origin

Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination based on race, color, or national origin in programs and activities operated by recipients of federal funds. Title VI states: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” OCR staff investigates cases under Title VI including, among others, those involving different treatment in the administration of school discipline; discriminatory assignment to special education services; bullying and harassment based on race, color, or national origin; the inappropriate use of racial preferences in admissions; and limited access to resources, curricula, and opportunities that foster college and career readiness.

Key Facts

In FY 2019, OCR received 2,660 complaints containing 3,673 allegations of discrimination based on race, color, or national origin in violation of Title VI. OCR resolved 2,819 complaints containing 3,887 allegations of discrimination under Title VI. Of these resolutions, 152 Title VI allegations in 124 complaints were resolved with change. The largest numbers of resolutions were in the following categories: different treatment based on

BY THE NUMBERS

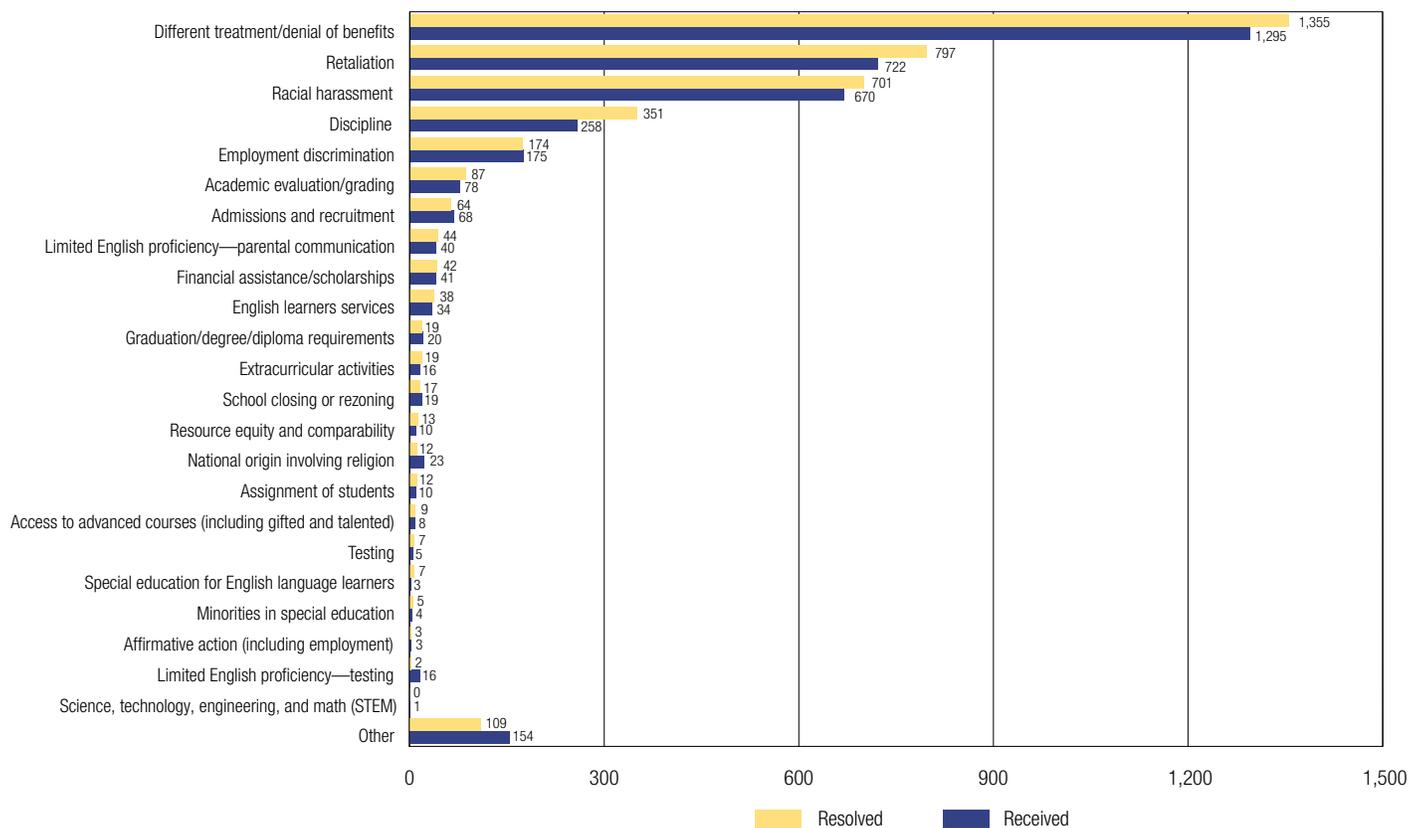
In FY 2019, OCR

- Received 2,660 Title VI complaints
- Resolved 2,819 Title VI complaints
- Resolved 152 Title VI allegations in 124 complaints with change



race, racial harassment, and retaliation for filing complaints under Title VI. See figure 21 for more specific information on the variety of Title VI allegations received and resolved by OCR during FY 2019. OCR also resolved one compliance review initiated by the previous administration in 2010.

Figure 21: Title VI Allegations Received and Resolved in FY 2019



Annual Report to the Secretary, the President, and the Congress

During the first three years under the current administration (FYs 2017–2019), OCR saw significant increases in both Title VI resolutions, and resolutions with change, compared to the last three years under the previous administration. During FY 2018, OCR resolved nearly as many Title VI allegations with change as the prior administration resolved during their last two years combined (FYs 2015 and 2016). During FYs 2017, 2018, and 2019, OCR resolved a total of 520 Title VI allegations with change—72 more than the total number of Title IX allegations resolved with change by the previous administration during FYs 2014, 2015, and 2016 (see figure 22). These increases occurred in important Title VI issue areas, and some of the most notable increases occurred in complaints alleging the discriminatory administration of school discipline and bullying and harassment based on race.

OCR resolved double the number of allegations involving discrimination in school discipline in FYs 2017, 2018, and 2019 combined compared to those resolved by the prior administration over the course of FYs 2014, 2015, and 2016. During the first three years of the current administration, OCR resolved a total of 970 allegations of discrimination in school discipline, compared to a total of 487 during the last three years under the prior administration. OCR also achieved over twice as many resolutions with change in the category of school discipline allegations compared to FYs 2014, 2015, and 2016. In FYs 2017, 2018, and 2019, OCR resolved a total of 50 discipline allegations with change—26 more than the number of discipline allegations resolved with change in FYs 2014, 2015, and 2016 combined (see figure 23).

OCR achieved a 45 percent increase in the number of allegations resolved involving racial harassment or bullying during the first three years under the current administration compared to the last three years under the prior administration. In FYs 2014, 2015, and 2016 combined, OCR resolved a total of 1,509 racial harassment allegations compared to a total of 2,190 allegations resolved during FYs 2017, 2018, and 2019. OCR also achieved a 27 percent increase in the number of racial harassment allegations resolved with change. Over the course of FYs 2014, 2015, and 2016, OCR resolved 129 racial harassment allegations with change compared to 164 allegations resolved with change during FYs 2017, 2018, and 2019 (see figure 24).

The complaints and compliance reviews summarized below are a small but representative sample of the types of Title VI investigations conducted by OCR and the remedies that were obtained as a result of the investigations. The remedies imposed were deemed appropriate for the facts of the specific case.

Figure 22: Title VI Allegations Resolved with Change: Last Three Years of Prior Administration and First Three Years of Current Administration

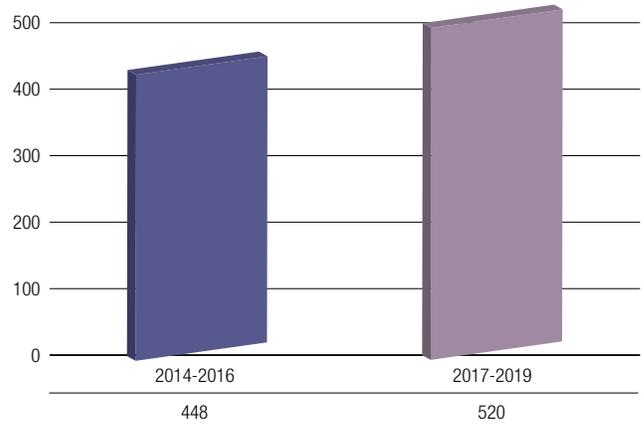


Figure 23: Allegations of Discriminatory Administration of School Discipline Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration

