U.S. Department of Education

Office for Civil Rights

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

U.S. Department of Education
Office for Civil Rights

Kimberly M. Richey, Acting Assistant Secretary for Civil Rights

January 2021

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 Acting Assistant Secretary for Civil Rights

Protecting *all* students in our nation's schools is a responsibility that requires unparalleled commitment. It is my belief that the U.S. Department of Education's Office for Civil Rights (OCR) must be resolute in justly and impartially enforcing the law and ensuring justice for students who have experienced discrimination. Over the last four years, OCR has discharged this imperative in a way that has bolstered educational opportunities for students and provided tangible relief for students, parents, and families across our country. It has been an honor and a privilege to work with the dedicated staff of OCR, and I am pleased to present the *Annual Report to the Secretary, the President, and the Congress for Fiscal Year 2020.*

Under the Trump Administration and the leadership of Secretary of Education Betsy DeVos, OCR has prioritized reorienting its function as a neutral civil rights law enforcement agency, dedicated to full and faithful execution of the law. OCR's enforcement data over the last four years demonstrate that this approach successfully secures compliance in schools and positive results for students and families. Thanks to the hard work of OCR's talented staff, we have achieved remarkable accomplishments, including resolving thousands of civil rights complaints with change and greatly reducing OCR's burdensome backlog.

In OCR's most recent Annual Report to the Secretary, the President, and the Congress for Fiscal Years (FYs) 2019, OCR demonstrated how it achieved significant improvement in civil rights enforcement. During the first two fiscal years of the Trump Administration, OCR 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, it is evident that we have built on those significant successes.

During the last four years, we achieved historic results and resolved more discrimination complaints than either of the previous two administrations did in any previous single term: 52,700 resolutions to be exact. In addition, under the Trump Administration, OCR's complaint resolutions outpaced the number of complaints received during each of the four years of the term. Specifically, this administration resolved complaints at a pace that allowed OCR to keep up with the 10,000–12,000 complaints filed each year *and* prioritize the backlog of complaints inherited by the prior administrations. During the eight years of the previous administration, OCR's resolutions unfortunately failed to keep pace; in only two of the eight years did OCR resolve more complaints than it received. In fact, under the previous administration, OCR's complaint backlog more than tripled. As a result, too many students and families were forced to wait years for justice.

During the Trump Administration, OCR has achieved success in complaint resolution *and* in requiring schools to take corrective action to address civil rights violations. In fact, more than 6,000 of the record number of complaints were resolved with the school being required to make substantive changes to better protect their students' civil rights, which also far outpaced any previous administration. Under this administration, OCR achieved a 20-year record in the number of complaint resolutions with change per year.

In addition to this convincing enforcement record, OCR has also provided important technical assistance to schools and implemented significant policy changes that protect students, hold schools accountable, and restore fundamental fairness to the agency's investigative process. OCR accomplished several significant milestones during FY 2020:

- OCR announced a comprehensive Title IX enforcement initiative to address the disturbing increase in sexual assault in K-12 public schools. The initiative was developed to enhance OCR's enforcement of Title IX and its ability to determine how schools handle sexual assault reports, through nationwide compliance reviews and Data Quality Reviews of sexual assault and sexual offenses data submitted by school districts.
- OCR announced its Title IX Final Rule, a historic action to strengthen Title IX protections for survivors of sexual harassment, and to restore due process on campus during proceedings to help ensure that all students can pursue an education free from sex discrimination;
- OCR resolved a directed investigation requiring the University of Southern California to make sweeping reforms to the way it responds to and addresses sexual harassment, in light of its mishandling of sexual misconduct by Dr. George Tyndall;
- OCR completed one of its largest comprehensive compliance reviews ever into systemic sexual assault problems at Pennsylvania State University, requiring the University to significantly revise its handling of reports of sexual harassment;
- OCR established the Outreach, Prevention, Education, and Non-discrimination (OPEN) Center, focused on strengthening civil rights compliance through voluntary, proactive, and targeted outreach;

- OCR released the 2017–18 Civil Rights Data Collection (CRDC), encompassing self-reported civil rights data from 17,604 public school districts and 97,632 public schools and educational programs;
- OCR finalized changes to the 2020–21 CRDC, which now requires public schools at the elementary and secondary level to report on incidents of rape, attempted rape, and/or sexual assault involving students and school staff members. These changes to the CRDC make it the only data collection to collect such data systemically, by school. In addition, OCR will now require schools to report disaggregated data on incidents of harassment or bullying on the basis of religion to the CRDC; and
- OCR accomplished major regulatory reform by releasing the Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities Final Rule, building on President Donald J. Trump's Executive Order 13684.

This *Annual Report to the Secretary, the President, and the Congress for Fiscal Year 2020* recaps OCR's achievements and significant accomplishments both for fiscal year 2020 and over the past four years, highlighting how OCR worked tirelessly to safeguard individual rights that are guaranteed to all students under federal law throughout the past four fiscal years of the Trump Administration. The report establishes and exemplifies how OCR has considerably reduced the extensive backlog of pending complaints inherited from the prior administration while resolving significantly more complaints with change than the previous administration. During FY 2020 alone, OCR:

- Resolved a total of 10,185 complaints, which is more than the 9,711 complaints that OCR received;
- Resolved over 2,000 total allegations of discrimination by requiring corrective action protective of students' civil rights;
- Continued to reduce the backlog of 7,854 unresolved civil rights complaints that the Trump Administration inherited when it took office, down to 4,246; and
- In each of its 12 regional offices, OCR reduced the number of complaints older than 365 days, for the first time in at least the last 12 years.

This Report's conclusion addresses the future of OCR, as well as additional achievements from fiscal year 2020 that have advanced the enforcement of federal civil rights laws. In the years ahead, OCR must continue to dedicate its efforts to ensure that the backlog of cases does not re-emerge, and that families continue to receive timely resolutions of their cases. OCR must remain committed to ensuring that all students, regardless of race, color, national origin, sex, disability, or age, receive equal access to a high-quality education. As a part of this commitment, OCR must continue to maintain the fair and impartial enforcement of civil rights laws as its primary focus. This means vigorously enforcing civil rights laws on behalf of all students and building upon the important work that OCR has prioritized for the last four years. As part of these vital enforcement efforts, some of OCR's most important priorities moving forward must continue to include:

- The faithful enforcement of the Department's Title IX regulations, which strengthens protections for survivors of sexual misconduct and restores due process to ensure that all students can pursue an education free from sexual discrimination. The rule enshrines protections from sexual harassment for the first time carries the full force of law, and holds recipient schools accountable for their response to allegations of sexual assault;
- Vigorous enforcement of Title VI to combat anti-Semitism and the adoption of race-exclusionary policies and practices promoting and advocating the categorization of students by race;
- The commitment to maintain OCR's proactive enforcement initiatives to address issues of access to online and web-based learning for students with disabilities, sexual harassment and sexual assault in K-12 schools, and the possible inappropriate use of restraint and seclusion on students with disabilities; and
- The support of local education leaders and schools during the COVID-19 pandemic to ensure that schools continue to meet their civil rights obligations and continue to provide meaningful access to quality education for all students, including children with disabilities.

After reflecting on OCR's achievements this past year and over the last four years during the Trump Administration, I strongly believe that OCR's future is bright. I am immensely proud of the role we have taken as an unbiased arbiter of federal civil rights laws. OCR must continue to dutifully ensure that we do not use our enforcement powers to prioritize certain investigations above all others, and it must instead focus instead on conducting legally appropriate and thorough investigations to obtain necessary and expedient relief for students experiencing discrimination in schools. When executed correctly, civil rights enforcement results in conducting investigations that root out discriminatory conduct to protect all students, but it requires the objective review of facts, allegations, and evidence, and a determination, as an independent fact finder. By applying these principles at OCR, we have made tangible, positive differences in the lives of students. This Report demonstrates that OCR has not only operated more efficiently and effectively under the Trump Administration, but has in fact achieved better results for our nation's children, while establishing a framework for success in the years to come.

Respectfully submitted,

Kimberly M. Richey
Acting Assistant Secretary for Civil Rights

Executive Summary and Report Highlights

In fiscal year (FY) 2020, the U.S. Department of Education's (Department's) Office for Civil Rights (OCR) built upon the Trump Administration's previous efforts to strengthen civil rights enforcement; alleviate unnecessary, outdated, or ineffective regulatory burdens through regulatory reform; and bolster civil rights enforcement through proactive technical assistance. During the last year, OCR launched its third nationwide compliance initiative in three years; continued to dedicate resources toward improving the quality of data submitted and reported by the Civil Rights Data Collection (CRDC); and issued two historic regulations—the Title IX regulation and the Religious Liberty and Free Inquiry Final Rule. At the same time, OCR further reduced the backlog of unresolved civil rights complaints, continued to strengthen resolutions of new complaints, and recommitted to supporting local education leaders through a newly established team of OCR attorneys focused on the provision of timely, accurate, and consistent technical assistance.

In accordance with its duty to enforce Title IX, OCR continued to dedicate substantial resources to the regional offices and their investigations of sexual harassment at our nation's postsecondary institutions and in elementary and secondary schools.[1] On February 26, 2020, the Department announced a major Title IX enforcement initiative, led by OCR, to combat the troubling rise of sexual assault in K-12 public schools. This ongoing initiative examines schools' handling of reports of sexual assault through nationwide compliance reviews, opens Data Quality Reviews of the sexual assault/offenses data submitted by school districts through the CRDC, and raises awareness of the issue of sexual assault in K-12 schools through public education and technical assistance. During FY 2020, OCR enforcement offices also resolved another two major sexual violence investigations at Pennsylvania State University and the University of Southern California with resolution agreements that require the schools to provide remedies to past victims of sexual misconduct, to revise their reporting structures, and to overhaul their Title IX grievance procedures.

Additionally, on May 6, 2020, the Department announced its new Title IX Final Rule, a historic action to strengthen Title IX protections for survivors of sexual harassment and to restore due process in campus proceedings to help ensure that all students can pursue an education free from sex discrimination. The Title IX Final Rule enshrines in regulations, for the first time, that sexual harassment is sex discrimination, and it holds schools accountable for failure to appropriately respond to reports of sexual harassment. The regulations also mandate that schools offer supportive measures to survivors and require schools to employ an adjudication process that is fair to all students. The long-awaited Title IX Final Rule went into effect on August 14, 2020, and is the result of years of wide-ranging research, careful deliberation, and critical input from various stakeholders and the American people, including over 124,000 public comments.

> *"This new regulation requires schools to act in meaningful ways to support survivors of sexual misconduct, without sacrificing important safeguards to ensure a fair and transparent process."*
>
> U.S. Secretary of Education Betsy DeVos

On September 9, 2020, the Department delivered on its promise to protect free inquiry and religious liberty on campus, by publishing the Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities Final Rule (Religious Liberty and Free Inquiry Final Rule). This regulation builds on President Donald J. Trump's Executive Order 13684, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities, by ensuring that public institutions uphold fundamental rights guaranteed by the First Amendment, by requiring the equal treatment and constitutional rights of religious student organizations at public institutions, and by providing clarity to faith-based institutions with respect to their non-discrimination duties under Title IX.

On January 21, 2020, OCR took the major step of launching a new center: the Outreach, Prevention, Education, and Non-discrimination (OPEN) Center. The OPEN Center focuses on strengthening civil rights compliance through voluntary, proactive, and targeted outreach. The OPEN Center provides technical assistance to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws. In addition to providing technical assistance on the laws enforced by OCR, the OPEN Center worked proactively with recipients during FY 2020 to ensure that recipient institutions were aware of their continuing civil rights obligations during the COVID-19 pandemic. In addition to the efforts of the OPEN Center, OCR's National Digital Access Team, established in 2019, provided important resources and technical assistance on issues of online accessibility, when more and more schools across the nation shifted to distance learning in response to the unprecedented national emergency.

In October 2020, OCR released the 2017–18 CRDC. The 2017–18 CRDC encompasses data covering a broad array of civil rights topics, and was self-reported by 17,604 public school districts and 97,632 public schools and educational programs. Importantly, the 2017–18 CRDC was improved over past collections through specific efforts focused on addressing statistical anomalies and increasing post-collection outreach to give school districts an opportunity to submit amended, accurate data. With the release of the 2017–18 CRDC, OCR also released two issue briefs highlighting national data on significant, ongoing OCR initiatives: the possible inappropriate use of restraint and seclusion on students with disabilities and incidents of sexual violence in K-12 schools. During FY 2020, OCR also proposed changes to the next CRDC. The proposal reflects the requirements of the Department of Education Organization Act (20 U.S.C. 3413[c][1]), which authorizes OCR to collect data that are necessary to ensure compliance with civil rights laws within its jurisdiction; it follows Executive Order 13777 which requires OCR to reduce regulatory burdens whenever possible, including the burdens of collecting and reporting civil rights data, while also furthering OCR's important mission of protecting students' civil rights.

During FY 2020, OCR continued its focus on improving the efficiency of case processing and the effectiveness of case resolutions. In August, OCR issued a revised Case Processing Manual, which built upon previous efforts to increase transparency and provide for greater due process protections in the conduct of OCR investigations. As a result of the Trump Administration's approach to case processing, OCR has achieved better results for students. FY 2020 was the fourth consecutive fiscal year in which the number of case resolutions outpaced the number of complaints received. Over the course of FYs 2017–20, OCR received a total of 44,979 complaints and resolved a total of 52,700 complaints—over 15,000 more complaints than the previous administration resolved during its last four years combined. Of those complaints resolved during the past four years, 6,018 complaints were resolved with change—over 1,500 more complaints resolved with change than the previous administration achieved during its last four years in office. Further, OCR initiated and resolved an unprecedented number of proactive investigations—with 748 proactive investigations initiated and 413 proactive investigations resolved in four years.

The Office for Civil Rights: Overview

Office for Civil Rights' Mission

The mission of the Office for Civil Rights (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.

OCR enforces civil rights laws which protect millions of students attending or seeking to attend our nation's educational institutions from unlawful discrimination. OCR's work to eliminate discriminatory barriers to education directly supports the U.S. 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 recipients of federal financial assistance from discriminating on the basis of race, color, national origin, sex, disability, and age:

- 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 discrimination based on age; and
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination based on disability by public entities (e.g., public elementary and secondary school systems, postsecondary schools, and vocational education programs) regardless of whether they receive federal financial assistance.

OCR also enforces the Boy Scouts of America Equal Access Act of 2001. 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, 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 from the Department of Education, including:

- All state education agencies (SEAs);
- 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 educational institutions receive such 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 educational institutions from unlawful discrimination.