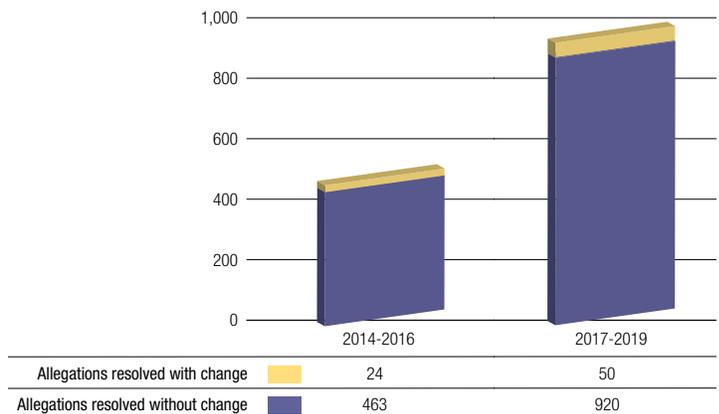
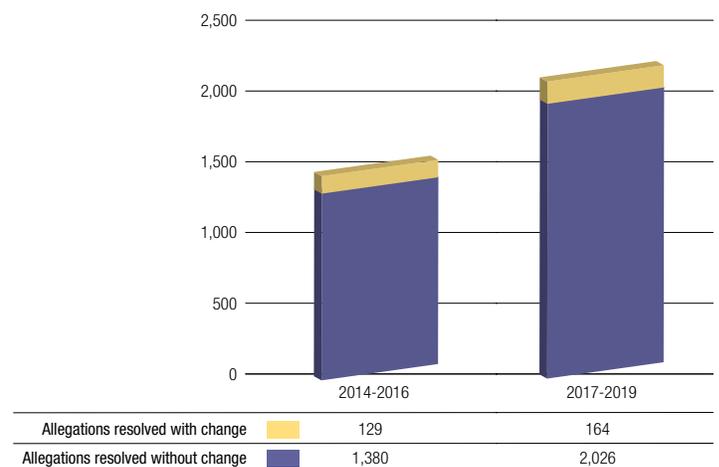


Figure 24: Allegations of Bullying or Harassment Based on Race Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration



Case Summaries

Ensuring Nondiscrimination in the Administration of School Discipline

OCR resolved a complaint alleging that a district discriminated against Black students on the basis of race by disciplining them more harshly than similarly situated White students. During the course of its investigation, OCR reviewed the disciplinary records of the student involved, the district's student code of conduct, and correspondence between district staff concerning the behavior of the students in addition to conducting interviews of school officials.

As a result of the investigation, OCR had compliance concerns based on evidence that Black students may have received more severe disciplinary sanctions than White students for similar offenses. The school district expressed an interest in voluntarily resolving the complaint with a resolution agreement. Pursuant to the agreement, the school district was required to:

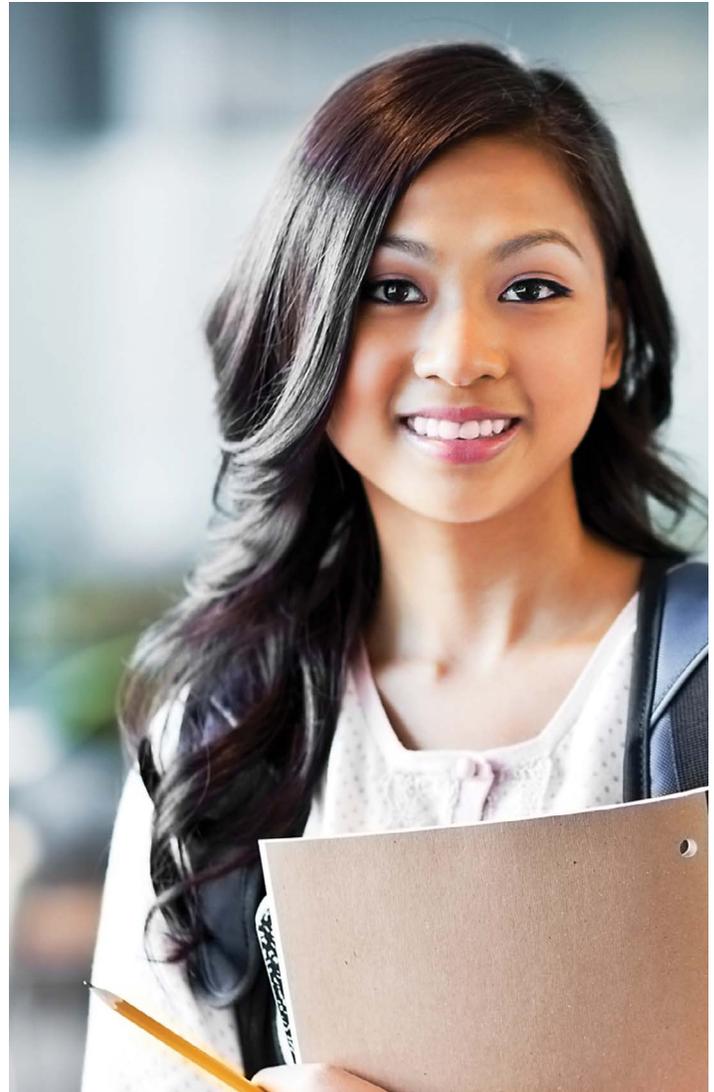
- Review the discipline decisions of particular staff members to determine whether there was any disparate treatment of Black students;
- Conduct a similar review regarding the disciplinary records of Black students compared to similarly situated White students and make all needed changes to those disciplinary records that evidenced disparate treatment;
- Revise its disciplinary policies to clearly address what disciplinary sanctions would be imposed generally and against repeat offenders; and
- Provide training to appropriate staff on the nondiscriminatory administration of student discipline.

Combating Racial Harassment in All Forms

Case 1: OCR resolved a complaint that alleged a student of Asian descent was subjected to a hostile environment and the school district failed to respond promptly and effectively to known incidents of harassment towards the student. Specifically, the complaint alleged that elementary students on the school bus, in class, and at lunch/recess harassed a student of Asian descent by directing epithets, insults, and physical aggression towards the student and that the school district had notice of these incidents and failed to respond appropriately.

In the course of the investigation, OCR reviewed documents and information provided by the student and the school district concerning the incidents of harassment—including the district's policies and procedures—and interviewed the student. Prior to OCR's completion of its investigation, the school district expressed an interest in voluntarily resolving the complaint with a resolution agreement. Pursuant to the agreement, the school district was required to provide training to appropriate staff on racial harassment, investigate the allegations, and, if it determined that any allegations were meritorious, appropriately remedy them.

Case 2: OCR resolved a complaint that alleged that a school district failed to appropriately respond to known reports of racial harassment towards a Black kindergarten student spanning several months. Specifically, the complaint alleged that the student was subjected to repeated incidents of harassment by her peers based on her appearance, that the student's



parent brought these incidents to the attention of school officials, and the school failed to respond appropriately.

During the course of its investigation OCR reviewed documentation provided by the complainant and the district—including the district's relevant policies and procedures, email exchanges from the parent and between district staff regarding the incidents of harassment, and meeting notes and correspondence documenting the incidents and the district's response—and interviewed the complainant and district officials. OCR concluded that the district violated Title VI by failing to take effective action to cease the known harassment, prevent its recurrence, and remedy its effects on the student. OCR found that the school repeatedly had notice of incidents involving students mocking the student for her race and appearance over the span of several months. OCR concluded that the school district failed to take effective action to stop the harassment, prevent it from recurring, and remedy its effects on the student.

To resolve this matter, the school district agreed to a resolution agreement under which the school agreed to offer to meet with the parents of the student, to reimburse them for transportation expenses incurred because of the harassment, and to provide racial harassment training to school district staff and students.

Case 3: OCR resolved a complaint that alleged a school district discriminated against a Black student by failing to appropriately respond to a complaint that a music teacher subjected the student to different treatment and racial harassment. Specifically, the complaint alleged that the music teacher sent the student out of the classroom on a weekly basis and treated the student differently than White students. The complaint also alleged that the school district failed to promptly and effectively respond to the teacher retaliating against the Black student for filing a complaint against the teacher with the school district's board of education by physically shoving the student. OCR opened an investigation, interviewed district staff and the complainant, and reviewed documentation and other information provided by the district.

Based on the information obtained in the investigation, OCR had compliance concerns regarding whether the district properly investigated and made a determination regarding the complainant's allegations of race discrimination and retaliation. Prior to OCR's completion of its investigation, the district agreed to enter into a resolution agreement to resolve both allegations. Pursuant to this resolution agreement, the district agreed to complete a thorough supplemental investigation of the complainant's allegations, issue a written decision on the allegations to the complainant, and provide training to appropriate district staff on discrimination, harassment, and retaliation.

Preventing the Inappropriate Use of Race in Admissions

OCR resolved a complaint alleging that a university's decision to change its prior race-neutral criteria to include consideration of race and ethnicity as factors in certain of its graduate admissions practices violated the strict scrutiny requirements of Title VI. Specifically, OCR initiated an investigation to determine whether the university's use of race as an admissions factor (race-conscious admissions policy) met narrow tailoring requirements of the strict scrutiny analysis set forth by the Supreme Court.¹⁸

During its investigation, OCR conducted interviews with the complainant as well as university staff and administrators, examined admissions data from 2005 to 2017, analyzed enrollment demographics, and reviewed university memoranda, policies, and procedures. OCR found that the university's school of medicine did not periodically review its race-conscious admissions policy and consider whether race-neutral alternatives would be sufficient, as required under the second narrow-tailoring prong of strict scrutiny analysis.