Organizational Structure and Functions

OCR's offices include 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 Outreach, Prevention, Education, and Non-Discrimination (OPEN) Center. The immediate office is led by the Assistant Secretary for Civil Rights, the Principal Deputy Assistant Secretary for Civil

Figure 1: OCR Enforcement Jurisdiction Timeline

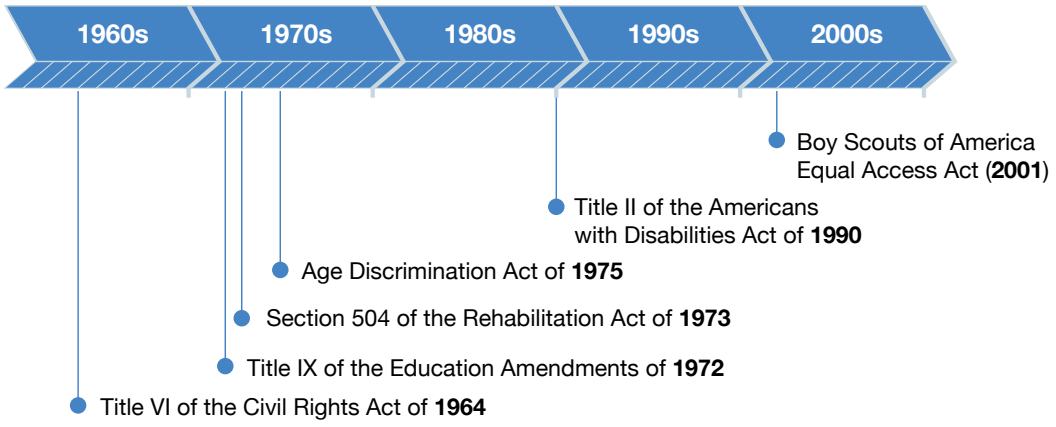
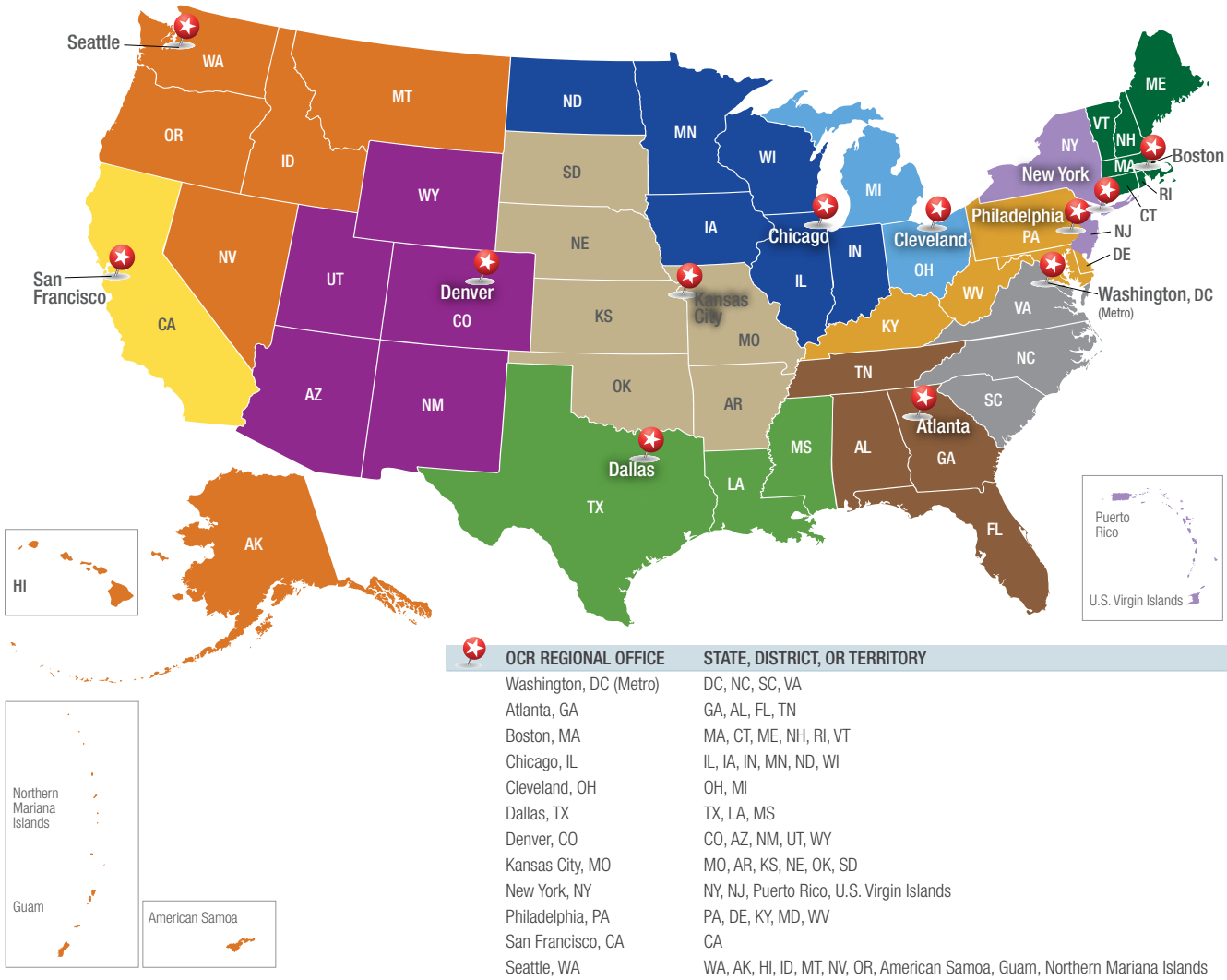


Figure 2: Map of OCR Regional Offices



OCR REGIONAL OFFICE	STATE, DISTRICT, OR TERRITORY
Washington, DC (Metro)	DC, NC, SC, VA
Atlanta, GA	GA, AL, FL, TN
Boston, MA	MA, CT, ME, NH, RI, VT
Chicago, IL	IL, IA, IN, MN, ND, WI
Cleveland, OH	OH, MI
Dallas, TX	TX, LA, MS
Denver, CO	CO, AZ, NM, UT, WY
Kansas City, MO	MO, AR, KS, NE, OK, SD
New York, NY	NY, NJ, Puerto Rico, U.S. Virgin Islands
Philadelphia, PA	PA, DE, KY, MD, WV
San Francisco, CA	CA
Seattle, WA	WA, AK, HI, ID, MT, NV, OR, American Samoa, Guam, Northern Mariana Islands

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 advises the Assistant Secretary in the development of legal and policy guidance on the laws enforced by OCR, and regularly coordinates with and provides direct case-specific legal support to the Assistant Secretary and OCR's 12 enforcement offices on cases that raise novel legal 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 composed of OCR's budget, human resources, customer service, and technology staff.

In FY 2020, OCR created two new component offices to alleviate burdens on OCR's regional offices and allow regional enforcement staff to focus on their primary function: the processing of civil rights cases. Established in January, the OPEN Center 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 team of dedicated OCR staff, including attorneys and led by a director, that supports recipients through the provision of technical assistance, which includes responding to email inquiries, creating webinars and instructional videos, and issuing resources such as Questions and Answers documents. OCR also established a separate team of dedicated Freedom of Information Act (FOIA) professionals to facilitate the expeditious processing of FOIA requests for OCR records. Consisting of a director, team leader, attorney-advisor, and six FOIA professionals, the FOIA Team is focused exclusively on reducing OCR's backlog of FOIA requests and fulfilling new FOIA requests in a streamlined, consistent, and timely manner.

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, SEAs, and LEAs. The bulk of OCR's enforcement activities consists of investigating over 10,000 complaints filed with OCR, on average, each year. Therefore, the majority of OCR's staff members are assigned to OCR enforcement offices 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 ongoing monitoring of recipients' compliance with resolution agreements. Since the beginning of the Trump Administration in 2017, OCR's approach to civil rights enforcement has followed certain guiding principles that have allowed OCR to be both more efficient and effective in its handling of civil rights complaints. These principles are reflected in changes to OCR's Case Processing Manual (CPM), and are predicated on the belief that OCR is a neutral, impartial law enforcement agency that faithfully executes the laws as written by Congress, and focuses on the needs of each individual student. As a result, over the last four fiscal years, OCR has steadily reduced its backlog of pending complaints, achieved a greater number of complaint resolutions (including resolutions with change), and launched and resolved an unprecedented number of proactive investigations.[2]

New Case Processing Manual

On August 26, 2020, OCR announced that it had revised its CPM to strengthen many of the provisions adopted in the November 2018 CPM and to build on the Trump Administration's continuous efforts to improve the efficiency of OCR's case processing while increasing transparency and safeguarding due process.[3] The new CPM contains three key revisions:

- Requires OCR to issue a draft resolution letter to the recipient in addition to the proposed 302 resolution agreement and to provide the recipient an opportunity to inform OCR of any factual errors contained within the draft resolution letter;
- Requires OCR to issue a draft letter of findings to the recipient in addition to the proposed 303(b) resolution agreement and to provide the recipient an opportunity to inform OCR of any factual errors contained within the draft letter of findings; and
- Articulates, for the first time, the applicable standard of review for appeals of OCR determinations.

In prior revisions to the CPM, OCR determined that it would provide recipients with a copy of the complaint or appeal, from the outset of an investigation. This provision increased transparency and ensured that recipient institutions received fair notice of the allegations against them. With similar goals in mind, OCR included additional requirements in the new CPM—provisions requiring OCR to issue a draft resolution letter or letter of findings to recipients, and to provide an opportunity for recipients to review the letter for factual errors. This new provision ensures that recipients are able to review OCR's determination in a case before recipients sign the proposed resolution agreement from OCR. Previously, in November 2018, OCR reinstated a robust appeals process consistent with its commitment to procedural due process, and to safeguard against erroneous or inconsistent case outcomes. In the CPM OCR issued in August 2020, OCR built upon those efforts by articulating, for the first time, the applicable standard of review for appeals of OCR determinations.

The new CPM also retains several important changes from its November 2018 revision, including:

- Section 109, which enshrines OCR's duty to comport with the First Amendment when investigating and resolving complaints;
- The requirement that OCR must *automatically* provide recipient institutions a copy of the complaint and/or appeal at the outset of an investigation or appeal process; and
- Provisions reinstating 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.

BY THE NUMBERS

In FY 2020, OCR

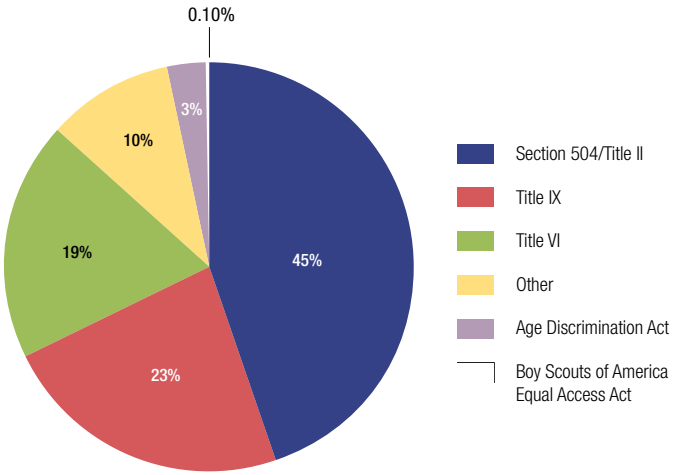
- Received 9,711 complaints
- Resolved 10,185 complaints
- Resolved 2,001 total allegations in 1,362 complaints with change

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

Complaints

The majority of OCR's enforcement obligations each year consist of investigating and resolving the large number of complaints filed by individuals. Any person who believes that 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.[4] 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"). In FY 2020, OCR received 9,711 new civil rights complaints and resolved 10,185 complaints—474 more complaints than OCR received. Of the 10,185 complaint resolutions, 1,362 complaints were resolved with change. For information on the types of issues raised in the nearly 10,000 complaints received in FY 2020, see Figure 3.[5]

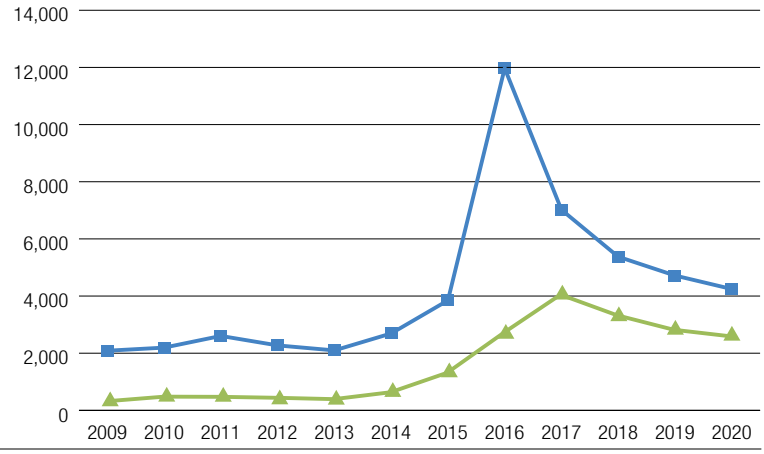
Figure 3: Allegations Received in FY 2020 Complaints, by Statute



Reducing the Complaint Backlog and Prioritizing Timely Resolutions

Resolving civil rights complaints in an effective and timely manner is important to both students and schools. Moreover, in the past when the timeliness of case resolutions was not a priority, OCR's complaint backlog quickly grew. As demonstrated by Figure 4, under the Obama Administration, OCR's complaint backlog more than tripled. During the last four years under the Trump Administration, by contrast, OCR has prioritized reducing the backlog of complaints inherited, while focusing on the timely resolution of new complaints received each year.

Figure 4: Complaint Backlog at the End of Each FY

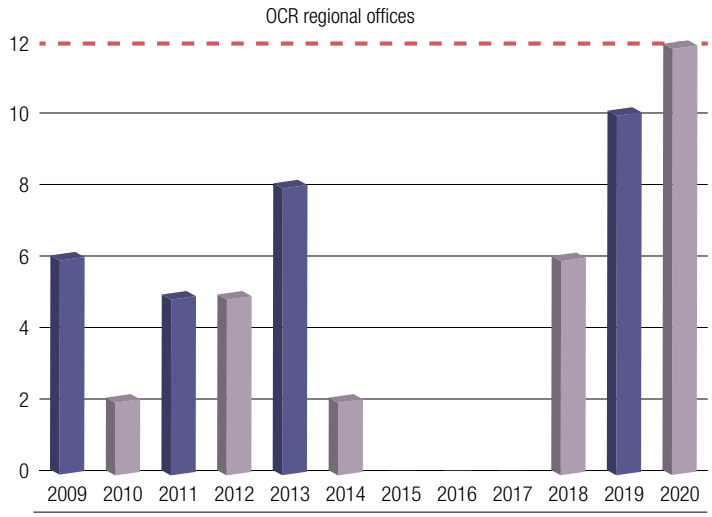


	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total pending complaints	2,087	2,195	2,604	2,273	2,098	2,691	3,848	11,970	7,019	5,376	4,718	4,246
Pending complaints >180 days	317	476	470	436	389	630	1,312	2,715	4,045	3,323	2,817	2,588

When the Trump Administration took office on January 20, 2017, OCR had a backlog of 7,854 unresolved civil rights complaints. Over 3,000 of the unresolved, or pending, complaints were more than 180 days old. By the end of FY 2020, OCR had reduced the number of complaints that were more than 180 days to 2,588, and the overall number of pending civil rights complaints to 4,246 (Figure 4). Over the last four years, OCR has also reduced the number of cases older than 365 days. For the first time in the last 12 years, every one of OCR's regional offices reduced its number of complaints older than 365 days (Figure 5). As demonstrated by Figure 6, in just one year, OCR's regional offices collectively reduced the number of complaints older than 365 days by 435. For more information on OCR's complaint backlog from year to year, see Figures 4, 5, and 6.

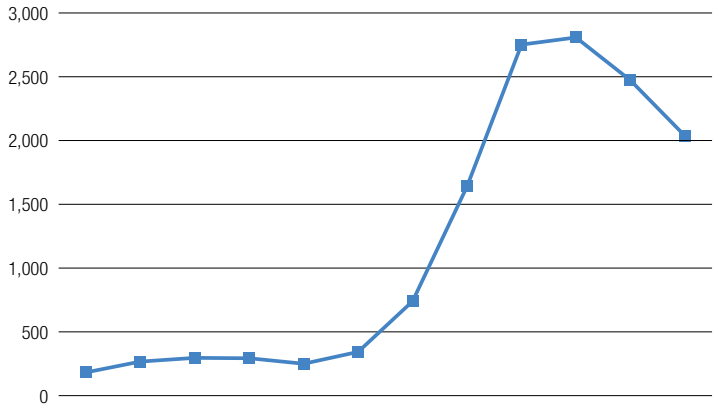
> *"The backlog of cases we inherited should have troubled everyone, as we know justice delayed is justice denied. While many have tried to distort the nature of our approach, the numbers don't lie. Our approach has been more effective at supporting students and delivering meaningful results."*
>
> U.S. Secretary of Education Betsy DeVos

Figure 5: Number of Regional Offices Each Year that Reduced the Number of Complaints More Than 365 Days Old



2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
6	2	5	5	8	2	0	0	0	6	10	12

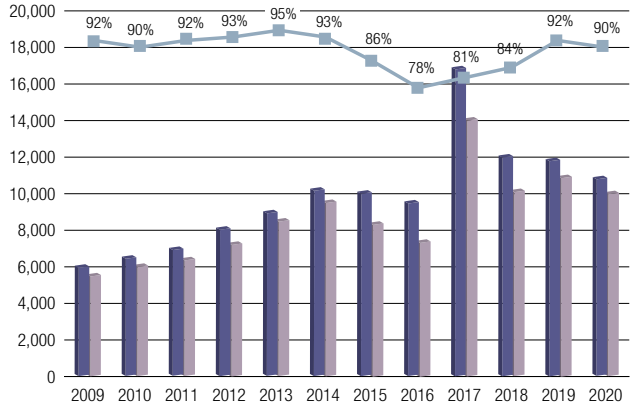
Figure 6: Pending Complaints > 365 Days at the End of Each FY



2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
182	267	296	293	250	343	740	1,640	2,752	2,808	2,472	2,037

Prioritizing the timely resolution of new complaints is one important way in which OCR can ensure that its backlog never again returns to the troubling numbers of the Obama Administration. Pursuant to the Government Performance and Results Act of 1993, OCR's goal has been to resolve at least 80 percent of complaints within 180 days of receipt. In FY 2020, each of OCR's regional offices achieved this goal for the second consecutive year. Collectively, the 12 regional offices resolved 90 percent of the 9,711 complaints received within the 180-day timeline (see Figure 7).

Figure 7: Percentage of OCR Complaints Resolved Within 180 Days



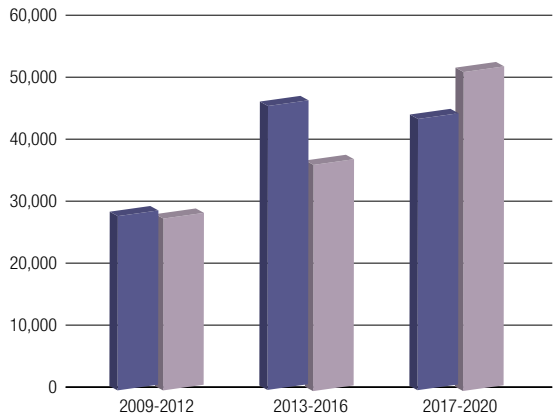
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Complaints reaching day 180 by end of fiscal year	6,167	6,671	7,159	8,051	9,251	10,551	10,004	9,823	17,476	12,453	12,250	11,191
Complaints resolved by day 180	5,684	6,025	6,580	7,491	8,790	9,864	8,649	7,625	14,185	10,474	11,303	10,070

Four Years of Achieving Real Results for Students

In addition to reducing the backlog of unresolved complaints left by the prior administration, OCR's regional offices also process the large volume of complaints received each year. Over the last 12 fiscal years, OCR has seen a 52 percent increase in the number of civil rights complaints filed annually. In FY 2009, OCR received 6,369 complaints alleging one or more violations of federal civil rights laws. In FY 2020, OCR received 9,711 of these complaints. Despite this increase, during the last four years, OCR has not only managed to keep pace with the large volume of complaints but has also strengthened the quality of complaint resolutions, effecting real change at schools across the nation and benefitting hundreds of thousands of students.

For four consecutive years, OCR's complaint resolutions have substantially outpaced the number of complaints received. During FYs 2017, 2018, 2019, and 2020, OCR received a total of 44,979 civil rights complaints and resolved 52,700 complaints. Under the prior administration, during FYs 2013–16, OCR received a total of 47,109 civil rights complaints. However, OCR only resolved 37,414 complaints during those same four years. As illustrated by Figure 8, OCR previously struggled to keep pace with the volume of complaints received, but it resolved 7,721 more complaints than it received during FYs 2017, 2018, 2019, and 2020.

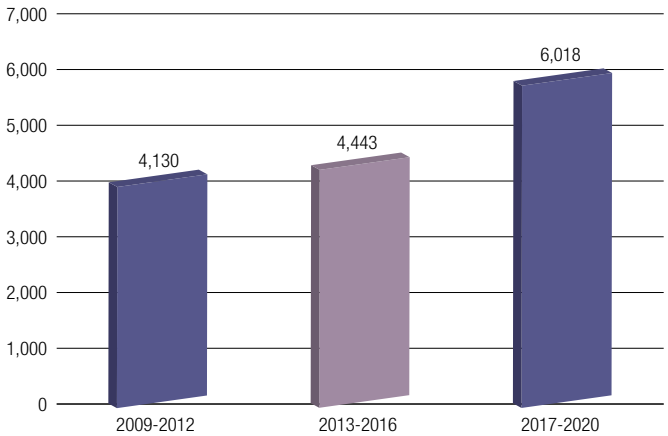
Figure 8: Complaints Received and Resolved



	2009-2012	2013-2016	2017-2020
Complaints received	28,979	47,109	44,979
Complaints resolved	28,577	37,414	52,700

OCR has also secured more complaint resolutions requiring schools to make substantive changes to remedy or otherwise address noncompliance with federal civil rights laws (resolutions with change). During FYs 2017–20, OCR resolved a total of 6,018 complaints with change. During the four fiscal years prior, the previous administration resolved 4,443 complaints with change, or 1,575 fewer resolutions with change than the current administration (see Figure 9). More specifically, under the current administration, OCR resolved 10,276 allegations of discrimination in 6,018 complaints with change during the past four fiscal years. This is over 2,000 more allegations resolved with change than OCR achieved

Figure 9: Complaints Resolved with Change



during FYs 2013–16 (see Figure 10). For more information on the number of complaints resolved with change over the past 12 years, including the type and number of complaint allegations resolved with change, see Figures 9 and 10.

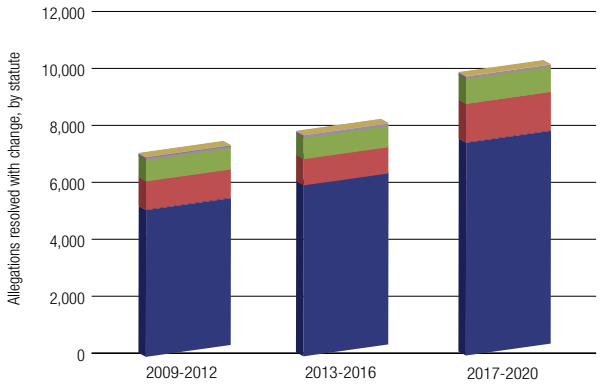
Proactive Investigations

OCR is permitted 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."

Under the Trump Administration, OCR has taken on an ambitious enforcement agenda. Over the course of FYs 2017, 2018, 2019, and 2020, OCR initiated a total of 748 proactive investigations—over seven times the number of proactive investigations initiated during FYs 2013, 2014, 2015, and 2016 and over three times the number of proactive investigations launched by the Obama Administration in all eight years combined (see Figure 11). In FY 2019, OCR launched over 20 compliance reviews as part of its initiative on the possible inappropriate use of restraint and seclusion on students with disabilities. In FY 2020, OCR launched another 24 compliance reviews across all 12 regional offices as part of a second nationwide initiative to address sexual violence in K-12 schools (discussed at greater length below). In addition to these compliance reviews, OCR launched 21 directed investigations in FY 2020 in response to receiving reports of compliance concerns at several schools, colleges, and universities.

OCR has also resolved over three times as many proactive investigations in four years than the prior administration resolved in all eight years combined (see Figure 12). Over the course of FYs 2017–20, OCR resolved a total of 413 proactive investigations. The prior administration resolved only 137 proactive investigations in all eight years combined (FYs 2009–16). In FY 2020 alone, OCR resolved 310 proactive investigations. This includes 300 directed investigations focused on issues of accessibility in online education, as well as one directed investigation and two compliance reviews of three prominent universities concerning their failure to respond to reports of sexual assault.

Figure 10: Complaint Allegations Resolved with Change, by Statute



	2009-2012	2013-2016	2017-2020
Other	6	7	16
Boy Scouts	1	19	2
Age	70	87	80
Title VI	878	821	957
Title IX	1,060	984	1,424
Section 504/Title II	5,378	6,295	7,797

Figure 11: Proactive Investigations Initiated

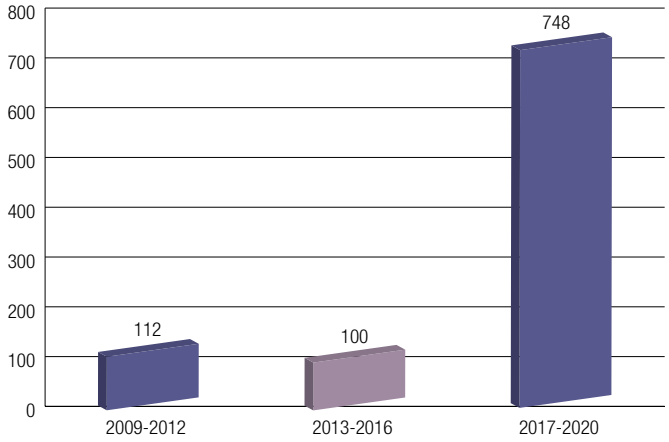
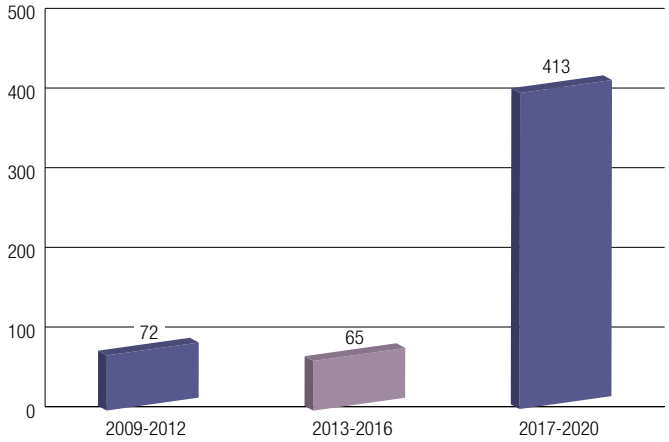


Figure 12: Proactive Investigations Resolved



Major Feature
COVID-19 Response

On March 13, 2020, President Donald J. Trump took decisive action to save American lives when he declared the COVID-19 outbreak a national emergency. In the days and weeks following this declaration, the COVID-19 pandemic forced students, teachers, parents, and school personnel to navigate unprecedented and difficult obstacles to education, including the eventual transition to online (or distance) learning. During the remainder of the 2019–20 academic year, school officials exercised their discretion to make educational decisions in the best interest of their students and based on local health concerns. The Department recognized that school districts and postsecondary schools nationwide had to make difficult decisions to protect the health, safety, and welfare of students and school staff, and the Department sought to support local education leaders where possible. The Department promptly made available emergency taxpayer funds authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, provided a streamlined process for states to submit waivers to opt out of federal testing requirements for the 2019–20 school year, and took steps to continue learning for all students. In addition, various offices within the Department, including OCR, delivered timely information to support states, school districts, K-12 schools, and colleges and universities so that they could provide much-needed assistance to educators, students, and families.

OCR provided critical guidance and technical assistance to support local education leaders and to ensure that schools were mindful of their continuing civil rights obligations as they responded to evolving circumstances. In the final months of FY 2020, states and school districts developed plans for the provision of high-quality instruction and educational services in preparation for a new school year. OCR continued to support these local decision-makers, and reminded them of their obligation to provide equal access to educational opportunities to all students consistent with the civil rights laws enforced by OCR. These efforts to supplement and support local education leaders during this unprecedented national emergency are described in more detail below.

The OPEN Center and COVID-19: Timely Provision of Technical Assistance

OCR began providing critical civil rights guidance related to COVID-19 before the national emergency declaration, and continued to support schools with technical assistance and other resources through the end of FY 2020.Through its newly established OPEN Center, OCR received questions and feedback of critical importance from schools and parents across the country and issued comprehensive technical assistance materials to help schools navigate the unprecedented challenges posed by COVID-19.

On March 4, 2020, OCR issued a "Letter to Education Leaders on Preventing and Addressing Potential Discrimination Associated with COVID-19," aimed specifically at combating stereotyping, harassment, and bullying directed at persons perceived to be of Chinese American or, more generally, Asian descent. This guidance, issued well in advance of the President's emergency declaration, implored educational institutions to take special care to ensure that all students are able to study and learn in an environment that is healthy, safe, and free from bias or discrimination, and reminded schools of their obligations under Title VI to respond to such discrimination.

To prevent learning from coming to a halt across America, OCR clarified in the early days of the pandemic that, although federal civil rights laws remained in effect, they should not stand in the way of schools' good-faith efforts to offer distance learning opportunities to all students, including students with disabilities. On March 16, 2020, OCR and the Office of Special Education and Rehabilitative Services (OSERS) released a joint technical assistance document entitled, "Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students." To reiterate the message that learning can and should continue, on March 21, 2020, OCR and OSERS released a "Supplemental Fact Sheet on Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities." Also in March 2020, OCR released a timely webinar on "Online Education and Website Accessibility" to help ensure that schools understood and considered their obligations under Section 504 and Title II as they prepared for the transition to online learning.

As a result of inquiries received by the OPEN Center, OCR also provided technical assistance tailored to different types of educational institutions and concerning schools' civil rights obligations more generally. In response to specific questions posed by postsecondary institutions, OCR issued "Questions and Answers for Postsecondary Institutions Regarding the COVID-19 National Emergency" on May 12, 2020. On July 9, 2020, OCR released a webinar, "Civil Rights and COVID-19," providing an overview of the resources available to assist schools as they navigate the COVID-19 pandemic. To ensure that recipients understood their continuing obligation to respond to reports of discrimination under federal civil rights laws during the pandemic, the OPEN Center also provided a blog post entitled, "Title IX Investigations Must Continue During the COVID-19 National Emergency," in addition to other blog posts outlining recipients' obligations during the COVID-19 pandemic.[7] Finally, as state education leaders and local school districts evaluated and monitored COVID-19-related developments over the summer months and began to make decisions regarding the provision of educational services for the 2020–21 school year, OCR's resources continued to remind local decision-makers to take into account their obligations under federal civil rights laws. To assist K-12 schools with providing the full benefit of educational opportunities for all students and meeting the requirements of federal civil rights laws, OCR issued "Questions and Answers for K-12 Public Schools in the Current COVID-19 Environment" on September 28, 2020.

Distance Learning and OCR's National Digital Access Team

As the nation faced distance learning challenges in FY 2020, OCR's National Digital Access Team (NDAT) was already well-established and thus well-positioned to help recipients ensure that their online learning platforms were accessible to all students, including those with disabilities. In addition to providing a webinar on ensuring web accessibility for students with disabilities for schools using online learning during the COVID-19 outbreak and publishing fact sheets for education leaders through the OPEN Center, OCR continues to utilize NDAT during the pandemic to help students, families, schools, recipients, and other stakeholders.

OCR's primary mission is to ensure equal access to education, including access for people with disabilities, in compliance with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). OCR's NDAT was created to promote consistency, efficiency, and timeliness in OCR's enforcement efforts in the complex and evolving area of digital accessibility. As a result of OCR's collaborative approach with schools, access to online programs and activities improved for students and other individuals with disabilities.

NDAT members use only consistent, validated protocols to help schools and libraries better understand how to remediate technological barriers to access for individuals with disabilities—or eliminate these barriers altogether. NDAT members provide in-depth investigations and offer recipients comprehensive, individualized technical assistance. Typically, NDAT members test a sampling of schools' websites or other online programs to identify barriers, including checking for appropriate keyboard access and navigation, semantic markup, visual focus indicators, color contrast, video captioning, and document accessibility. NDAT members then hold video conference calls with recipients to explain the impact of any identified concerns on the schools' own pages. During these conference calls, schools and libraries often remove barriers identified by NDAT in real time, learn during the process, and demonstrate their commitment to maintain accessibility. Recipients that need more time to come into compliance enter into resolution agreements wherein NDAT continues to work with them to ensure that access issues are addressed.

Of course, the mere presence of technological barriers to access does not mean that recipients have violated Section 504 or Title II. When NDAT 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 the recipients' digital programs, services, or activities. If, for instance, the same information or functionality is provided in an accessible way, or if equally effective alternative access is provided, recipients are in compliance with the laws enforced by OCR despite the presence of a technological barrier to access.

Long before the COVID-19 national emergency declaration and the eventual transition to online learning, NDAT was working to help recipients identify and correct accessibility issues associated with recipients' use of technology and online platforms. In FY 2020, NDAT closed 225 directed investigations after working with recipients to bring their online programs, services, and activities into compliance with the law. The team entered into 76 resolution agreements designed to bring additional recipients into compliance over the next year. In addition, the team closed the monitoring of 50 resolution agreements that had been entered into in previous years, as NDAT members aided recipients in their efforts to ensure that the allegations underlying those agreements had been fully remedied. Over the course of FY 2020, and despite various school closures, NDAT also received 18 new complaints alleging discrimination, five of which have been resolved with change to date.