Before OCR completed its investigation, the university expressed an interest in resolving OCR's concerns through a resolution agreement. Under this agreement, the university was required to discontinue all consideration of an applicant's race and ethnicity in its school of medicine admissions policies or practices and provide documentation evincing that it had ceased to use such practices. Further, before the university's school of medicine could institute or re-institute consideration of an applicant's race or ethnicity as a factor in admissions decisions, the university would be required to provide a reasoned and principled explanation for its decision while fully considering:

- The degree to which race-neutral measures could achieve its educational goals;
- How to tailor race-conscious measures, if such measures are deemed necessary, to afford flexible and individualized review of applicants and ensure no burden is imposed on applicants of any racial group; and
- By what processes and on what periodic schedule the school's continuing need for race-conscious measures, if any, would be periodically reviewed and assessed.

Issue Spotlight:

Discrimination Based on Shared Ancestry or National Origin

Title VI prohibits discrimination on the basis of race, color, and national origin. Since 2004, OCR has recognized that discrimination against students who share a common faith can violate Title VI when it constitutes race or national origin discrimination based on shared ancestry or ethnic characteristics. This position was reaffirmed in guidance issued by the previous administration in 2010. Accordingly, OCR has investigated complaints of discrimination based on actual or perceived membership in groups that exhibit both ethnic and religious characteristics and resolved such complaints by requiring recipients to change their nondiscrimination policies and responses to reports of discrimination. OCR has found violations and required substantive remedies in cases involving students subjected to anti-Semitic threats, slurs, and assaults; Muslim students targeted for wearing a hijab; and Middle Eastern and Sikh students taunted and called terrorists. Although OCR has seen an increase in the number of national origin and shared ancestry complaints in recent years, the number of cases in this area remain relatively small, as figure 25 demonstrates.¹⁹

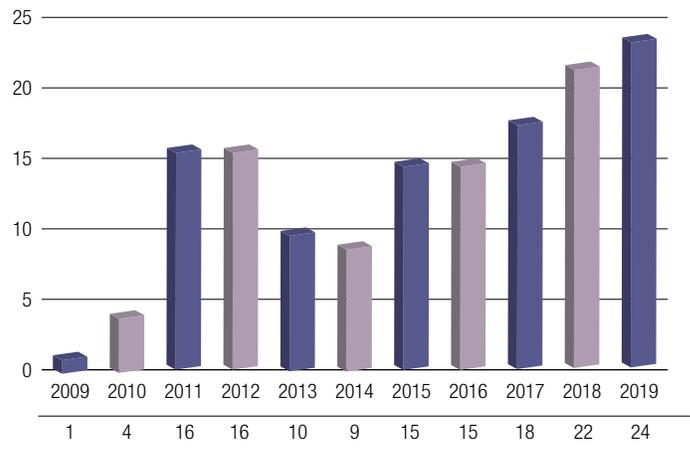
Although OCR has not received a large number of complaints in this category to date, various reports have indicated that these types of incidents, and especially anti-Semitic incidents, are on the rise. At a Summit on Combating Anti-Semitism hosted by the US Department of Justice, Secretary Betsy DeVos denounced anti-Semitism and reiterated her commitment to stopping this form of discrimination on college campuses and in schools. As Secretary DeVos stated, “We stand firmly against the alarming rise of anti-Semitism and we acknowledge this reality.”²⁰

Williams College

On July 3, 2019, OCR entered into a resolution agreement with Williams College to resolve allegations that the college discriminated against students based on shared ancestry or ethnic characteristics. On May 2, 2019, OCR received a complaint against the college alleging that it discriminated against students based on shared ancestry or ethnic characteristics when the College Council rejected a proposal to establish a registered student organization called the Williams Initiative for Israel. After anti-Semitic uproar, the College Council denied recognition to the pro-Israel student group even though a student group known as Students for Justice in Palestine was previously granted recognition by the Council.

Before the conclusion of OCR’s investigation, the college expressed a willingness to voluntarily resolve the complaints. The college signed a resolution agreement under which it agreed to, *inter alia*, afford the Williams Initiative for Israel the same rights and privileges as other registered student groups approved by the College Council; issue a statement to all students, faculty, and staff stating that the university does not tolerate acts of prohibited harassment; and educate the university community on prohibited forms of harassment in all training and orientation sessions for the next several years.

Figure 25: Complaints Received Alleging Discrimination Based on National Origin Involving Religion



UNC-Duke Consortium on Middle Eastern Studies

On April 17, 2019, OCR received a complaint against both the University of North Carolina at Chapel Hill (UNC) and Duke University alleging that the universities discriminated against students of Jewish descent on the basis of national origin in connection with a joint conference entitled “Conflict over Gaza: People, Politics, and Possibilities,” hosted by the Duke-UNC Consortium for Middle East Studies. OCR initiated an investigation into whether a hostile environment existed in connection with the conference and, if so, whether the universities appropriately responded. OCR interviewed the complainant, university officials, and other witnesses and reviewed documentation submitted by the university, information submitted by third parties, and other publicly available information.

Before the conclusion of its investigation, both universities expressed a willingness to voluntarily resolve the allegations in the complaint. Pursuant to the resolution agreements, the universities were required to issue statements to its communities that the universities do not tolerate prohibited forms of harassment, including anti-Semitic harassment, revise written policies to reiterate its commitment to having an environment free from prohibited harassment, and educate the university communities on prohibited forms of harassment in each training and orientation session for the next several years.

As Secretary DeVos has made clear, “[d]iscrimination against anyone on the basis of their faith or ethnicity is always wrong.”²¹ Under the current administration, the Department, including OCR, has reaffirmed its commitment to protect *all* students from discrimination based on race, color, or national origin, including discrimination based on actual or perceived shared ancestry and ethnic characteristics.

Section 504 and Title II: Discrimination Based on Disability

OCR protects the rights of persons with disabilities, including students and parents, pursuant to its jurisdiction under two federal laws. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity operated by recipients of federal funds. It states: “No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability by public entities, regardless of whether they receive federal financial assistance. Title II states, “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

Key Facts

In FY 2019, OCR received 5,831 complaints alleging a total of 9,038 violations of Section 504 and/or Title II. OCR resolved a total of 6,210

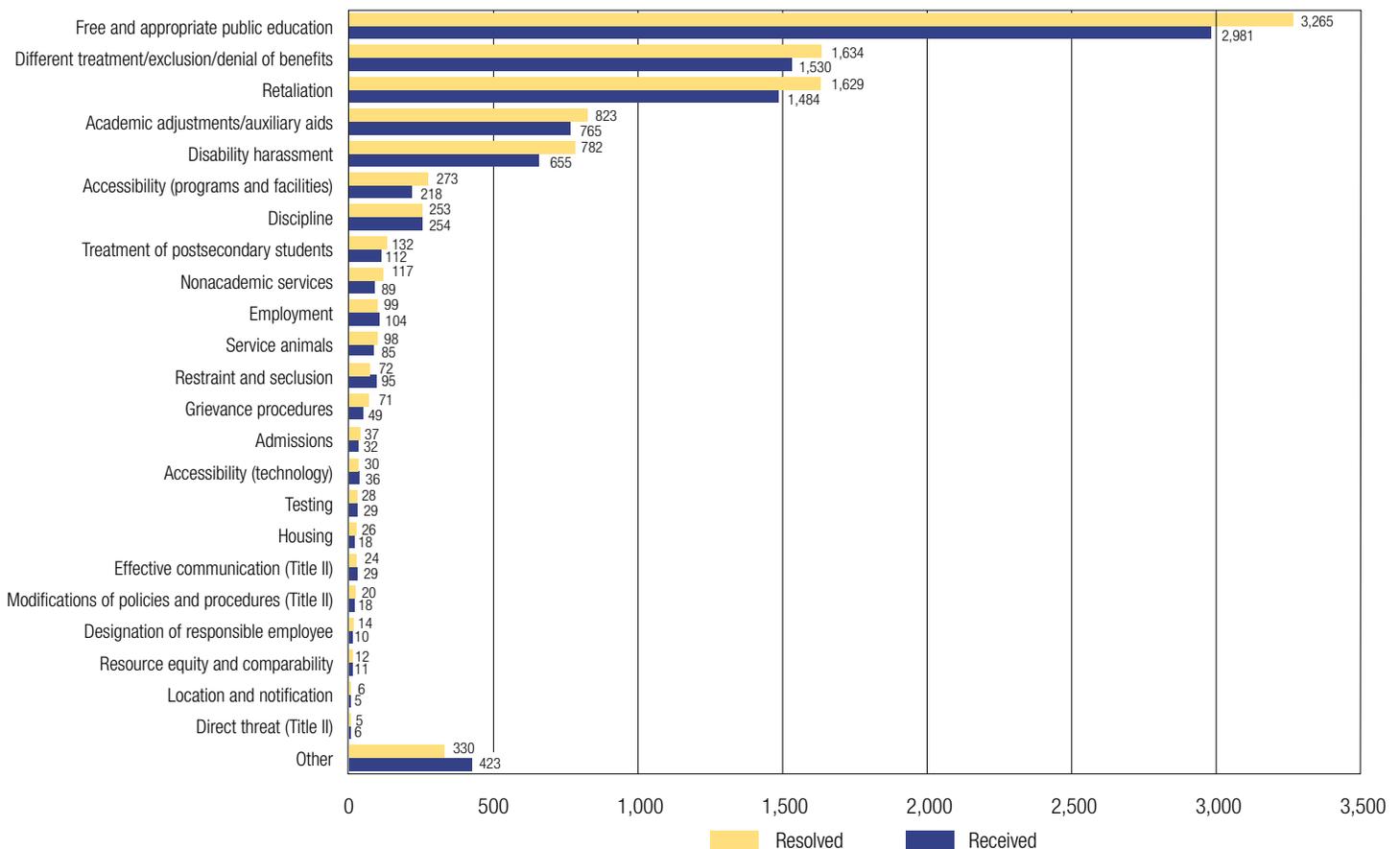
BY THE NUMBERS

In FY 2019, OCR

- Received 5,831 Section 504/Title II complaints
- Resolved 6,210 Section 504/Title II complaints
- Resolved 1,387 Section 504/Title II allegations in 955 complaints with change

complaints containing 9,780 allegations of discrimination based on disability. Of these resolutions, 1,387 Section 504/Title II allegations in 955 complaints were resolved with change. The largest numbers of these allegations involved claims that a school failed to provide a student with a disability with a FAPE, treated students with disabilities differently from other students, retaliated against individuals who asserted their Section 504/Title II rights or those of others, or failed to make programs or activities accessible to students with disabilities. See figure 26 for more detailed information on the variety of Section 504/Title II allegations received and resolved by OCR during FY 2019. OCR also resolved two compliance reviews involving a total of four Section 504/Title II issues, all four of which were resolved with change. Finally, OCR initiated 678 Section 504/Title II directed investigations in which OCR raised 947 disability issues and resolved 35 directed investigations in which OCR had raised 45 disability issues, 12 of which were resolved with change.

Figure 26: Section 504/Title II Allegations Received and Resolved in FY 2019



During FYs 2017, 2018, and 2019, OCR achieved significant increases in both the number of Section 504/Title II allegations resolved, and resolved with change, compared to FYs 2014, 2015, and 2016. During FYs 2017, 2018, and 2019, OCR resolved a total of 5,476 allegations of discrimination under Section 504/Title II with change—1,590 more allegations resolved with change than during FYs 2014, 2015, and 2016 combined (see figure 27). This is a 41 percent increase in the number of allegations resolved with change over three years. These increases occurred in important Section 504 and Title II issue areas including restraint and seclusion, harassment or bullying based on disability, and different treatment of students with disabilities.

During FYs 2017, 2018, and 2019, OCR achieved a 77 percent increase in the total number of allegations involving the inappropriate use of restraint and seclusion resolved by OCR compared to FYs 2014, 2015, and 2016. Over the course of the past three fiscal years, OCR resolved a total of 280 restraint or seclusion allegations—122 more restraint and seclusion allegations than the prior administration resolved during FYs 2014, 2015, and 2016. OCR also achieved a 53 percent increase in resolutions with change in the category of restraint and seclusion. During FYs 2017, 2018, and 2019, OCR resolved a total of 49 restraint and seclusion allegations with change—17 more restraint and seclusion complaint allegations than resolved with change during FYs 2014, 2015, and 2016 combined (see figure 28).

During the first three years of the current administration, OCR achieved a 26 percent increase in the total number of allegations involving disability harassment resolved compared to the last three years under the prior administration. In FYs 2014, 2015, and 2016, OCR resolved a total of 1,801 disability harassment allegations. Over the course of FYs 2017, 2018, and 2019, OCR resolved a total of 2,273 disability harassment allegations, or 472 more resolutions than the prior administration. OCR also achieved a 14 percent increase in allegations of disability harassment resolved with change. During FYs 2017, 2018, and 2019, OCR resolved a total of 278 disability harassment allegations with change—35 more allegations of disability harassment than resolved during FYs 2014, 2015, and 2016 (see figure 29).



Figure 27: Section 504/Title II Allegations Resolved with Change: Last Three Years of Prior Administration and First Three Years of Current Administration

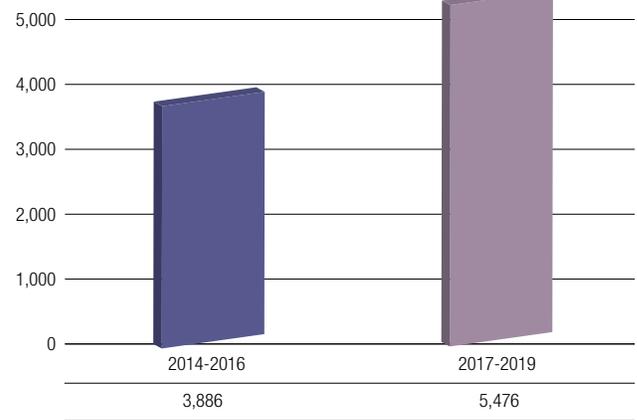
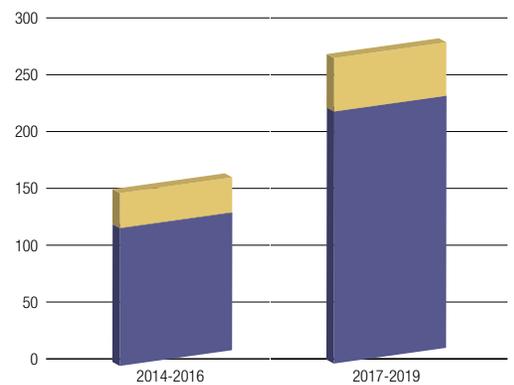
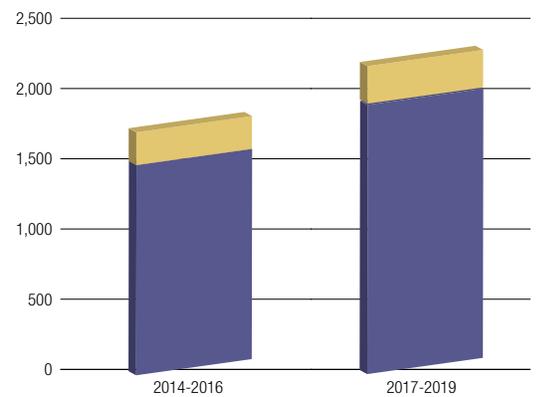


Figure 28: Allegations of Discriminatory Use of Restraint and/or Seclusion on Students with Disabilities Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration



Allegations resolved with change	32	49
Allegations resolved without change	126	231

Figure 29: Allegations of Bullying/Harassment Based on Disability Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration



Allegations resolved with change	243	278
Allegations resolved without change	1,558	1,995

During FYs 2017, 2018, and 2019, OCR resolved a total of 4,655 different treatment allegations under Section 504/Title II—a 48 percent increase over the total number of different treatment allegations resolved by the prior administration during FYs 2014, 2015, and 2016. During the last few fiscal years, OCR resolved a total of 596 different treatment allegations with change—214 more allegations than those resolved with change over the course of FYs 2014, 2015, and 2016 (382 allegations). This is a 56 percent increase in the number of allegations of different treatment resolved with change under Section 504 and Title II (see figure 30).

The complaints and compliance reviews summarized below are a small but representative sampling of the types of Section 504 and Title II investigations conducted by OCR and the remedies that were obtained as a result of the investigations. The remedies imposed were deemed appropriate for the facts of the specific case.

Case Summaries

Addressing the Inappropriate Use of Restraint and Seclusion on Students with Disabilities

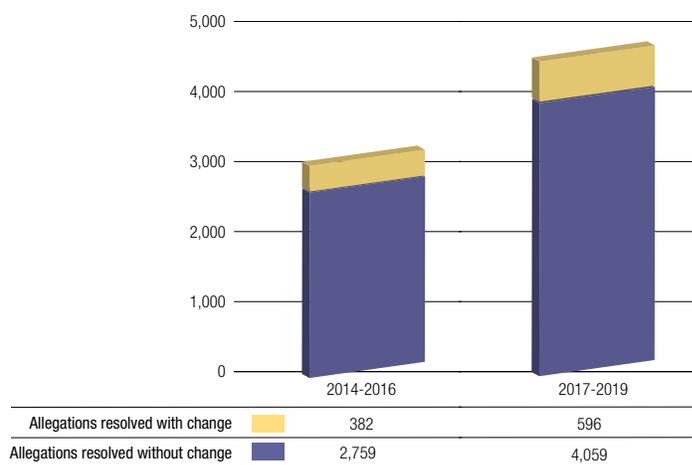
Case 1: OCR resolved a complaint alleging that a school district discriminated against one of its students on the basis of disability by repeatedly secluding the student in an area outside the classroom, thereby limiting this student from participation in and receiving benefits from the district's programs and activities. OCR conducted an investigation, interviewing the student's paraprofessional, examining the student's regular and special education files, reviewing relevant district policies and procedures, and inspecting correspondences between district staff and the complainant.

Following an investigation, OCR informed the school district of its compliance concerns based on evidence that the district had repeatedly secluded the student without considering whether reevaluation or a different placement was needed and that it had failed to provide the student with aids and services in his individualized education program. Prior to the completion of its investigation, OCR and the school district entered into a resolution agreement requiring the district to review its restraint and seclusion policies and procedures, revise such policies to ensure that students with disabilities were treated equitably, and maintain adequate records regarding incidents of restraint or seclusion.