NDAT's unique approach to providing technical assistance during its enforcement activities has been universally well-received by recipients. NDAT embodies OCR's deep commitment to ensuring equal access to education for people with disabilities and the Trump Administration's renewed focus on supporting school districts, colleges, and those closest to students, especially as they navigate the unprecedented circumstances presented by the national emergency.

RECOGNITION FROM RECIPIENTS

Following a February 2020 Skype meeting with a community college in Michigan to discuss NDAT's compliance concerns, the college's director of web services thanked NDAT, stating: "[T]hank you for what you do. What you and OCR do is vitally important. Going into the first call with you, I felt relatively comfortable that my site was in pretty good shape, but I didn't know for sure. After working through this process with you and making the adjustments you asked for, I now feel confident that my work will not cause any barriers for site visitors. And that gives me great peace of mind. So thank you."

Providing Flexibility to Recipients Where Possible

The Department recognizes the impact that the COVID-19 pandemic has had on SEAs, LEAs, and schools in providing educational and support services to students and parents. Because schools' obligations under federal civil rights laws cannot be suspended, since March, the Department has been considering other ways to support SEAs, LEAs, and schools, including providing flexibility where appropriate. Temporarily waiving certain mandatory reporting requirements was one way in which the Department sought to reduce the burden on recipients as they confronted the extraordinary circumstances created by the pandemic. The Department, including OCR, monitored COVID-19's impact on all data collections across the agency, including those administered by the National Center for Education Statistics.

As a result, and due to the impact that the COVID-19 pandemic has had on SEAs, LEAs, and schools, OCR proposed to postpone the latest collection of the CRDC by one year, from the 2019–20 academic year to the 2020–21 academic year. Based on the unprecedented burden on school districts due to the coronavirus and other concerns from school districts and stakeholders about conducting data collections during the COVID-19 pandemic, OCR sought to provide flexibility to school districts in the hope that they may provide more complete, accurate, and reliable data during the following school year, and may enjoy some reprieve during the height of the pandemic.

These actions, as well as the resources mentioned above, are some of the latest actions in the Department's ongoing effort to assist students, teachers, and education leaders as part of the Trump Administration's unprecedented, whole-government response to the coronavirus outbreak. 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 NDAT and OPEN Center. OCR's actions demonstrate this administration's commitment to work with recipients and meet their needs during the COVID-19 pandemic in a way that both supports recipients and protects students.

Major Feature
Significant Strides to Combat Sexual Violence in Schools

The Trump Administration has taken unprecedented steps to prioritize the issue of sexual violence in schools. Only a few months after her confirmation, Secretary of Education Betsy DeVos announced that the Department would amend the Title IX regulations to enshrine protections against sexual harassment in regulations for the first time since the law was enacted in 1972. In the months and years following, the Department conducted wide-ranging research, engaged in careful deliberation, and considered critical input from various stakeholders and the American people—including over 124,000 public comments—before announcing the Title IX Final Rule on May 6, 2020. The impact the Department has had in strengthening protections for students pursuant to Title IX is not limited to this historic rulemaking. At the same time that the Department was considering and developing the Title IX regulation, Secretary DeVos announced a new, nationwide civil rights initiative to combat sexual violence in K-12 schools. This initiative, aimed to address the alarming rise of sexual violence against our nation's most vulnerable students, was announced after OCR's 2019 investigation into Chicago Public Schools revealed the troubling pattern of student-on-student and staff-on-student sexual violence in the District.

Through its enforcement division, OCR also resolved a series of troubling cases involving Michigan State University, the University of Southern California, and Pennsylvania State University. Together with the corrective actions OCR required Chicago Public Schools to undertake, OCR's enforcement efforts at these postsecondary institutions not only demonstrate the importance of having a Title IX regulation that carries the full force and effect of law, but also highlight the impact that OCR's enforcement division has on hundreds of thousands of students.

Historic Title IX Rule

On May 6, 2020, Secretary DeVos took historic action and announced the Department's Title IX regulations, which for the first time enshrined protections for survivors of sexual harassment in regulations, and helped restore due process in campus proceedings to ensure that all students can pursue an education free from sex discrimination.[8] For the first time ever, the Department's Title IX regulations define sexual harassment, including sexual assault, as unlawful sex discrimination. The new Title IX regulations also hold schools accountable for failure to respond appropriately to sexual misconduct incidents, and ensure a more reliable adjudication process that is fair to all students. Finally, the new Title IX regulations provide long-awaited clarity to stakeholders and the public by codifying recipients' obligations to respond to sexual harassment and, importantly, what an appropriate response must entail. The regulation carries the full force of law, and provides a consistent and clear framework for adjudicating Title IX complaints on which survivors, the accused, and schools can rely.

The Department's Title IX regulation contains many important changes to how schools respond to reports of sexual harassment, a few of which are elaborated on below. For more information on the various changes contained in the regulations, visit the Department's newly launched Title IX Resources page.

THE TRUMP ADMINISTRATION'S HISTORIC AND COMPREHENSIVE EFFORTS TO COMBAT SEXUAL VIOLENCE

September 7, 2017: Secretary DeVos announces the Department's intention to amend the Title IX regulations through notice-and-comment rulemaking.

November 16, 2018: The Department issues its Title IX Notice of Proposed Rulemaking (NPRM), which proposed to codify, for the first time, recipients' obligations concerning sexual harassment under Title IX.

November 29, 2018: The Title IX NPRM is published in the Federal Register for public comment.

September 5, 2019: The Department levies a $4.5 million fine against Michigan State University and requires major corrective action following the university's systemic failure to address sexual abuse on campus by Dr. Larry Nassar.

September 12, 2019: The Department requires significant corrective action from Chicago Public Schools following OCR's determination that the district failed to address reports of student-on-student and staff-on-student sexual violence.

February 26, 2020: Secretary DeVos announces a new nationwide civil rights initiative to combat sexual violence in K-12 schools.

February 27, 2020: OCR requires the University of Southern California to take significant corrective action after OCR found that the university failed to protect students from Dr. George Tyndall for decades.

March 26, 2020: OCR requires Pennsylvania State University to make sweeping changes to its Title IX procedures in light of the university's failure to address reports of sexual violence in the wake of the Jerry Sandusky scandal.

May 6, 2020: The Department announces its Title IX Final Rule.

May 19, 2020: The Title IX Final Rule is published in the Federal Register.

August 14, 2020: The new Title IX Final Rule became effective.

Supporting Complainants and Respecting Complainants' Autonomy

The Title IX regulations include many new protections for survivors of sexual harassment, including sexual assault. The Title IX regulations require schools to support students who allege sexual harassment and protect their privacy while also respecting their autonomy. The regulations provide a new definition of sexual harassment that covers a wider range of

discriminatory conduct, and empower survivors to make decisions about how a school responds to their report of sexual harassment.

The Department's regulations, for the first time, define sexual harassment to include even a single instance of any of the following: sexual assault, dating violence, domestic violence, and stalking. Previously, OCR analyzed whether the complained of conduct was sufficiently "severe" or "pervasive" to trigger a school's obligations under Title IX. Now, each individual instance of sexual misconduct will constitute a per se incident of sexual harassment when the incident is based on sex. By defining sexual harassment to include these forms of sexual misconduct, Title IX will cover a wide range of serious violations of a person's bodily and emotional autonomy, regardless of how many times a specific type of incident occurs.

The Title IX regulation also includes important provisions supporting complainant autonomy. In the past, OCR required schools to always investigate any report of sexual harassment, even when the alleged victim, or complainant, did not want an investigation or a grievance process to commence. Under the new process, students will now have greater control over whether to file a formal complaint, thereby triggering the formal grievance process. Under the regulations, when a school learns that someone is alleged to be a victim of sexual harassment, the school must promptly contact the person and inform them of their right to request supportive measures, whether that person decides to file a formal complaint or not. The Title IX Coordinator must also explain to complainants that they have an option and a process for filing a formal complaint. Only when a complainant or their parent or guardian signs a formal complaint or the school's Title IX Coordinator signs a formal complaint is the school required to follow the grievance procedures required by the Title IX regulation. Importantly, the regulation also makes clear that a school may never pressure an individual into filing a formal complaint or into participating in a grievance process; similarly, a school may never pressure an individual into not filing a formal complaint or participating in a grievance process. These provisions and others ensure that every formal complaint must be taken seriously by the school and that every complainant is supported in the way that best suits their individual needs and preferences.

The new regulation also includes prominent features that protect important aspects of complainants' privacy. It contains a new provision requiring schools to adopt and abide by a written grievance process, and states that the school will never use or attempt to use questions or evidence that is protected by a legally recognized privilege, unless the person holding the privilege waives the privilege. This includes attorney-client privilege, patient-physician privilege, or any other privilege recognized by law. Another new protection is that during the grievance process, questions or evidence about the complainant's prior sexual behavior—even with the respondent accused of sexual harassment and even in cases where the respondent already possesses evidence about sexual history—are never deemed relevant except in two limited circumstances: to either prove consent or to prove someone other than the respondent committed the alleged sexual harassment.

Ensuring a Grievance Process that Is Fair to All Students

The Title IX regulations restore fairness to campus processes by upholding each student's right to a written notice of allegations, the right to an advisor of choice, and the right to submit, examine, and challenge evidence. The regulations were designed to ensure that both parties—complainants *and* respondents—are treated fairly in sexual harassment cases by guaranteeing them a consistent, predictable, and reliable grievance process. Through a number of new provisions, the Title IX regulation ensures that schools must operate free from sex discrimination, that complainants and respondents have specific procedural rights and protections, and that a school's grievance process is predictable, transparent, and free from bias.

First, the Title IX regulation lays out specific procedural rights and protections for both parties to a formal complaint to ensure that *both* sides receive a grievance process that complies with the terms of the regulations. As a fundamental part of that process, a school must ensure that *all* relevant evidence is evaluated objectively, whether it goes to prove or disprove responsibility for sexual harassment. Another key provision is that the respondent, or the individual accused of misconduct, cannot be presumed responsible for the alleged conduct prior to the grievance process. The regulations also require that the grievance process must end within a reasonably prompt time-frame. Finally, the Title IX regulations guarantee that all school personnel handling the process—the Title IX Coordinator, investigators and decision-makers, and those facilitating informal resolutions—must be free from conflicts of interest and bias and be trained to serve impartially, without regard to the sex of the individuals involved in a formal complaint or a party's status as a complainant or a respondent.

In addition to guaranteeing a fair and equitable grievance process, the new Title IX regulation also provides both parties a range of new protections while that process plays out, including but not limited to the following:

- Once a formal complaint is filed, the parties are entitled to written notice of the complaint and notice of the grievance process that will be employed.
- Each party has a right to an advisor of their choice, who may be an attorney.
- Both parties have the right to gather and present evidence on their behalf, and each party has an equal opportunity to present evidence.
- All parties must also be given an equal opportunity to review and respond to the evidence gathered during the investigation, including evidence gathered by the school, before the school can issue a final determination or investigative report.
- For postsecondary institutions, the regulations require the grievance process to include a live hearing, during which both parties, through their advisors, have the opportunity to ask the other party and witnesses—directly, orally, and in real time—any relevant questions and follow-up questions, including questions challenging credibility.
- At the conclusion of the grievance process, both parties must receive a written determination regarding responsibility that explains how and why the decision-maker reached their conclusions, describes any remedies for a complainant if a respondent is found responsible, and provides both parties an equal opportunity to appeal.

New Nationwide Initiative to Combat Sexual Violence in K-12 Schools

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.[9] This initiative is designed both to enhance OCR's enforcement of Title IX in elementary and secondary public schools and to raise awareness of schools' obligations to respond to all incidents of sexual harassment and assault. OCR's efforts under this initiative also build on the Department's work to implement the "Pass the Trash" provisions of the Every Student Succeeds Act, which prohibit schools from simply transferring or reassigning employees who have committed acts of sexual misconduct.

In addition to what OCR has learned from recent sexual violence investigations, data released as part of OCR's 2017–18 CRDC reveal a marked increase in the reported number of sexual violence incidents in K-12 schools, and demonstrate the need for OCR's initiative. For the 2015–16 CRDC collection year, schools and school districts reported 9,649 incidents of sexual violence nationwide. For the 2017–18 collection year, a total of 14,152 incidents of sexual violence were reported to the CRDC. This is a 53 percent increase in the number of incidents, compared to the 2015–16 reporting year.[10]

OCR's initiative on sexual violence in K-12 schools is comprehensive and includes four activities aimed at tackling the tragic rise of sexual misconduct complaints in K-12 schools. As one component of this initiative, OCR's enforcement division has launched nationwide compliance reviews in K-12 schools and school districts to examine how sexual assault cases are handled under Title IX—including sexual incidents involving teachers and school staff—and to correct any compliance concerns identified. Specifically, in each of the 24 compliance reviews, OCR staff review the school or district's handling of reports of sexual violence in recent years, and its Title IX policies and procedures for compliance with Title IX. OCR staff then identify any compliance concerns and work with schools to correct noncompliance either through voluntary resolution agreements or technical assistance, where appropriate.

OCR's initiative also focuses on raising awareness of the issue of sexual assault in K-12 schools, including making information readily available to educators, school leaders, parents, and families through webinars released by OCR's OPEN Center, as well as by providing technical assistance to recipients on the requirements under Title IX and its implementing regulations. To date, OCR has issued a "Short Webinar on Sexual Violence in Public Schools," which describes OCR's multifaceted initiative on sexual violence in public elementary and secondary schools; provided technical assistance in response to inquiries received by the Department in a "Questions and Answers for K-12 Public Schools in the Current COVID-19 Environment" document, which reminds schools of their continuing obligations under Title IX; and issued a long list of resources (including webinars, blog posts, fact sheets, and a Questions and Answers document) to help recipients and the public understand the new protections for students and new obligations for schools under the Department's Title IX regulations.

The third and fourth components of OCR's initiative are focused on improving the quality of sexual violence/offenses data collected as part of the CRDC. During FY 2020, OCR initiated data quality reviews of the sexual assault/offenses data submitted by school districts during the 2017–18 CRDC. As part of this process, OCR examined districts' data submissions for both the offenses data module and the harassment and bullying data module to determine if any districts had submitted anomalous data. OCR then reached out to 50 school districts that reported seemingly anomalous sexual offenses data, and worked with many of the districts to submit corrected data.

Relatedly, the fourth and final component of this important initiative aims to expand future collections to include more detailed data on sexual offenses in K-12 schools. In FY 2020, OCR formally proposed revising the CRDC to solicit data on the number of sexual misconduct incidents perpetrated by school staff and data on the outcome of any disciplinary process or formal review following allegations made against staff. The proposed inclusion of this data reflects OCR's commitment to ensuring that school districts understand how to effectively respond, under Title IX, to complaints of sexual harassment and assault, including sexual acts perpetrated upon students by teachers, school staff, and personnel. The proposed inclusion of this data also reflects OCR's commitment to a broader Department-wide initiative to raise awareness of the requirement under the Every Student Succeeds Act, which prohibits SEAs, school districts, schools, and school employees from assisting an individual in obtaining new employment if the individual has engaged in sexual misconduct with a student or minor, a phenomenon otherwise known as "Pass the Trash." With the inclusion of this data, the CRDC would become the first universal collection to gather such data systemically, by school.

RECENT SEXUAL VIOLENCE INVESTIGATIONS RESULTING IN SWEEPING REFORMS

Pennsylvania State University

On March 26, 2020, the Department announced that OCR resolved its comprehensive compliance review of Pennsylvania State University (Penn State) and was requiring major changes at the university as a result.[11] Through its investigation, OCR examined the university's handling of sexual assault complaints to determine if the university had responded appropriately to complaints of sexual abuse in the wake of the Jerry Sandusky scandal. OCR's investigation focused on Penn State's handling of reports of sexual harassment, including sexual assault, at its eight campuses. OCR reviewed university policies and procedures for resolving allegations of sexual harassment effective during the 2011–12 through 2019–20 academic years, and conducted reviews of files regarding complaints of sexual harassment.

OCR's investigation revealed that Penn State 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 employed by the university to ensure fair and appropriate investigation of complaints. Specifically, OCR found that Penn State violated Title IX in several ways:

- During the 2016–17 academic year for student complaints and the 2015–16 and 2017–18 academic years for complaints first reported to the Athletic Department, Penn State failed to appropriately respond to complaints of sexual harassment;
- During the 2016–17 academic year, Penn State failed to maintain records necessary for OCR to determine whether the university complied with Title IX, and Penn State continued to fail to implement adequate record-keeping practices; and
- During the 2019–20 academic year, Penn State's Title IX policies and procedures failed to provide adequate notice to students and employees, did not ensure fair and appropriate investigation of complaints, and did not provide designated and reasonably prompt time frames for the major stages of the complaint process.

To address the serious deficiencies unearthed by OCR's investigation, OCR and Penn State entered into a resolution agreement. Pursuant to the resolution agreement, Penn State agreed to provide for individual remedies for instances where it had not appropriately responded to complaints of sexual harassment; review and revise its Title IX policies to ensure that they provide for an appropriate response to complaints of sexual harassment; revise its record-keeping practices to ensure that university staff adequately and accurately document all complaints of sexual harassment and the university's response to such complaints; provide additional Title IX training for university staff; notify participants in youth programs and their parents or guardians that Title IX prohibits sexual harassment against youth participants; and report to OCR on its processing of sexual harassment complaints for the 2019–20 and 2020–21 academic years.

University of Southern California

On February 27, 2020, the Department announced that OCR resolved a directed investigation of the University of Southern California (USC). OCR required sweeping changes to USC's Title IX procedures after finding the university failed, for decades, to protect students from sexual harassment committed by Dr. George Tyndall, formerly employed as a gynecologist at USC's student health center.[12] OCR opened its directed investigation on May 24, 2018, following news articles detailing Dr. Tyndall's long history of sexual misconduct. OCR investigated whether USC received notice of allegations of misconduct by Dr. Tyndall, whether the university failed to respond appropriately, and, if so, whether the failure to respond subjected female students to continuing sex discrimination.

In its investigation, OCR, found that USC failed to respond appropriately to notice of possible misconduct by Dr. Tyndall, and that the university's failure to respond allowed female students to be subjected to continuing sexual harassment, including sexual assault. OCR also found that USC failed to maintain a record-keeping system to identify and monitor incidents of possible sex discrimination by its employees. Specifically, OCR discovered:

- USC received reports from five patients of possible misconduct by Dr. Tyndall from 2000 to 2009 and failed to investigate those reports, assess whether interim measures were needed, or take steps to prevent the recurrence of the conduct;
- USC failed to investigate whether Dr. Tyndall's photographing of patients and his possession of over 200 photographs of patients' genitals constituted sex discrimination; and
- USC failed to investigate complaints in 2016 that Dr. Tyndall conducted pelvic examinations without gloves and digitally penetrated patients during examinations and full-body skin checks.

To address the serious deficiencies uncovered, OCR entered into a resolution agreement with the university, under which USC agreed to overhaul its Title IX processes, conduct a formal review of current and former employees, and allow OCR to monitor its compliance for three years. Specifically, USC agreed to, among other things:

- Ensure that its Title IX coordinator and Title IX office have the independent authority to respond to reports of sex discrimination;
- Ensure that the Title IX office tracks and monitors every complaint or report of sex discrimination, and provides to OCR documentation of such reports;
- Contact nine patients who complained of misconduct by Dr. Tyndall, and notify current and former students and employees who may have interacted with him to offer remedies for any harm;
- Change its Title IX procedures to ensure that all parties receive due process, and to require specialized training for health center employees; and
- Conduct a review of current and former employees to determine whether they took appropriate action in response to concerns regarding Dr. Tyndall.

Major Feature
The Religious Liberty and Free Inquiry Final Rule

During the past year, the Department took historic action to implement Executive Order 13864, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities. Secretary DeVos delivered on her promise to protect free inquiry and religious liberty on campus by publishing the Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities Final Rule (Religious Liberty and Free Inquiry Final Rule). This rulemaking followed months of careful deliberation and extensive input from stakeholders, represented by over 17,000 public comments.

The Religious Liberty and Free Inquiry Final Rule ensures that public institutions of higher education uphold the fundamental rights of students and student organizations guaranteed by the First Amendment to the U.S. Constitution. It likewise requires private colleges and universities to live up to their articulated ideals of free expression, free inquiry, and diversity of thought for both students and teachers.

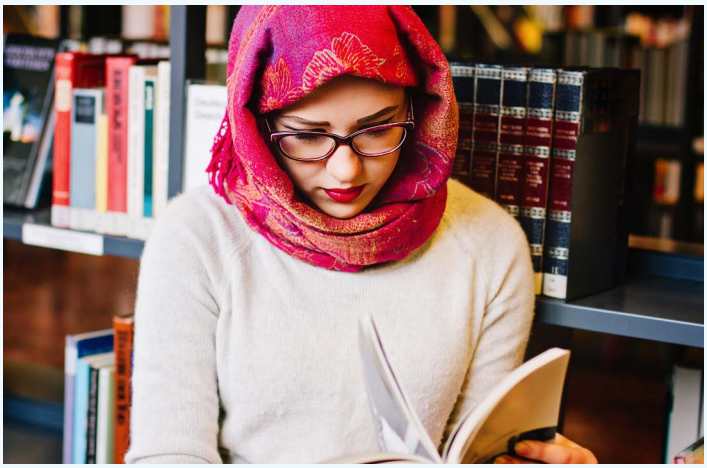
The final rule also ensures the equal treatment of religious student organizations at public institutions, and provides much-needed clarity for faith-based institutions with respect to their non-discrimination duties under Title IX. Among the Department's goals in this rulemaking process were the elimination of the untenable choice faced by many institutions controlled by a religious organization: maintain their religious beliefs or participate in Department grants and programs.

Clarification of Title IX Religious Exemption

In its rulemaking, the Department recognized that educational institutions, stakeholders, and the public would benefit from greater clarity concerning religious exemptions to Title IX's non-discrimination requirements, as well as greater transparency as to what factors the Department considers when evaluating a school's invocation of this religious exemption. This clarification will also assist OCR in its vigorous enforcement of Title IX's non-discrimination provisions and its efforts to ensure fairness in interscholastic athletics.

For the first time, the Religious Liberty and Free Inquiry Final Rule codifies how an educational institution may demonstrate that it is "controlled by a religious organization" for purposes of Title IX, 20 U.S.C. § 1681(a)(3). Federal law already provides that Title IX "shall not apply" to educational institutions that are "controlled by a religious organization," to the extent that application of Title IX "would not be consistent with the religious tenets of such U.S. Department of Education Religious Liberty and Free Inquiry Final Rule organization."[13]

Likewise, federal regulations echo the fact that Title IX does not apply to certain schools "controlled by a religious organization."[14] Before the final rule was promulgated, neither Title IX nor its implementing regulations had ever defined what it meant to be "controlled by a religious organization." Now, the Department's regulations give schools and other stakeholders clarity on the meaning of this phrase. The final rule includes a non-exhaustive list of criteria that an educational institution may use to satisfy the definition of "controlled by a religious organization." As



such, the Religious Liberty and Free Inquiry Final Rule gives fair notice to stakeholders and to the public of when the religious exemption under Title IX applies and balances the Department's interest in securing religious freedom for educational institutions with its interest in ensuring vigorous enforcement of Title IX's prohibition of discrimination on the basis of sex.

Additional Areas Addressed by the Department's Final Rule

In its Religious Liberty and Free Inquiry Final Rule, the Department makes clear that public colleges and universities must comply with the First Amendment as a requirement to receive Department grants. Under the final rule, private institutions of higher education must also comply with their own stated institutional policies regarding freedom of speech, including academic freedom, as a requirement of Department grants. Due to the well-developed body of case law by state and federal courts on First Amendment rights and violations of stated institutional policies, the Department will rely upon a final, non-default judgment by a state or federal court to determine whether a public or private institution has violated these material grant conditions.

In addition, the final rule ensures equal treatment of religious student organizations at public colleges and universities. As a requirement of the Department's grants, public colleges and universities must not deny to a religious student group any of the rights, benefits, or privileges that other student groups enjoy. For example, a religious student group must have the same rights and opportunities as other student groups at the public institution to receive official recognition, use the institution's facilities, and receive student fee funds. As a result of this rulemaking, equal treatment of religious student groups is now a material condition of the Department's grants.

Finally, the final rule revises regulations governing some discretionary grant programs under Titles III and V of the Higher Education Act of 1964, as amended, to better align with the First Amendment and other federal laws. Prior regulations could prohibit a school from using such a grant for even secular activities or services such as teaching a course about world religions. The Religious Liberty and Free Inquiry Final Rule more narrowly tailors the prohibition on the use of these grants to religious instruction, religious worship, or proselytization. The final rule also more narrowly defines a "school or department of divinity" to clarify that institutions are not prohibited from using grants for a secular department of religion.

Title IX: Discrimination Based on Sex

Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., prohibits discrimination on the basis of sex in education programs 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, and retaliation for filing a complaint.

Key Facts

In FY 2020, OCR received 2,871 complaints containing 3,491 alleged Title IX violations, and resolved 3,624 Title IX allegations in 2,903 complaints. Of these resolutions, 330 Title IX allegations raised in 224 complaints were resolved with change. The largest number of Title IX allegations involved discrimination in athletics, sexual harassment (excluding sexual violence), different treatment based on sex, retaliation, and sexual violence. See Figure 13 for specific information on the variety of Title IX allegations received and resolved by OCR during FY 2020. In addition, OCR resolved three proactive Title IX investigations, including two systemic sexual violence investigations at prominent universities—one compliance review involving Penn State, and a directed investigation at USC.

Over the course of the four fiscal years under the Trump Administration (FYs 2017–20), OCR achieved a steady increase in Title IX resolutions with change when compared to either four-year term under the Obama Administration (FYs 2009–12 and FYs 2013–16). In FY 2020, the number of Title IX allegations resolved with change once again far exceeded the prior administration's average number of Title IX allegations resolved with

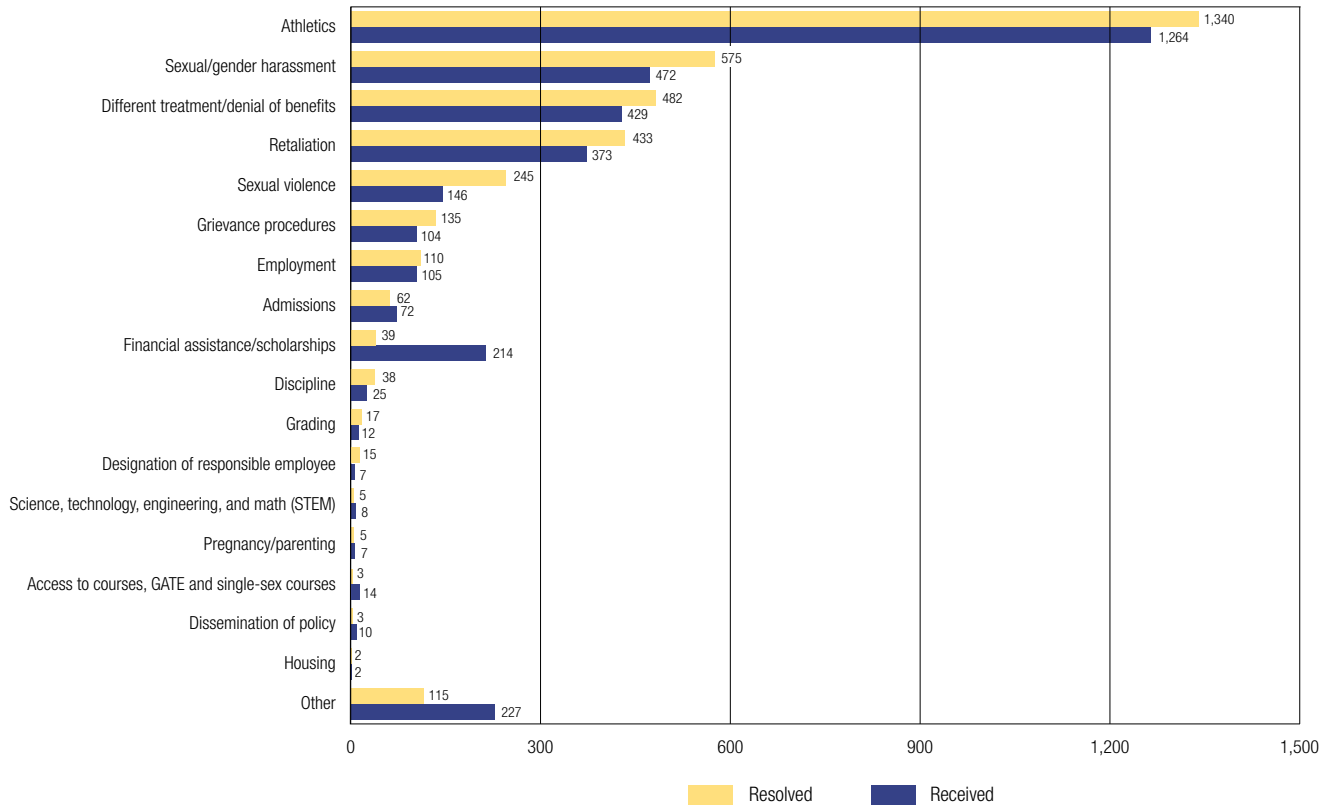
BY THE NUMBERS

In FY 2020, OCR

- Received 2,871 Title IX complaints*
- Resolved 2,903 Title IX complaints
- Resolved 330 Title IX allegations in 224 complaints with change

*1,121 of the 2,871 complaints received were filed by a single individual between February and March 2020.

Figure 13: Title IX Allegations* Received and Resolved in FY 2020



* Unless otherwise specified, the term *allegations* as used in the title of this and subsequent graphs refers to *complaint* allegations.

change during the prior eight years. As demonstrated by Figure 14, during the first four years under the Obama Administration, OCR resolved 1,060 Title IX allegations with change, or an average of 265 Title IX allegations with change per year. During the prior administration's second term, OCR resolved only 984 Title IX allegations with change, or 246 allegations with change per year. By contrast, under the current administration, OCR resolved a total of 1,424 Title IX allegations with change during FYs 2017–20, or an average of 356 Title IX allegations per year. This is a 34 percent increase over the Obama Administration's first term in office, and a 45 percent increase over its second term. These increases in allegations resolved with change occurred across Title IX issue areas, the most notable of them being sexual violence, sexual harassment, and different treatment.[15]

During the four fiscal years under the current administration, OCR more than tripled the total number of sexual violence allegations resolved during the last four years of the Obama Administration. During FYs 2017, 2018, 2019, and 2020, OCR resolved 1,035 sexual violence allegations, compared to a total of 269 allegations resolved during FYs 2013, 2014, 2015, and 2016. OCR also achieved nearly a sixfold increase in the number of sexual violence resolutions with change under the Trump Administration. Over the course of FYs 2017–20, OCR resolved a total of 231 sexual violence allegations with change—190 more sexual violence allegations resolved with change than during the prior administration's second term (see Figure 15). In FY 2020 alone, OCR resolved nearly as many sexual violence allegations by requiring corrective action to protect students' civil rights (73 sexual violence allegations) than the Obama Administration resolved in all eight years, or both terms, combined (76 sexual violence allegations).

The total number of resolved sexual harassment (excluding sexual violence) allegations increased 81 percent during the last four years under the current administration, compared to the total number of sexual harassment allegations resolved during the last four years under the Obama Administration. During FYs 2013, 2014, 2015, and 2016, OCR resolved 1,333 sexual harassment allegations, compared to the 2,411 sexual harassment allegations OCR resolved over the course of FYs 2017, 2018, 2019, and 2020. OCR also achieved a 50 percent increase in the number of sexual harassment allegations resolved with change under the Trump Administration, compared to the second term of the Obama Administration. During FYs 2017–20, OCR resolved 258 sexual harassment allegations with change—86 more allegations than the Obama Administration resolved during FYs 2013–16 combined (see Figure 16).