Case 2: OCR resolved a complaint alleging that a school district subjected students in a special education classroom to a hostile environment when their special education teacher and special education aides committed physical, mental, and emotional abuse. During its investigation, OCR interviewed district staff members, conducted an on-site review of the school, and examined relevant email exchanges, district policies and procedures, special education files, and the school district's investigative summary and training materials.

OCR's investigation revealed insufficient evidence to support a finding that the district was in violation of Section 504 or Title II with respect to the allegations. However, OCR did find that the school had used a converted windowless bathroom as a timeout or calming room, preventing the visual monitoring of the health and safety of students placed there, and that a teacher had used this room for students even though a student suffered from episodic seizures and could have been hurt if a seizure took place in the bathroom.

Figure 30: Allegations of Different Treatment of Students with Disabilities Resolved: Last Three Years of Prior Administration and First Three Years of Current Administration



To resolve the matter, the district agreed to a resolution agreement requiring it to:

- Revise its procedures on seclusion and physical restraint for all students;
- Train staff on those revised procedures;
- Periodically inspect the school and review the school's practices to ensure that it used only rooms that were free of any items that might cause injury to a student and would permit visual monitoring of students placed in the room; and
- Invite the affected student's parent/guardian to a meeting to discuss counseling services, academic services, or other remedies.

Case 3: OCR resolved a complaint alleging that a student was regularly removed from his class at a charter school and placed in a separate room or office and locked in a utility closet when he had outbursts. The complaint also alleged that untrained staff restrained the student. The student was eventually placed at a different school. Prior to the conclusion of the investigation, the school voluntarily committed to resolving the complaint allegations by entering into an agreement with OCR. Pursuant to this agreement, the district was required to review and revise its policies and procedures regarding restraint, seclusion, and classroom removals to ensure that such actions do not deny a student a FAPE, train staff on the policies and procedures, and send a letter to the complainants expressing regret and ensuring a FAPE for the student if the student re-enrolled.

Preventing Bullying and Harassment Based on Disability

The complainant alleged, in part, that the district created a hostile environment for the student based on disability because one of her teachers informed her class that she has a seizure disorder and a school counselor made disparaging disability-related remarks about the student during a graduation practice. In its investigation, OCR reviewed the information and documentation provided by the parties, spoke with the complainant, and interviewed the teacher and the school counselor.

Based on the preliminary evidence, OCR had compliance concerns that the student may have been subjected to harassment by teachers based on her disability and that school personnel may have had notice of the harassment and failed to respond. Prior to OCR's completion of its investigation, the district expressed an interest in resolving the complaint with a resolution agreement. The district signed an agreement that included a commitment to provide Section 504 and Title II training to all staff at the student's school regarding the prohibition against disability discrimination and harassment and the obligation to take prompt and effective steps reasonably calculated to end harassment, prevent it from recurring, and, as appropriate, remedy its effects.

Ensuring Equal Treatment of Students with Disabilities

OCR resolved a complaint alleging that a school district was treating students with disabilities differently than students without disabilities, resulting in a shorter school day for students with disabilities. Specifically, the complaint alleged that the school district released the student and other district students with disabilities from school early to take specialized transportation, resulting in them having a shorter school day than students without disabilities.

In its investigation, OCR reviewed the information and documentation provided by the complainant, spoke with the complainant, and interviewed the district's interim superintendent and director of student services. Based on the preliminary evidence, OCR had compliance concerns based on evidence indicating that the student and other district students with disabilities had a shortened school day due to transportation schedules that required late arrivals and early departures for buses transporting students with disabilities.

Prior to the conclusion of the investigation, the district voluntarily agreed to resolve the allegations in the complaint by entering into an agreement with OCR. The agreement provided that the district would:

- Review and revise its policies and procedures regarding specialized bus transportation;
- Create a transportation plan to ensure that students with disabilities would not receive a shortened school day (unless required to meet the individualized needs of a student);
- Train all appropriate district staff on the new transportation policies and procedures; and
- Identify and provide compensatory education services to all students with disabilities who missed instructional time due to their shortened school days.

Ensuring Equal Access to Educational Facilities

Case 1: OCR resolved a complaint alleging that a university discriminated against a female student on the basis of disability by locating some classes in a building that was physically inaccessible, failing to provide an operable video system permitting students to participate in classes virtually, and failing to provide accessible parking spaces. Through an investigation of data obtained by OCR, detailed diagrams and floor plans of the relevant building and parking lot, and a review of submissions by both parties, OCR found evidence of compliance concerns regarding all three allegations, including the failure to provide a route from the parking lot to a university building.

Prior to OCR's completion of its investigation, the university addressed several of the concerns and expressed an interest in voluntarily resolving the complaint through a resolution agreement. Pursuant to the agreement, the university was required to:

- Modify the first-floor rooms, doors, and hallways and the dedicated disability parking space;
- Create an accessible route from a parking space to the building; and
- Complete technological improvements to the building necessary to enable students to observe therapy sessions taking place on the second floor from the first floor by acquiring new computers, computer systems, software upgrades, audio and video cameras, and a television.

Case 2: OCR resolved a complaint alleging that a school district discriminated against individuals with disabilities by failing to provide access to spectator seating at football/track and baseball facilities, designated disability parking spaces, and the routes between that seating and the school's designated disability parking spaces as well as the restrooms at the football/track facility for people with disabilities. During its investigation, OCR examined information provided by the parties, interviewed the affected stakeholders, spoke with a district representative, and conducted an on-site review at the school.

OCR's investigation revealed evidence of violations or compliance concerns regarding all allegations and indicated additional concerns with the ticket booth and concession stand at the football/track and baseball facilities as well as the "lunch counter" at one of the food service venues. To remedy these issues, the district agreed to a resolution agreement requiring it to remedy all features of the school regarding which OCR either found violations or had compliance concerns.

The Age Discrimination Act of 1975 and the Boy Scouts of America Equal Access Act of 2001

OCR also has jurisdiction to enforce the Age Discrimination Act of 1975 and the Boy Scouts of America Equal Access Act of 2001. The Age Discrimination Act prohibits discrimination based on age. It states: “[N]o person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.” The Act therefore applies to SEAs, elementary and secondary schools, colleges and universities, vocational schools, proprietary school systems, state vocational rehabilitation agencies, libraries, and museums that receive federal financial assistance.

The Boy Scouts of America Equal Access Act prohibits any public elementary and secondary school, or state or local education agency that receives Department funds from discriminating against any group officially affiliated with the Boy Scouts of America and any other youth group listed in Title 36 of the *United States Code* (as a patriotic society). Specifically, the statute prohibits covered entities that provide meeting spaces for outside groups from denying the Boy Scouts and other protected youth groups equal access to or a fair opportunity to meet.

During FY 2019, OCR received 598 complaints alleging one or more violations of the Age Discrimination Act. Of the 10,644 complaints that OCR resolved in FY 2019, 663 (6.2 percent) included at least one alleged violation of the Age Discrimination Act. OCR resolved 11 of those complaints (1.46 percent of complaint resolutions overall) with change, although a large majority of the allegations of discrimination under the Age Act were dismissed including those dismissed for insufficient evidence. The specific allegations that OCR received ranged from discrimination based on age in admissions, inadequate grievance procedures, the distribution of financial aid, access to programs or activities, and retaliation against individuals who asserted their rights or those of others under the Age Discrimination Act.

Of the 9,990 complaints received in FY 2019, OCR received 13 complaints (0.1 percent of total complaints) which alleged at least one violation of the Boy Scouts Act. OCR resolved 18 complaints containing an allegation of discrimination under the Boy Scouts Act, and none of the allegations raised under the Boy Scouts Act in FY 2019 were considered resolved with change.



The Civil Rights Data Collection

In FY 2019, OCR completed the 2017-18 CRDC, took historic steps to improve the quality of data submitted to the CRDC, and proposed changes to the 2020-21 CRDC to reduce the administrative burden of collecting and reporting civil rights data and further OCR's ongoing mission of protecting students' civil rights. OCR collects and publishes CRDC data on a biennial basis. Since 1968, through the CRDC, OCR collects data on leading civil rights indicators related to access and barriers to educational opportunity at the early childhood through grade 12 levels. The CRDC is also a long-standing and critical aspect of the overall enforcement and monitoring strategy used by OCR to ensure that recipients of the Department's federal financial assistance do not discriminate on the basis of race, color, national origin, sex, and disability. In addition, the CRDC is a valuable resource for other Department offices and federal agencies, policymakers and researchers, educators and school officials, parents and students, and the public who seek data on student equity and opportunity.

The 2017-18 CRDC data collection closed on June 21, 2019, and included a record response from 99.81 percent of school districts—which included new data on computer science classes and school internet access. As with any new data elements, the collection of these new data was optional for the 2017-18 CRDC since it was the first time that schools were asked to report such data. However, in the next data collection, the data elements on computer science classes and school internet access will be required. In an effort to reduce the reporting burden on schools, the 2017-18 CRDC did not collect data on high school equivalency course exam results and Advanced Placement course exam results. Finally, chronic student absenteeism data were no longer collected by the CRDC because the data are obtained through the Department's *EDFacts* collection. The student absenteeism data collected through *EDFacts* are then incorporated into the CRDC.

Actions to Improve Data Quality

For the first time, OCR directed significant efforts to improve the accuracy of restraint and seclusion data collected through the CRDC. Immediately following the close of the 2017-18 CRDC, OCR began a data quality correction phase during which LEAs could make corrections to erroneous data directly via the CRDC submission system. OCR also conducted outreach to 50 school districts with potentially anomalous restraint and seclusion data submissions regarding the 2015-16 CRDC, through the initiative on the inappropriate use of restraint and seclusion. Furthermore, OCR allocated additional technical support resources, clarified proper understandings of reporting requirements, worked with school districts to ensure that detailed written corrective action plans were put into place, and increased its collaboration with the Department's NCES. Specifically:

- OCR increased technical assistance to school districts to improve data collection timeliness and accuracy. For example, in the 2017-18 data collection cycle, OCR allocated an additional \$671,549 to provide year-round technical assistance support to all school districts. This significantly expanded OCR's ability to assist school districts in meeting reporting obligations and will no doubt improve timeliness and accuracy.



- On June 18, 2019, OCR and NCES entered into a Memorandum of Understanding, greatly expanding the role of NCES and better utilizing NCES' expertise. The two offices held biweekly meetings to improve the planning, administration, review, and release of the 2017-18 CRDC. OCR and NCES worked closely on contract review affecting the 2020-21 and 2022-23 collections. OCR and NCES worked together to build on processes to assist SEAs and school districts seeking to make data corrections for the 2017-18 CRDC after the regular data submission period.

Proposed Changes to Reduce Regulatory Burden

In September 2019, OCR published its proposed numerous changes to the then 2019-20 CRDC, which was subsequently postponed to 2020-21 in light of the COVID-19 outbreak, in the *Federal Register* for public comment. The proposed changes are partly in response to the President's Executive Order 13777: "Enforcing the Regulatory Reform Agenda"²² and Executive Order 13891: "Promoting the Rule of Law Through Improved Agency Guidance Documents,"²³ which require federal agencies to alleviate unnecessary regulatory burdens and provide public notice of and opportunity to comment on proposed regulations. With this in mind, OCR prioritized reducing the administrative burden on schools for the 2019-20 CRDC proposal. OCR foresees less time spent collecting and reporting data and more time available for student instruction as a result. OCR's proposed changes represent a 21.8 percent reduction in the total number of individual responses required by LEAs for the LEA survey. For the school survey, there is a 1.8 percent reduction for elementary schools and a 4.3



reduction for secondary schools. Additionally, these changes to the CRDC will improve the data collection process as well as the usefulness of the resulting information collected.

OCR also proposed adding data elements based on prior CRDC data. Past data collections revealed that harassment or bullying on the basis of religion is prevalent, with about 10,000 allegations reported in the 2015-16 CRDC. OCR proposed to collect new data—the number of allegations of harassment or bullying on the basis of perceived religion, for 14 religion categories identified by the FBI's Hate Crime Data Collection.

To further the purpose of the CRDC, supporting OCR's enforcement efforts, OCR proposed additional data collection on sexual violence. In response to a tenfold increase in the number of annual cases that OCR investigated involving sexual violence from 2009–2018, and due to the gravity of these offenses, OCR proposed to collect more detailed data involving sexual violence such as rape, attempted rape, and sexual assault. The Office wants to ensure it has sufficient data to address these important issues.

In recent data collections, OCR has seen an increase in the number and percentage of students with disabilities served under Section 504 of the Rehabilitation Act of 1973. In the 2015-16 CRDC, about 1.1 million students served under Section 504 were reported. To better gauge equal educational opportunity for these students, OCR proposed to expand two data elements to determine 1) the number of Section 504–only students participating in the International Baccalaureate Diploma Programme, and 2) the number of Section 504–only students taking one or more Advanced Placement courses.

COVID-19 and the CRDC

The Department, including OCR, recognizes the impact the COVID-19 pandemic has had on SEAs, LEAs, and schools, beginning in March of the 2019-2020 school year, in providing educational and support services to students and parents. Due to extraordinary circumstances created by the COVID-19 pandemic and resulting school closures, the Department has been considering ways to support SEAs, LEAs, and schools, including providing flexibility where possible. As part of that effort, and for the other reasons set forth below, OCR has decided to postpone the 2019-20 CRDC by one year. This is consistent with the Department's Institute of Education Sciences' (IES) plan to postpone the collection for "The Organisation for Economic Co-operation and Development's Programme for International Student Assessment," which is a worldwide assessment of 15-year-old students. In addition, IES plans to postpone the following, pending negotiations with its partners:

- The National Assessment of Educational Progress' Long-Term Trend Assessment of 17-year-old US students; and
- The National Assessment of Educational Progress' assessment of 8th grade American history and civics competencies.

Since March, the Department has worked to continually evaluate all mandatory reporting requirements applicable to SEAs, LEAs, and schools to determine whether any adjustment or flexibility is needed in response to COVID-19. The Department has monitored developments of how COVID-19 is impacting all data collections across the agency, including those administered by the NCES. The decision to postpone data collections does not impact the CRDC alone. In fact, adjustments and shifts are being made with regard to several other data collections administered by the Department.

Freedom of Information Act Requests

The Freedom of Information Act (FOIA) is a federal law that establishes the public’s right to request existing records from federal government agencies. The FOIA sets standards for determining which records must be made available for public inspection and which records can be withheld from disclosure. The law also provides administrative and judicial remedies for those denied access to records. Above all, the statute requires federal agencies to provide the fullest possible disclosure of information to the public.

In FYs 2017, 2018, and 2019 combined, OCR saw a 15 percent increase in both the number of FOIA requests received and the number of FOIA requests processed compared to the last three years under the previous administration (FYs 2014, 2015, and 2016). In FYs 2017, 2018, and 2019, OCR received a total of 4,126 FOIA requests and issued 4,011 responses (see figure 31). During the last three years of the previous administration, OCR received only 3,598 FOIA requests and issued 3,498 responses. While the increase in requests and processing in recent years has been met by current OCR staff, many of the FOIA requests that OCR receives are requests for entire enforcement case files, which may contain thousands of records to be reviewed, processed, and released under applicable FOIA standards.

Since FY 2009, OCR has consistently received the most FOIA requests each year compared to all other offices within the Department of Education. For the first time since FY 2015, OCR saw a significant decrease in FY 2019 in the annual number of FOIA requests it received. Although the volume of FOIA requests that OCR received increased by 42 percent from FY 2015 to FY 2018 (1,116 requests in FY 2015 to 1,583 requests in FY 2018), in FY 2019, OCR received only 1,040 new FOIA requests. Still, the 1,040 requests received by OCR in FY 2019 represent 42 percent of the total number of requests received by the Department that year.

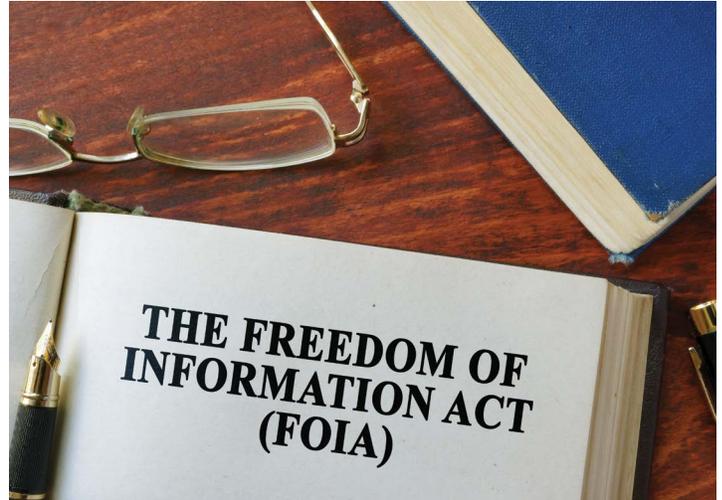
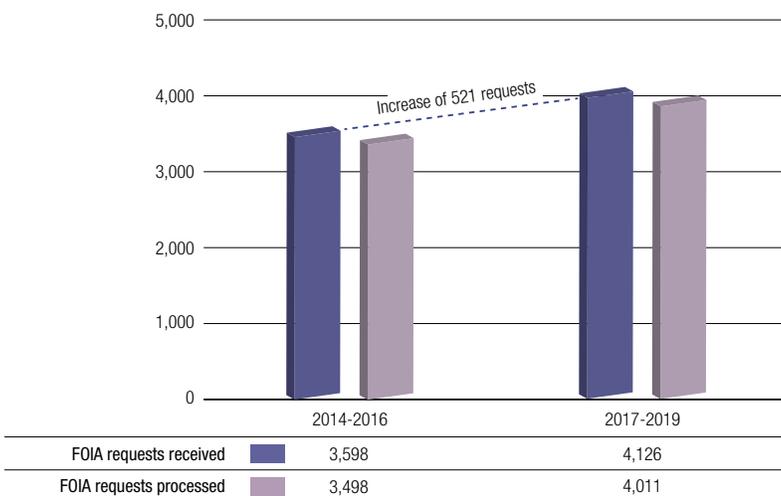


Figure 31: FOIA Requests Received and Processed: Last Three Years of Prior Administration and First Three Years of Current Administration



Looking Ahead

Historic Title IX Final Rule

On May 6, 2020, the Department took historic action to strengthen Title IX protections for survivors of sexual misconduct and restore due process in campus proceedings to ensure all students can pursue education free from sex discrimination. For the first time ever, the new Title IX regulations define sexual harassment, including sexual assault, as unlawful sex discrimination and hold schools accountable for a failure to respond equitably and promptly to allegations of sexual misconduct. The Title IX final regulations also ensure that schools implement a more reliable adjudication process that is fair to all students and includes basic due process protections. Among other things, the new Title IX regulation prescribes a transparent grievance process that treats the accused as innocent until proven guilty, requires schools to state and select one of two standards of evidence that will apply evenly to proceedings for all students and employees, requires schools to promptly contact a complainant to offer supportive measures, requires schools to provide a written decision and rationale, and ensures that schools do not violate First Amendment rights when complying with Title IX.