Under the Trump Administration, OCR resolved more allegations of different treatment based on sex in four years than the prior administration resolved in all eight years combined. During the course of FYs 2017, 2018, 2019, and 2020, OCR resolved a total of 2,066 allegations of different treatment based on sex—891 allegations more than the Obama Administration resolved during its second term and 1,378 allegations (over three times) more than the prior administration resolved during its first term. Likewise, the current administration saw a 66 percent increase in the number of different treatment allegations resolved with change when compared to the prior administration's second term and nearly a 200 percent increase when compared to its first term. Under the Trump

Figure 14: Title IX Allegations Resolved with Change

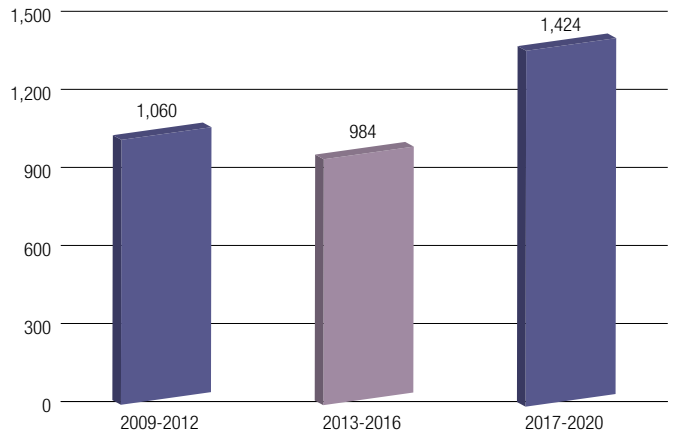
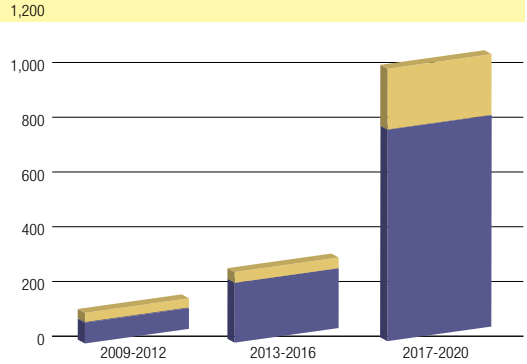
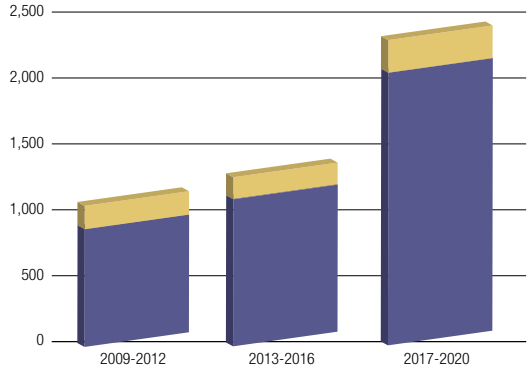


Figure 15: Allegations of Sexual Violence Resolved



	2009-2012	2013-2016	2017-2020
Allegations resolved with change	35	41	231
Allegations resolved without change	79	228	804

Figure 16:
Allegations of Harassment or Bullying Based on Sex Resolved



	2009-2012	2013-2016	2017-2020
Allegations resolved with change	185	172	258
Allegations resolved without change	931	1,161	2,153

Administration, OCR resolved more allegations of different treatment with change in four years than the prior administration resolved during all eight years, or both terms, combined (see Figure 17).

The complaints and compliance reviews summarized below are a small but representative sample 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.

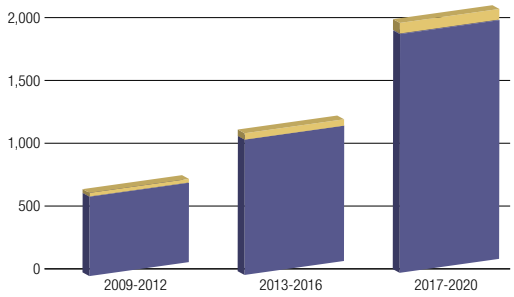
Case Summaries

Protecting Students of All Ages from Unlawful Sexual Harassment, Including Sexual Assault

Case 1: OCR resolved a Title IX compliance review from 2013 that investigated a university's handling of complaints of sexual harassment, including sexual violence. OCR reviewed the university's sexual harassment and sexual misconduct policies and procedures, analyzed files relating to the university's response to complaints of sexual misconduct, interviewed numerous university staff members, and conducted on-site visits. Based on OCR's review of all of the information, OCR had compliance concerns regarding an inconsistency in providing both parties notice of the outcome of the Title IX process, the issuance of no-contact orders to respondents only and prior to a finding of responsibility without a case-specific assessment, a failure to provide respondents with adequate information concerning the nature of the allegations against them in the initial notice, and delays in various steps of the Title IX process. Prior to the completion of OCR's investigation, the university voluntarily agreed to enter into a resolution agreement with OCR pursuant to Section 302 of OCR's CPM. In the resolution agreement, the university agreed to, among other actions, revise its notice of non-discrimination, ensure that it continues to notify employees and students of the current names and contact information for its Title IX Coordinators, and maintain a procedure for documenting each report or complaint of discrimination on the basis of sex. OCR is currently monitoring the university's compliance with the agreement and Title IX.

Case 2: OCR resolved a complaint alleging discrimination on the basis of sex when a school district failed to respond appropriately to an incident that occurred on a district school bus involving a male student forcing another male student to perform oral sex on him while a third male student videotaped the sexual assault. Based on information gathered from the complainant, school personnel, and the district's superintendent, OCR determined that the district violated Title IX when it failed to complete an adequate investigation of the incident, and failed to provide notice of the outcome of the investigation to the complainant. Specifically, OCR found that the district's Title IX Coordinator did not conduct an investigation into the incident or follow up on the police investigation of the incident, that the district did not notify the complainant of any outcome of an investigation or other actions taken in response to the complaint, and that the district had not provided Title IX training to staff, including the district's Title IX Coordinator. OCR also had compliance concerns that the district did not maintain records sufficient for OCR to assess compliance with Title IX. The district entered into a resolution agreement to address the violations and compliance concerns. Pursuant to that agreement, the district agreed to provide training to responsible administrators and staff,

Figure 17:
Allegations of Different Treatment Based on Sex Resolved



	2009-2012	2013-2016	2017-2020
Allegations resolved with change	30	53	88
Allegations resolved without change	658	1,122	1,978

offer for the complainant to meet with the Title IX Coordinator to discuss the district's handling of the investigation into his complaint, and develop and implement a record-keeping system sufficient to provide evidence of compliance with Title IX.

Safeguarding Due Process and Ensuring a Prompt and Equitable Response

Case 1: OCR resolved a complaint alleging that a college discriminated against a complainant, on the basis of his sex, by failing to respond appropriately to a complaint of sexual assault that a female student filed against him. After investigation, OCR determined that the college failed to provide an appropriate process in the adjudication of the female student's complaint against the complainant in violation of Title IX. Specifically, OCR found that the college failed to provide the complainant with notice of sufficient details regarding the facts and circumstances forming the basis for the student's complaint against him with sufficient time prior to his initial interview; that the Title IX Coordinator allowed the female student to review and edit interview notes from their initial interview, but the Title IX Coordinator did not take notes during the interview of the complainant; that the investigator allowed the female student to draft a written "voluntary statement" but did not provide the same opportunity to the complainant; that the investigator conducted a follow-up interview with the student but not with the complainant; that the assistant director only advised the female student that she did not have to respond to questions with which she was uncomfortable; that the board sat the female student directly in front of them during the board hearing but sat the complainant behind a privacy screen; and that the college failed to state a basis for any of its determinations throughout the process, including after the administrative hearing, board hearing, and appeal.

To address the various violations, the college entered into a resolution agreement that requires the college to vacate its findings, investigative report, determinations, and suspension related to the female student's complaint filed against the complainant and expunge from the complainant's records any and all references to his suspension related to the complaint. The agreement also requires the college to refund all monies that the complainant paid to the college for housing during the

summer of 2018, and to extend to the complainant a written offer for immediate readmission. In addition, the agreement requires the college to extend to both the complainant and the female student written offers to provide, within 30 calendar days, any additional information, including written statements for themselves and/or any witnesses relevant to the complaint before it re-adjudicates the complaint against the complainant. The college also agreed to ensure that any college staff assigned to participate in any stage of the re-adjudication of the female student's complaint had not previously participated in any stage of the college's previous adjudication against the complainant and that the investigative report that was prepared in the previous adjudication shall not be considered in the re-adjudication. Finally, the agreement requires the college to provide training to all staff directly involved in processing, investigating, adjudicating, and/or resolving complaints of sexual harassment or assault.

Case 2: OCR investigated a complaint that alleged, in part, that a district subjected a student to discrimination on the basis of sex when it failed to provide an appropriate response to a parent's report that a student (her daughter) had been sexually assaulted in the girls' restroom by a biologically male student who identified as "gender fluid," and who was permitted access to use the girls' restroom pursuant to the district policy that permits students access to facilities, including restrooms, that correspond to their "gender identity," which meant that a biological male student was permitted to use the girls' restroom at those times when the student identified as a female. OCR found that the district's response to the parent's report of sexual assault violated Title IX. Specifically, OCR determined that the district took no further steps to determine what occurred, and instead deferred to a safety resource officer and an investigation by the state's Division of Family and Children Services. After the safety resource officer indicated that there would be no further criminal inquiry, the district did not resume its investigation. The district failed to ascertain anything from the Division of Family and Children Services investigation concerning the alleged incident and, aside from a general public announcement, never communicated the outcome of any investigation to the parents of the students involved. Finally, OCR concluded that the district had knowledge of, but likely failed to respond to, at least two other reported incidents of harassment in the bathrooms involving the same biologically male student.

To address the violations, the district entered into a resolution agreement with OCR, in which the district agreed to develop a grievance process to ensure that it responds to each complaint alleging any action that violates or may violate Title IX, maintain complete and accurate records of each of such complaints, and inform the district's Title IX Coordinator of all such complaints, including those complaints that the district refers to another entity. The district also agreed to provide OCR copies of all records of Title IX complaints that the district receives during the following school year and to solicit information from parents or guardians, teachers, counselors, and administrators regarding any alleged incidents of sexual harassment of students in school bathrooms. Finally, the district agreed to offer to have a qualified counselor meet with the female student to determine whether any inaction by the district in responding to the alleged incident resulted in harm to her apart from the incident itself, and to identify what services may be offered to her to address any such harm.

Case 3: OCR resolved a complaint alleging that a college discriminated against a student on the basis of sex by failing to provide an appropriate response to the student's report of sexual harassment. The complainant alleged, in part, that the college failed to provide her daughter (the student) with a prompt and equitable response to her daughter's report that another female student subjected her to unwanted touching and comments based on sex. Based on evidence that the school did not conduct an adequate inquiry to reliably determine what had occurred, OCR found that the college's response to the student's report was inadequate and constituted a violation of Title IX. The college's investigation primarily consisted of a five-minute conversation with the student accused of the conduct at issue, and there was no evidence that the college attempted to corroborate the student's allegations with eyewitness testimony. OCR also had concerns that the college lacked adequate grievance procedures and failed to consider whether the student needed interim supports while her complaint was being evaluated and make any findings concerning whether the alleged harassment occurred. The college entered into a resolution agreement with OCR that required it to arrange for its staff to receive adequate Title IX training, issue guidance to its staff on its revised Title IX policies and procedures, and adopt and publish grievance procedures that comply with Title IX.

Case 4: OCR resolved a complaint alleging that a college discriminated against a student on the basis of sex when the college failed to respond appropriately to allegations that the student sexually assaulted another student. Specifically, the complainant alleged that his son, the accused student, was treated unfairly during the adjudication of a sexual misconduct complaint filed against him by another student. While OCR's preliminary investigation found that the college responded promptly to the allegations, OCR had concerns that the student may not have been provided an adequate opportunity to respond to the evidence upon which the college's determination was based and that the college failed to properly consider many points the student raised on appeal. Before the completion of OCR's investigation, the college expressed an interest in resolving the complaint through a voluntary resolution agreement. Pursuant to that agreement, the college agreed to inform the parties of its intention to reopen the internal Title IX investigation if either party expressed interest. The college also agreed to meet with the student to discuss the points raised in his appeal, discuss the evidence the college allegedly overlooked, and offer the student a prompt and equitable investigation of his concerns.

Ensuring Equal Opportunities for Members of Both Sexes in Programs and Activities, Including Athletics

Case 1: OCR resolved a complaint alleging that a university discriminated against boys when it hosted its annual Science, Technology & Engineering Preview Summer (STEPS) Camp for Girls, a girls-only summer program that excluded boys from participation. The evidence that OCR obtained from the university indicated that the STEPS Camp, as described by the university's website at that time, was "a day-camp preview of science, engineering, and technology for young ladies between the 6th and 7th grades"—i.e., that the camp engaged in sex discrimination because it was exclusively for girls. Prior to the completion of OCR's investigation, the university voluntarily agreed to end its discriminatory practices and to enter into a resolution agreement to resolve the complaint. Pursuant to the resolution agreement, the university agreed to ensure that the camp was open to both sexes and to make the necessary changes to the promotional materials, any content on the website advertising the camp, and the operation of the camp so that a reasonable person would infer that the camp was open to members of both sexes. OCR has completed its monitoring of the university's implementation of the agreement.

Case 2: OCR resolved a complaint alleging that a school district discriminated on the basis of sex by failing to provide female students in the high school's athletics program with equal athletic opportunities. Specifically, the complaint alleged that the district offered only four sports for female students at the high school, but five sports for male students; that female softball athletes have fewer games scheduled than the number allowed by the state high school athletics authority, while male athletes on the baseball team play more games; that softball athletes practice less often than baseball athletes ahead of a new season; that members of the female softball team are not permitted to be enrolled in athletics during the offseason, but that male athletes on the baseball team are allowed to remain in athletics during the offseason; that female athletes have to schedule their practice times around the male athletes' practice schedule; and that female athletes do not have access to their own weightlifting facility, but male athletes have access to weights and indoor training. OCR's investigation revealed that despite making up 52 percent of the enrollment at the high school in question, female students were only

offered 45 percent of the athletic opportunities. In addition, OCR found that girls' athletics teams practiced during second period each day, while boys' athletics teams practiced during their athletics period, indicating that the school favored male athletes with regard to the time of day that practices were scheduled. Based on the foregoing, OCR had compliance concerns, and the district expressed an interest in voluntarily resolving the complaint through a resolution agreement. Pursuant to the resolution agreement, the district agreed to evaluate the number of full-time enrolled students in grades seven through 12 by sex to comply with Title IX, create a corrective action plan that includes a description of interim steps to be taken during the school year, conduct an assessment of the scheduling of games and practice time by sport and by sex, and provide equivalent benefits and opportunities to female and male students with respect to the provision of locker rooms and practice and competitive facilities.

Case 3: OCR resolved a complaint alleging that a university discriminated against middle school male students on the basis of sex by hosting a Girls Math & Technology Program that was restricted to female participants. Based on OCR's review of the information submitted by the parties, OCR had compliance concerns based on the fact that the promotional and recruitment materials for the program, including the title of the program, used the term "girls" when referring to participants or registrants, indicating potential exclusion of male students from the program and discouraging males from applying and/or participating in the program. Prior to the completion of OCR's investigation, the university expressed an interest in voluntarily resolving the complaint through a resolution agreement. Pursuant to the agreement, the university agreed to change the name of the program to eliminate any suggestion that it is for only one of the sexes, and to modify its registration process and recruitment activities for the program to ensure that all materials clearly communicate that the program is open to males and female students regardless of sex.

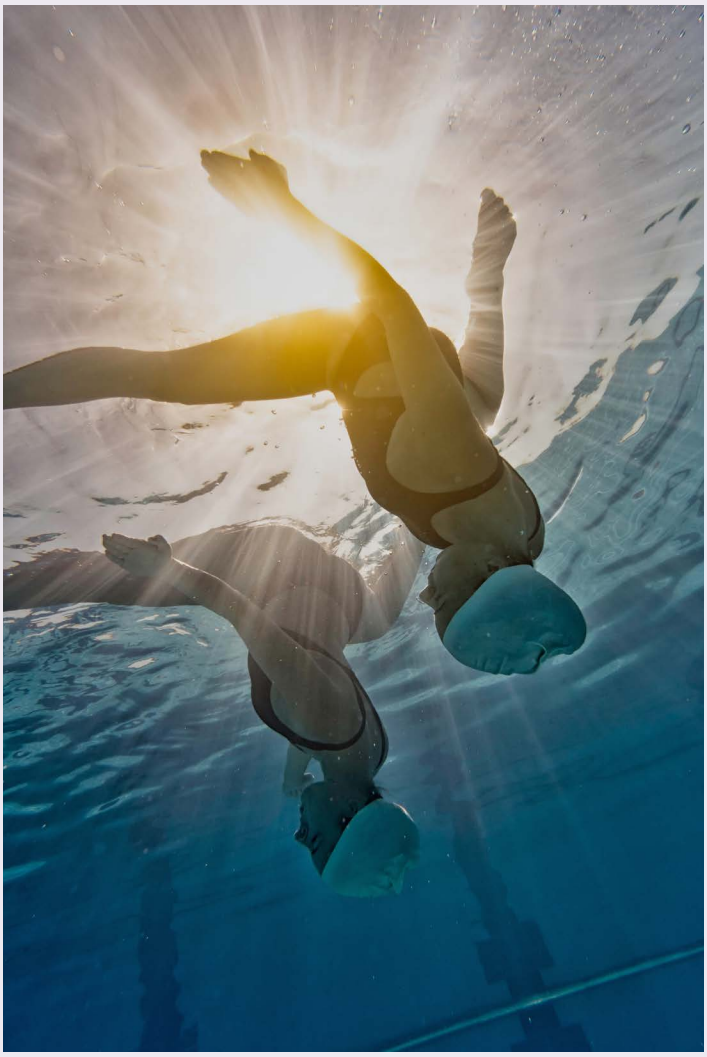
Issue Spotlight
OCR's Commitment to Protecting Women's and Girls' Athletics

Since its passage, Title IX and its implementing regulations at 34 C.F.R. Part 106 have ensured that educational environments are free from discrimination on the basis of sex. Title IX was intended to, and has, dramatically increased both educational and athletic opportunities for women and girls, as it requires recipients that operate or sponsor athletic programs to provide equal athletic opportunities for members of both sexes. The Department's Title IX regulations expressly permit schools to "operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport."[16] Indeed, such separate-sex teams have long ensured that female student athletes are afforded an equal opportunity to participate.[17] According to OCR's CRDC, in the 2017–18 school year, nearly 2.5 million female athletes participated in girls' athletic programs in K-12 public schools. Title IX has paved the way to securing these opportunities for women and girls. Today, nearly 50 years after the issuance of the first Title IX regulations, which were designed to protect women's and girls' interscholastic athletics, this has once again become a critical priority for OCR as recipients are now permitting biological males who identify as females to compete against and alongside female student athletes.

In June 2019, OCR received a complaint filed by Alliance Defending Freedom that alleged that the Connecticut Interscholastic Athletics Conference (the CIAC) and the Glastonbury Board of Education had denied equal athletic benefits and opportunities to female students, in contravention of Title IX, by permitting biological males who identify as transgender females to compete and participate in track meets for the female team. Five months later, in November 2019, OCR received a similar complaint from Concerned Women of America alleging that Franklin Pierce University in New Hampshire had denied female student athletes equal athletic benefits and opportunities, in violation of Title IX, when it permitted biologically male transgender athletes to participate in its women's intercollegiate track program.

Connecticut Interscholastic Athletic Conference, Glastonbury Board of Education, et al.

OCR received a complaint filed by Alliance Defending Freedom on behalf of three high school girls alleging that the CIAC and a Connecticut school district denied equal athletic benefits and opportunities to girls in violation of Title IX. The complaint, received in June 2019, specifically alleged that the CIAC and the Glastonbury Board of Education permitted biologically male student athletes who identify as transgender females to participate in female high school track meets pursuant to the CIAC's Revised Transgender Participation Policy, and resulted in the loss of athletic benefits and opportunities for female student athletes. In August 2019, OCR opened an investigation into the two recipients named in the complaint and, later, five additional Connecticut school districts for their involvement in the alleged acts of discrimination (i.e., for their implementation of the Revised Transgender Participation Policy).[18] During



the investigation, one of the complainant student athletes explained to OCR that no matter how hard she trained, she could never be good enough to defeat the biologically male athletes who were allowed to compete as transgender female athletes. She also stated that female student athletes were missing out on opportunities to succeed, and felt that female student athletes could be "completely eradicated from their own sports." Another complainant student athlete explained to OCR that she could not fairly compete against the transgender athletes, because they had a physical advantage over her.

After reaching a determination of noncompliance, and trying to reach voluntarily resolution with the recipients of federal funds, OCR issued letters of impending enforcement action to the CIAC and the six school districts on May 15, 2020. As explained in that notice, OCR determined that the athletics conference and six school districts—by permitting the participation of certain biologically male student athletes in girls' interscholastic track in the state of Connecticut pursuant to the CIAC's Revised Transgender Participation Policy—denied female student athletes athletic benefits and opportunities, including advancing to the finals in events; participating in higher level competitions; and receiving awards, medals, recognition, and the possibility of greater visibility to colleges. OCR found that several of the athletic events in which the female student athletes competed were in fact coeducational, or open to members of both biological sexes. As such, female student athletes in Connecticut were

denied the opportunity to compete in events that were exclusively female, whereas male student athletes were able to compete in events that were exclusively male. Accordingly, the districts' participation in the athletic events sponsored by the CIAC denied female student athletes athletic opportunities that were provided to male student athletes in violation of the regulation implementing Title IX at 34 C.F.R. § 106.41(a).

Franklin Pierce University

In September 2018, Franklin Pierce University adopted a policy to govern the participation of transgender student athletes in its intercollegiate athletics program, titled the Transgender Participation and Inclusion Policy. The policy stated that its provisions "closely follow the recommendations of the NCAA" and are "[c]onsistent with NCAA policies and bylaws." The policy generally provided that a "transgender student athlete should be allowed to participate in any sports activity," with guidelines and restrictions regarding testosterone use and suppression.

In November 2019, OCR received a complaint filed by Concerned Women for America alleging that the policy denies female student athletes equal athletic benefits and opportunities by permitting transgender athletes to participate in women's intercollegiate athletic teams. OCR opened an investigation into the complaint allegations on December 2, 2019, and, as in the CIAC case, determined that female student athletes had been denied equal athletic benefits and opportunities in violation of Title IX when it permitted biologically male transgender athletes to participate in its women's intercollegiate track program.

During OCR's investigation, the university expressed interest in voluntarily resolving the complaint through a resolution agreement. Among other items, the university agreed to rescind the policy that had discriminated on the basis of sex by permitting biologically male athletes to participate in intercollegiate female athletics based on their "gender identification." OCR is currently monitoring the university's compliance with that agreement.

The Impact of *Bostock v. Clayton County, Ga.,* on CIAC and Franklin Pierce University Complaints

On June 15, 2020—subsequent to the filing of both the CIAC and Franklin Pierce University complaints—the Supreme Court resolved three cases involving employees who argued that they had suffered discrimination because of their sex in *Bostock v. Clayton County, Ga.*, 140 S. Ct. 1731 (2020). Two cases involved homosexual male employees, and one case involved a biological male employee who identified as a transgender woman. In *Bostock*, the Court held that an employer violated Title VII of the Civil Rights Act of 1964 (Title VII) by terminating a transgender employee on the basis of their transgender status. ("For an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex."[19])

The Court's holding stated that it was assuming that sex referred to an employee's biological sex, but in fact the Court's holding in *Bostock* relies on that assumption, by noting that the employee who identifies as female is biologically male, and that the employer's discrimination for "traits or actions" that would be tolerated in an employee of the opposite sex—that is, female—is illegal. However, the *Bostock* decision was narrowly decided under Title VII, and, by its own terms, does not control Title IX. In fact, the Supreme Court expressly declined to decide questions about how its interpretation of Title VII would affect other statutes, like Title IX.[20] Moreover, by contrast, both the text and purpose of Title IX and its implementing regulations are different than those of Title VII. Therefore, even assuming that the Supreme Court's reasoning in *Bostock* applies to Title IX—a question the Court expressly did not decide—OCR's position is

that the Court's opinion in *Bostock* does not affect the Department's long-held position that its Title IX regulations authorize single-sex sports teams based only on biological sex at birth—male or female—as opposed to a person's "gender identity."

Although OCR does not enforce Title VII, and the Court specifically refused to consider circumstances addressed by Title IX's regulations, OCR sought to resolve the above-referenced complaints involving women's and girls' athletics in accordance with the Supreme Court's ruling in *Bostock* and consistent with OCR's interpretation of the same. In evaluating its own response to both the CIAC and Franklin Pierce University complaints, OCR relied on the Court's clarification that its ruling was based on the "assumption" that sex is defined by reference to biological sex and in fact predicated its holding on that assumption.[21] Because Congress codified as part of Title IX numerous circumstances under which Title IX does not prohibit school policies or decisions based on (biological) sex—and specifically directed the Department to issue regulations clarifying Title IX's application to athletics, including separate athletic teams based on sex—OCR ultimately determined that the Court's decision would not affect OCR's enforcement of Title IX with respect to women's and girls' athletic teams and resolved both complaints accordingly.

Following the Supreme Court's decision in *Bostock,* on August 31, 2020, OCR sent a revised Letter of Impending Enforcement Action to CIAC and the associated school districts that included an analysis of the Supreme Court's decision. In this letter, OCR explained why the Supreme Court's holding in *Bostock* did "not alter the relevant legal standard under [Title IX]" and OCR's determination of noncompliance in the case against the CIAC and the six school districts.[22] When the CIAC and the six school districts still refused to take actions to effect compliance with Title IX, OCR notified the seven recipients that the Department would pursue an enforcement action to effect compliance. By letters dated September 17, 2020, OCR notified CIAC and the six ConneOcticut school districts that OCR would be referring the case to the U.S. Department of Justice for enforcement. In a letter dated October 2, 2020, the Department referred the seven cases to the Civil Rights Division within the Department of Justice for enforcement.

Shelby County Schools and Protections for Transgender and Homosexual Students

As discussed above, the *Bostock* decision was narrowly and explicitly based on Title VII and its protections from individual discrimination in the workplace. While *Bostock* does not control OCR's interpretation or enforcement of Title IX, OCR recognizes that the *Bostock* rationale may inform how OCR evaluates certain complaints involving allegations of individual discrimination based on homosexual or transgender status. Though Title IX makes no mention of discrimination based on a student's sexual orientation, the Supreme Court's holding in *Bostock* clarifies that discrimination based on an individual's status as transgender or homosexual constitutes sex discrimination within the meaning of Title VII ("[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.").[23]

In keeping with these principles, OCR has jurisdiction in those cases where the *Bostock* rationale applies. With respect to complaints that a school's action or policy excludes a person from participation in, denies a person the benefits of, or subjects a person to discrimination under an education program or activity on the basis of sex, the *Bostock* opinion guides OCR's understanding that discriminating against a person based on their homosexuality or identification as transgender generally involves discrimination on the basis of their biological sex.

On June 11, 2020, OCR received a complaint alleging that the Shelby County School District had discriminated against a female student by denying the captaincy of her daughter's school's Color Guard squad due to her sexual orientation. Because the recipient's action allegedly excluded a person from participation in, denied a person the benefits of, or subjected a person to discrimination under an education program or activity on the basis of sex under Title IX, the *Bostock* opinion once again guided and will continue to guide OCR's understanding that discriminating against a person based on their homosexuality or identification as transgender generally involves discrimination on the basis of their biological sex as well.

Therefore, as in the CIAC and Franklin Pierce University complaints, while *Bostock* is not applicable to Title IX in general, the distinctions of biological sex in federal law will continue to inform OCR's enforcement of Title IX when complaints involving transgender or homosexual students allege that students have been denied the protections of Title IX based on their biological sex.

In accordance with *Bostock* and OCR's position on Title IX enforcement on the basis of biological sex, OCR issued a letter of notification on August 31, 2020, informing the parties that OCR would be opening an investigation into the complaint allegations and clarifying that discrimination on the basis of homosexuality necessarily involves considerations of biological sex.

OCR's position adheres to *Bostock*'s clarification that sex means "biological sex" and its own long-held approach by continuing to read "sex" in Title IX to mean the biological distinctions that identify a person as male or female at birth—and the sole characteristic protected under Title IX. OCR has remained consistently resolute in its enforcement of Title IX with respect to women's and girls' athletic teams, and no less so in 2020, when the protection of women's and girls' athletics and a preservation of Title IX's original purpose—to ensure that no student athletes competing in interscholastic sports suffer discrimination on the basis of their biological sex—was at the forefront of OCR's work. In situations where recipients deny student athletes the opportunity to compete or receive recognition or placement, awards, medals, or honors (all critical to college recruitment and scholarship opportunities), OCR is and must continue to be dedicated to the protection of the athletes for whom Title IX was enacted. As such, OCR has issued guidance and resolved claims focused on such discrimination and has clarified to recipients, stakeholders, and the public that denying such opportunities is—as it always has been—a violation of Title IX.

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

Title VI of the Civil Rights Act of 1964 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 investigate cases under Title VI including, among others, those involving different treatment in the administration of school discipline; racially discriminatory identification of students for special education services; bullying and harassment based on race, color, or national origin; the possible inappropriate use of racial preferences in admissions; and limited access based on race to resources, curricula, and opportunities that foster college and career readiness.

Key Facts

In FY 2020, OCR received 2,061 complaints containing 2,904 individual allegations of discrimination based on race, color, or national origin in violation of Title VI. In the same FY, OCR resolved 2,406 total complaints containing 3,487 individual allegations of discrimination under Title VI. Of these resolutions, 160 complaints were resolved with change. The largest numbers of resolutions were in the following categories: different treatment or denial of benefits based on race, racial harassment, and retaliation for filing complaints under Title VI. See Figure 18 for specific information on the variety of Title VI allegations received and resolved by OCR during FY 2020. OCR also resolved one compliance review initiated by the Obama Administration in 2013.

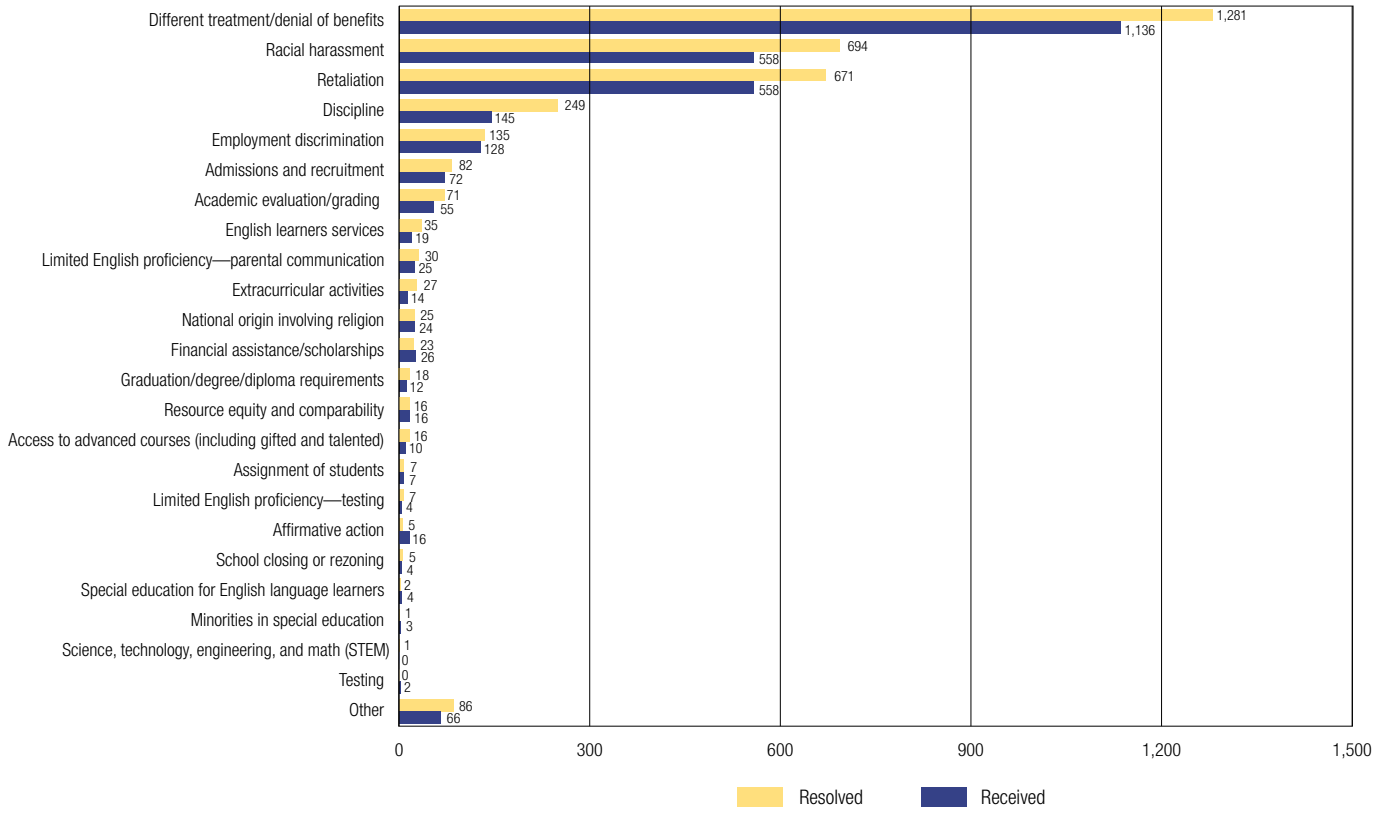
During the past four fiscal years under the Trump Administration (FYs 2017–20), OCR saw a significant increase in Title VI resolutions with change, compared to the fiscal years spanning both terms under the previous administration. During FYs 2017, 2018, 2019, and 2020, OCR resolved a total of 957 Title VI allegations with change, or an average of 239 allegations resolved with change per year. This is a 17 percent increase in Title VI allegations resolved with change, compared to the final four fiscal years under the Obama Administration. During FYs 2013–16, OCR resolved a total of 821 Title VI allegations with change,

BY THE NUMBERS

In FY 2020, OCR

- Received 2,061 Title VI complaints
- Resolved 2,406 Title VI complaints
- Resolved 213 Title VI allegations in 160 complaints with change

Figure 18: Title VI Allegations Received and Resolved in FY 2020



or an average of only 205 allegations per year. For more information on Title VI allegations resolved with change over the last 12 years, see Figure 19. As illustrated below, these increases occurred in important Title VI issue areas. Some of the most notable increases occurred in the number of allegations of different treatment or the denial of benefits, allegations of racial harassment and bullying, and allegations of discriminatory administration of school discipline.