The Department first announced its intention to engage in formal rulemaking to clarify schools' obligations under Title IX in September 2017. The Title IX Final Rule is the result of years of research, deliberation, and critical input from survivors, advocates, accused students, school administrators, Title IX coordinators, and the American people, including over 124,000 public comments.

Initiative on Sexual Violence in K-12

On February 26, 2020, the Department announced a new Title IX enforcement initiative, led by OCR, to combat the troubling rise of sexual assault in K-12 public schools.²⁴ According to the most recent CRDC data for the 2015-2016 school year, there were approximately 9,700 incidents of sexual assault, rape, or attempted rape reported in public elementary and secondary schools, indicating a grave problem that the Department cannot ignore. This initiative combines OCR's enforcement, technical assistance, and data-gathering activities to correct current major compliance concerns in schools, proactively work with districts and local education leaders to achieve compliance with Title IX, and raise public awareness of the issue. As part of the initiative, OCR launched a series of nationwide compliance reviews of schools and school districts focused on examining how sexual assault cases are handled under Title IX, plans to conduct DQRs of the sexual assault and offenses data submitted by school districts through the CRDC, and proposed to collect more detailed data on sexual assault, including incidents perpetrated by school staff or school personnel, in the 2020-21 CRDC.

Executive Order on Combating Anti-Semitism

On December 11, 2019, President Trump signed Executive Order 13899: "Combating Anti-Semitism."²⁵ With the issuance of this executive order, the administration furthered its commitment to combat the rise of anti-Semitism and anti-Semitic incidents in the United States and around the world. In an effort to fight the increase in anti-Semitic incidents since 2013, this executive order calls for robust enforcement of Title VI from all executive departments and agencies, including OCR.

The President's executive order is the first presidential directive to all executive departments and agencies, including OCR, that explicitly states that anti-Semitic discrimination may violate Title VI and mandates that all departments and agencies enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of race, color, and national origin discrimination prohibited by Title VI. In this way, the executive order affirms OCR's long-standing policy that anti-Semitism may violate Title VI.

OCR first took the position that discrimination based on ethnic or ancestral characteristics violated Title VI in a 2004 guidance document, which was later affirmed by the previous administration in a 2010 guidance document. Moreover, in their enforcement of Title VI, all federal agencies are instructed to consider the working definition of anti-Semitism adopted by the International Holocaust Remembrance Alliance (IHRA) on May 26, 2016, as well as the "Contemporary Examples of Anti-Semitism" identified by the IHRA to the extent that any examples might be useful as evidence of discriminatory intent. Importantly, in considering such definitions and accompanying examples, the executive order mandates that agencies not diminish or infringe upon any right protected under federal law or under the First Amendment.

OCR Resolves Systemic Sexual Violence Investigation of University of Southern California

In February 2020, OCR resolved a directed investigation of the University of Southern California (USC) after concluding that the university failed to protect students from Dr. George Tyndall, formerly employed at the school's student health center, since 1989.²⁶ During its investigation, OCR found that the university failed to respond appropriately to notice of possible misconduct by Tyndall, that the university's failure to respond may have subjected female students to continuing sexual harassment at the hands of Tyndall, and that the university failed to maintain a recordkeeping system to identify and monitor incidents of possible sex discrimination by its employees.

Pursuant to a resolution agreement, OCR required USC to:

- Ensure that its Title IX coordinator and Title IX office have the independent authority to respond to reports of sex discrimination;
- Track and monitor every complaint or report of potential sex discrimination and provide OCR with documentation of reports and complaints of sexual harassment;
- Make reasonable efforts to contact the nine patients who complained of misconduct by Tyndall and notify current and former students (as well as current and former university employees) of the offer to remedy the harm done by sex discrimination;
- Change its Title IX procedures to ensure that all involved parties receive due process; and
- Conduct a review of current and former employees to determine whether appropriate action was taken upon receiving notice of complaints regarding Tyndall.



OCR Concludes Systemic Investigation of Pennsylvania State University

In March 2020, OCR resolved its comprehensive compliance review of Penn State University which examined the university's handling of sexual misconduct complaints, with particular emphasis on complaints of sexual assault, to determine if the university has responded appropriately to complaints of sexual abuse in the wake of the Jerry Sandusky scandal and after implementing various procedural reforms.²⁷ During its investigation, OCR reviewed university policies and procedures for resolving allegations of sexual harassment effective during the 2011-2012 through 2019-2020 academic years. OCR's investigation revealed that the university violated Title IX because it failed to appropriately respond to complaints of sexual harassment, failed to maintain records necessary for OCR to determine compliance with Title IX, and failed to provide adequate notice to students and employees of the procedures necessary to ensure fair and appropriate investigation of complaints.

As a result of its investigation, OCR and the university entered into a resolution agreement requiring the university to:

- Provide for individual remedies for instances where it did not promptly and equitably process complaints;
- Report to OCR on its processing of sexual harassment complaints for the upcoming academic years;
- Review and revise its Title IX policies;
- Revise its recordkeeping practices to ensure that it adequately and accurately documents all complaints;
- Facilitate additional Title IX training for university staff; and
- Notify participants in its youth programs and their parents and guardians that Title IX prohibits sexual harassment against youth participants.

Reforms to the Methods of Administration Program

On February 6, 2020, OCR and the Office for Career and Technical Adult Education (OCTAE) jointly released an updated Memorandum of Procedures (MOP) that will allow state agencies to coordinate their civil rights activities under the Carl D. Perkins Career and Technical Education Act (Perkins Act) with their civil rights activities under the Methods of Administration (MOA) *Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs* (see 34 C.F.R. Part 100).²⁸ The updated MOP continues the long-standing, ongoing commitment of OCR and OCTAE to ensure that all students, regardless of race, color, national origin, sex, or disability, have equal access to succeed in CTE programs.

Under the 2020 MOP, states now have flexibility to determine the number and scope of their MOA periodic compliance reviews required by the guidelines so long as they provide a reasoned basis for their decisions regarding the number of subrecipients reviewed and issue area(s) they choose to review in these compliance reviews. Because the 2020 MOP provides increased flexibility, it also requires state agencies to submit one-time MOA plans to OCR explaining how the agency plans to conduct its MOA work moving forward. The 2020 MOP also lessens the biennial reporting burden on states by recommending five items states can include in their biennial reports, in contrast to the eight items OCR previously required.

OPEN Center

In FY 2020, OCR launched the OPEN Center to focus on proactive compliance with federal civil rights laws.²⁹ While OCR has historically pursued compliance with federal civil rights laws through the resolution of the thousands of complaints it receives annually, through the OPEN Center, OCR will now work more proactively with schools, educators, families, and students prior to the filing of a complaint. By providing targeted support to both recipient institutions and the public, the OPEN Center will work

to ensure that all schools are aware of their obligations and all students are aware of their protections under federal civil rights law. In addition to the other support provided to recipients in FY 2020 including technical assistance on the Title IX Final Rule and certain COVID-19–related guidance documents discussed further below, the OPEN Center provided the following technical assistance webinars as of May 31, 2020:

- [“OCR Short Webinar on Sexual Violence in Public Schools;”](#)
- [“OCR Short Webinar on Updates to Perkins and Methods of Administration Programs;”](#)
- [“OCR Short Webinar on Online Education and Website Accessibility;”](#)
- [“OCR Short Webinar: OCR 100: An Introduction to Federal Civil Rights Protections in Education;”](#) and
- [“OCR Short Webinar: How to File a Complaint.”](#)

As of June 2020, the five webinars had received over 70,000 collective views.

Dedicated FOIA Team

OCR receives and responds to the bulk of the FOIA records requests received by the Department. The requests can be complex in nature, requiring the review, redaction, and production of large numbers of pages of correspondence, policy guidance, enforcement case files, and letters of findings for hundreds of cases.

In FY 2020 and beyond, OCR anticipates receiving a record-high number of requests for OCR records under FOIA. Recognizing our legal obligations to respond under FOIA, and in response to the marked increase in FOIA filings, early in FY 2020, OCR established a separate team within OCR of dedicated FOIA professionals to facilitate the expeditious processing of FOIA requests for OCR records. Prior to this, OCR had no dedicated team to work on processing FOIA requests but instead relied on OCR staff throughout headquarters and the regional offices to perform FOIA work as their schedules and workloads permitted. Consisting of an acting director, team leader, and six FOIA professionals, the FOIA Team is focused exclusively on fulfilling FOIA requests and achieving the following results:

- Process and respond to new FOIA requests in a more timely and efficient manner;
- Better ensure that records released under FOIA are in response to, and within scope of, a properly described records request;
- Process the year-end backlog of FOIA cases not processed by OCR staff;
- Streamline OCR FOIA requests by proactively redacting and publicly posting OCR’s letters of findings to the OCR website, thereby reducing the need for requests;
- Relieve OCR attorneys of the burden of processing FOIAs to better focus on their primary duties of case investigation and resolution; and
- Provide for the consistent application of FOIA exemptions to the same or similar types of records.

COVID-19 and OCR’s Response

In FY 2020, the COVID-19 pandemic forced students, teachers, parents, and school personnel to navigate unprecedented and difficult obstacles to education, including the transition to online (or distance) learning. As the nation faces more distance-learning challenges, OCR’s National Web Accessibility Team was well-positioned to help by ensuring technology used in educational settings was accessible to those with disabilities.

Through the OPEN Center, OCR also provided crucial guidance and technical assistance to recipients and students, including:

- Providing webinars on [“Online Education and Website Accessibility”](#) and [“Civil Rights and COVID-19;”](#)
- Publishing a [“Supplemental Fact Sheet Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students”](#) and a [“Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities”](#) to alert recipients to potential civil rights violations during the transition to distance learning;
- Issuing a [“Letter to Education Leaders on Preventing and Addressing Potential Discrimination Associated with COVID-19”](#) to address troubling reports regarding stereotyping, harassment, and bullying directed at students perceived to be of Chinese American or Asian descent; and
- Publishing a [“Questions and Answers: Information on Protecting Higher Education Students’ Civil Rights during COVID-19 National Emergency”](#) to provide technical assistance for postsecondary institutions.

As the country continues to navigate the COVID-19 pandemic, OCR continues to provide technical assistance and other support to assist institutions with meeting their obligations under federal civil rights laws through OCR’s National Web Accessibility Team and OPEN Center.

Endnotes

1. In this report, unless otherwise specified, *schools* means elementary and secondary schools or school districts, postsecondary colleges or universities, and any other type of education institution receiving federal financial assistance.
2. In this report complaint resolutions requiring recipients to make substantive changes protective of students' rights are considered "resolutions with change." This term excludes resolutions that result in dismissal, administrative closure, and a finding of no violation or insufficient evidence.
3. Per OCR's Case Processing Manual, a complainant filing on behalf of another person will be required to secure any necessary written consent from the individual.
4. Often, a single complaint contains more than one allegation of discrimination. Please note that this report includes data on both the total number of allegations and the total number of complaints.
5. As used in this report, *case resolutions* include cases that result in dismissal, administrative closure, a finding of no violation, an early complaint resolution, a resolution requiring action by institutions without a resolution agreement, or a negotiated resolution agreement.
6. See 34 C.F.R. §§ 100.7(a), 106.71, 104.61, 108.9, 110.30, and 28 C.F.R. §35.172(a).
7. "Executive Order 13864 of March 21, 2019, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities," *Federal Register* 84, no. 58 (March 26, 2019): 11401-04, <https://www.federalregister.gov/documents/2019/03/26/2019-05934/improving-free-inquiry-transparency-and-accountability-at-colleges-and-universities>.
8. OCR's Case Processing Manual can be found at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.
9. For the full text of the 2003 *Dear Colleague* letter, see: <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>.
10. See "US Department of Education Announces Initiative to Address the Inappropriate Use of Restraint and Seclusion to Protect Children with Disabilities, Ensure Compliance with Federal Laws," press release, January 17, 2019, <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>.
11. All results will appear on the CRDC Data Notes, which are available here: <https://ocrdata.ed.gov/Downloads/Data-Notes-2015-16-CRDC.pdf>. For background, the CRDC Data Notes provide key information to the general public about the data file, such as response rates, privacy protection, data anomalies, and requests for data corrections.
12. Throughout this report, data on the number of allegations in discrete issue areas received and resolved by OCR in prior fiscal years may vary slightly when compared to the data reported in previous publications. This is because case information continues to be updated in OCR's database as cases are processed, investigated, and resolved, resulting in changes to the categorization of some cases.
13. For the full text of the Department of Education's Title IX Notice of Proposed Rulemaking, see: <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.
14. US Department of Education, Notice of Proposed Rulemaking, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," *Federal Register* 83, no. 230, (November 29, 2018): 61462-99, <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>; see also "Secretary DeVos: Proposed Title IX Rule Provides Clarity for Schools, Support for Survivors, and Due Process Rights for All," press release, November 16, 2018, <https://www.ed.gov/news/press-releases/secretary-devos-proposed-title-ix-rule-provides-clarity-schools-support-survivors-and-due-process-rights-all>.
15. US Department of Education, Final Rule, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," *Federal Register* 85, no. 97, (May 19, 2020): 30026-30579, <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>; see also "Secretary DeVos Takes Historic Action to Strengthen Title IX Protections for All Students," press release, May 6, 2020, <https://www.ed.gov/news/press-releases/secretary-devos-takes-historic-action-strengthen-title-ix-protections-all-students>.
16. See "US Department of Education's Office for Civil Rights Requires Significant Corrective Action from Chicago Public Schools Following Systematic Failure to Address Sexual Violence," press release, September 12, 2019, <https://www.ed.gov/news/press-releases/us-department-education-office-civil-rights-requires-significant-corrective-action-chicago-public-schools-following-systemic-failure-address-sexual-violence>.
17. See "Secretary DeVos Levies Largest-Ever Clery Fine Against Michigan State University, Requires Major Corrective Action Following Systematic Failure to Address Sex Abuse," press release, September 5, 2019, <https://www.ed.gov/news/press-releases/secretary-devos-levies-largest-ever-clery-fine-against-michigan-state-university-requires-major-corrective-action-following-systemic-failure-address-sexual-abuse>.
18. OCR's investigation in this case focused on whether the university's use of race was narrowly tailored to achieve a compelling interest, rather than whether the university sufficiently established a compelling interest when implementing race-conscious admissions policies.
19. The number of shared ancestry cases may not provide a complete picture of the universe of OCR's shared ancestry cases because there are many codes in OCR's Case Management System under which these cases may be coded in addition to the code for "National Origin Discrimination Involving Religion" used here.
20. Betsy DeVos, US Sec'y of Education, Remarks at the Department of Justice's Summit on Combating Anti-Semitism, (July 15, 2019), <https://www.c-span.org/video/?462607-4/combating-anti-semitism-summit-secretary-devos-panel-discussion-bds-movement>.

21. DeVos, Remarks at the Department of Justice's Summit on Combatting Anti-Semitism.
22. "Executive Order 13777 of February 24, 2017, Enforcing the Regulatory Reform Agenda," *Federal Register* 82, no. 3 (March 1, 2017): 12285-87, <https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda>.
23. "Executive Order 13891 of October 9, 2019, Promoting the Rule of Law Through Improved Agency Action," *Federal Register* 84, no. 199 (October 15, 2019): 55235-38, <https://www.federalregister.gov/documents/2019/10/15/2019-22623/promoting-the-rule-of-law-through-improved-agency-guidance-documents>.
24. See "Secretary DeVos Announces New Civil Rights Initiative to Combat Sexual Assault in K-12 Public Schools," press release, February 26, 2020, <https://www.ed.gov/news/press-releases/secretary-devos-announces-new-civil-rights-initiative-combat-sexual-assault-k-12-public-schools>.
25. "Executive Order 13899 of December 11, 2019, Combating Anti-Semitism," *Federal Register* 84, no. 241 (December 16, 2019): 68779-80, <https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism>.
26. See "Secretary DeVos Requires Sweeping Changes at USC After Title IX Investigation Finds University Failed for Years to Protect Students from Sexual Abuse," press release, February 27, 2020, <https://www.ed.gov/news/press-releases/secretary-devos-requires-sweeping-changes-usc-after-title-ix-investigation-finds-university-failed-years-protect-students-sexual-abuse>.
27. See "US Department of Education Holds Penn State Accountable for its Failure to Protect Students from Sexual Misconduct, Requires Major Overhaul of Title IX Procedures Following Compliance Review," press release, March 26, 2020, <https://www.ed.gov/news/press-releases/us-department-education-holds-penn-state-accountable-its-failure-protect-students-sexual-misconduct-requires-major-overhaul-title-ix-procedures-following-compliance-review>.
28. See Reading Room, Frequently Asked Questions, Methods of Administration Policy Guidance, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/moa.html>.
29. See "Secretary DeVos Announces New, Proactive Civil Rights Compliance Center within Office for Civil Rights," press release, January 21, 2020, <https://www.ed.gov/news/press-releases/secretary-devos-announces-new-proactive-civil-rights-compliance-center-within-office-civil-rights>.

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