OCR achieved a 33 percent increase in the number of allegations resolved involving racial harassment or bullying during the four fiscal years under the Trump Administration compared to the last four fiscal years under the Obama Administration. In FYs 2013, 2014, 2015, and 2016 combined, OCR resolved only a total of 2,161 racial harassment allegations, compared to a total of 2,884 allegations resolved during FYs 2017, 2018, 2019, and 2020. In FY 2020, OCR resolved more allegations of racial harassment (640 allegations) than the prior administration resolved during any one of its eight years in office (FYs 2009–16). OCR also achieved a 16 percent increase in the number of racial harassment allegations resolved with change under the current administration. Over the course of FYs 2017, 2018, 2019, and 2020, OCR resolved 218 allegations of racial harassment with change. This exceeds the number of racial harassment allegations the prior administration resolved with change during FYs 2009–12 and during FYs 2013–16 (see Figure 20).

OCR achieved a 55 percent increase in the number of allegations resolved involving different treatment based on race during the past four fiscal years under the Trump Administration compared to the last four fiscal years under the prior administration. Even more, under the current administration, OCR resolved more different treatment allegations in four years (5,168 allegations) than the prior administration resolved in all eight fiscal years combined (FYs 2009–16). Compared to the Obama Administration's final four fiscal years, the current administration resolved 55 percent more different treatment allegations during FYs 2017, 2018, 2019, and 2020. OCR also achieved a 35 percent increase in the number of different treatment allegations resolved with change. Over the last four fiscal years under the current administration, OCR resolved 170 allegations of different treatment based on race with change, compared to 126 over the course of FYs 2013, 2014, 2015, and 2016 (see Figure 21). During FY 2020 alone, OCR resolved more different treatment allegations than the prior administration did during any one of its eight fiscal years.

In FYs 2017, 2018, 2019, and 2020, OCR resolved a total of 1,219 allegations of discrimination in school discipline—over 400 more than the prior administration resolved over the course of FYs 2013–16. This is nearly a 50 percent increase in the number of school discipline allegations resolved, compared to the prior administration's last four fiscal years. OCR also saw a notable increase in the number of school discipline allegations resolved with change during FYs 2017–20. During the last four fiscal years under the Trump Administration, OCR resolved a total of 74 allegations of discrimination in school discipline with change—a 51 percent increase over the number of school discipline allegations resolved

Figure 19: Title VI Allegations Resolved with Change

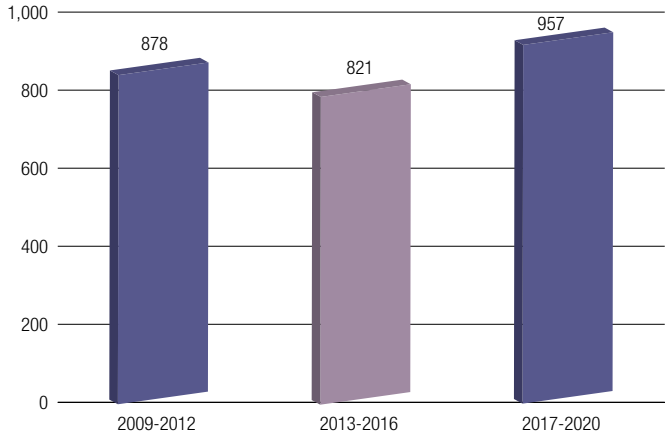
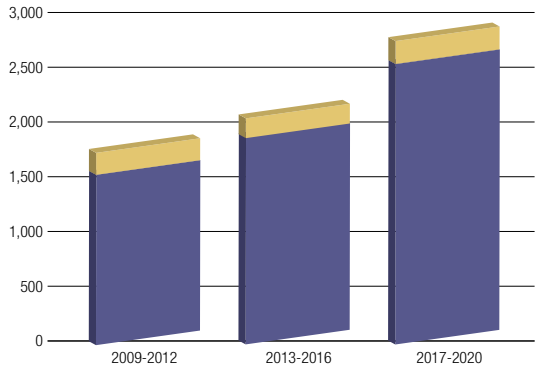
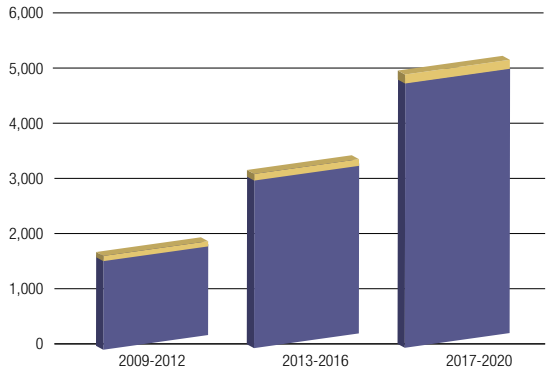


Figure 20: Allegations of Bullying or Harassment Based on Race Resolved



	2009-2012	2013-2016	2017-2020
Allegations resolved with change	209	188	218
Allegations resolved without change	1,620	1,973	2,666

Figure 21: Allegations of Different Treatment Based on Race Resolved



	2009-2012	2013-2016	2017-2020
Allegations resolved with change	98	126	170
Allegations resolved without change	1,712	3,206	4,998

with change by the prior administration during FYs 2013, 2014, 2015, and 2016 (see Figure 22).

The complaints and compliance reviews summarized below are a 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.

Case Summaries

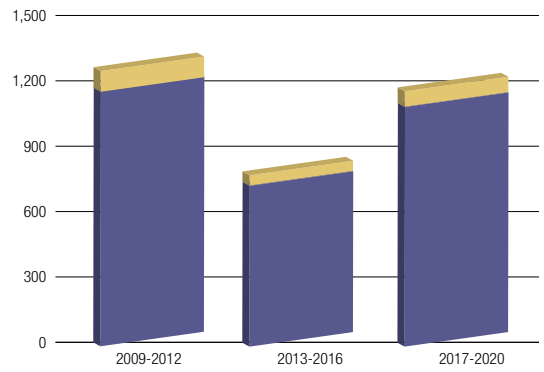
Ensuring Non-discrimination in the Administration of School Discipline

Case 1: OCR resolved a complaint alleging discrimination on the basis of race and national origin involving the administration of school discipline. Specifically, the complainant alleged that a school district discriminated against Black and Hispanic students in the administration of suspensions and discipline stemming from a specific incident, as well as in the administration of truancy referrals generally. The complaint alleged that Black and Hispanic students received more severe, or harsher, penalties than White students for their involvement in the same incident. Based on information gathered in OCR's investigation—including documentation provided by the district and eyewitness accounts—OCR had concerns that Black and Hispanic students were treated differently than White students with respect to the district's referral of students from truancy proceedings. OCR was also concerned that the district in some instances did not maintain records sufficient for OCR to ascertain the district's compliance with Title VI. Prior to the completion of OCR's investigation, the district expressed an interest in entering into a resolution agreement with OCR. Pursuant to the signed resolution agreement, OCR required the district to review and revise its student discipline policies and procedures; provide training on the revised discipline policies and procedures to all administrators, teachers, and any other personnel charged with making disciplinary referrals; and begin implementing a record-keeping process to allow the district to monitor the enforcement of the truancy policies and procedures to ensure that students of a particular race or national origin are not treated differently based on race or national origin.

Providing Equal Access to Gifted and Talented Programs

Case 1: OCR resolved a complaint alleging that a school district discriminated against American Indian students on the basis of race by having policies and procedures that excluded them from or limited their participation in the district's gifted and talented education program; by having policies and procedures that excluded them from or limited their participation in Advanced Placement (AP), honors, and advanced math courses; and by treating American Indian students differently by having a policy or practice of not allowing students to be considered "twice exceptional," or in other words, both having a disability and also gifted and talented. Prior to the conclusion of OCR's investigation, the school district expressed an interest in voluntarily resolving the allegations through a resolution agreement. Pursuant to the resolution agreement, OCR required the district to conduct a self-assessment to ensure non-discrimination in the gifted and talented education program and honors and AP courses; to create, adopt, and disseminate a policy and procedure for gifted and talented education, or amend its existing policy and procedures, to ensure non-discrimination and access for students with disabilities; to update or create, and disseminate, forms necessary for effective implementation of the policies and procedures created pursuant to the resolution agreement; to conduct training for all relevant staff on an ongoing basis about the district's revised and approved policies; and to develop and implement a plan for increasing awareness of gifted and talented education and AP courses among American Indian students and their families, as well as other racial and ethnic groups representative of the community.

Figure 22: Allegations of Discriminatory Administration of School Discipline Resolved



	2009-2012	2013-2016	2017-2020
Allegations resolved with change	99	49	74
Allegations resolved without change	1,219	768	1,145

Combating Racial Harassment

Case 1: On September 25, 2020, OCR resolved a complaint alleging that a complainant and other students of Jewish descent were discriminated against on the basis of their national origin and shared ancestry at a university and that the university failed to respond appropriately to reports and incidents of harassment. Specifically, the complainant alleged that multiple incidents of harassment of students based on their shared Jewish ancestry occurred, including instances where Jewish students were threatened by members of student groups and where the complainant fell to the ground after a "hostile mob" of students surrounded her and called her names.

As a result, OCR opened an investigation into whether, due to the incidents that occurred at the university, a hostile environment existed for Jewish students and, if so, whether the university responded appropriately. In its investigation, OCR conducted interviews with administrators from the university's offices of Student Affairs, Student Conduct and Community Standards, and Global Inclusion, Diversity, and Strategic Innovation, as well as the Department of Public Safety. Specifically, OCR lacked sufficient information to make a compliance determination and required verification on questions such as whether the university investigated concerns that were raised; communicated its findings to persons who filed complaints or made reports alleging anti-Semitism; offered interim and remedial measures where appropriate; properly considered disciplinary action for respondents; and, more generally, whether any incidents created a hostile environment for Jewish students at the university.

Prior to the completion of OCR's investigation, the university expressed an interest in resolving the allegations by entering into a resolution agreement with OCR. Pursuant to the agreement, OCR required the university to

revise its non-discrimination and anti-harassment policy to prohibit discrimination on the basis of shared ancestry and ethnic characteristics, including anti-Semitism, as reflected in Executive Order 13899; issue a statement to all university students, faculty, and staff stating that the university does not tolerate acts of discrimination or harassment on the basis of shared ancestry and ethnic characteristics, including anti-Semitism, and that the university will take all necessary actions to address and ameliorate such discrimination; host town hall meetings to inform students, faculty, and staff of the university's commitment to take all necessary actions to address discrimination and harassment based on shared ancestry or ethnic characteristics; provide training to relevant staff and administrators responsible for responding to reports of anti-Semitism; and include a component on national origin discrimination and harassment in each of the university's new training modules and orientation sessions for students, faculty, and staff.

Case 2: OCR resolved a complaint that alleged that a school district discriminated against the complainant's son (the student) and other minority students on the basis of race by failing to take prompt and effective action to address a racially hostile environment at a district school. Specifically, the complaint alleged that repeated incidents of racial harassment —including at least one incident in which a peer directed a racial slur at the student, as well as various student displays of Confederate flags, among other incidents, created a racially hostile environment at the school. Consistent with the First Amendment, OCR has recognized that the offensiveness of a particular expression (e.g., the Confederate flag), standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR, including Title VI. However, OCR had compliance concerns based on evidence suggesting that, on certain occasions, the district failed to consider whether individual students were subjected to a racially hostile environment and needed additional remedies, such as counseling or educational supports. Also, given the number of incidents at the school in one year, the severity of many of the incidents, and the commonality of the incidents (including repeated incidents involving the use of racial slurs), OCR was concerned that the district may have failed to consider whether the incidents collectively created a racially hostile environment at the school and, as such, required broader corrective actions. Prior to the conclusion of OCR's investigation, the district requested to resolve the allegations in the complaint with a resolution agreement. Under this resolution agreement, the district agreed to evaluate harassment reports and, given the number and severity of incidents, administer a climate survey to determine whether a racially hostile environment existed at the school, which might necessitate further remedies or corrective actions. The agreement also requires the district to take steps to ensure that students and other stakeholders are aware of the district's policies pertaining to harassment, and to conduct a refresher training for school administrators on the district's policies that must include appropriate consideration to the requirements and limitations of the First Amendment.

Case 3: OCR resolved a complaint that alleged that a school district failed to respond in a reasonable, timely, and effective manner to repeated incidents of racial harassment of a student by a classmate, including

derisive comments about the student's "brown skin color." Before the conclusion of OCR's investigation to determine whether the conduct was sufficiently severe or pervasive to constitute a hostile environment, the district expressed a willingness to resolve the complaint with a resolution agreement. As a result of OCR's investigation, OCR had concerns that the information gathered to date indicated that the district did not consider whether these incidents constituted racial harassment or investigated the impact of the classmate's comments on the student or any other students; did not interview relevant witnesses, including the student; and did not notify the complainants whether either alleged incident had been substantiated, or whether the district was taking any remedial measures in response, including measures to remedy the effect of the harassment on the student. More generally, OCR had concerns that the district's training, as well as the district's response to each incident, focused on compliance with the district's anti-bullying policy and failed to consider whether prohibited forms of racial discrimination had occurred under Title VI. In addition, OCR was concerned that the district's documentation and record-keeping of these incidents was insufficient with regard to the racial nature of the conduct, which could have hindered the district's ability

to track incidents based on race and to assess whether such incidents create a hostile environment. OCR negotiated a resolution agreement under which the district agreed to review the alleged incidents and assess whether remedial action is required to prevent and/or redress a racially hostile environment as required by Title VI; invite the family to meet with the superintendent to discuss how the district may support the student's ongoing education; enhance its record-keeping systems to better track alleged incidents of racial harassment; and provide Title VI-specific training to certain staff.

Ensuring English Learner Students Have Equal Access to a High-Quality Education

Case 1: OCR resolved a complaint that alleged, in part, that teachers at a school in a district were not providing English learner (EL) students with educational services that were designed to teach them English until they were fully proficient in the language. During the course of its investigation, OCR had compliance concerns based on evidence that the school had no articulated program design for EL students who were not making adequate progress; that there were insufficient interventions for EL students, including potential or actual long-term English learner students (LTELs); and that there was insufficient monitoring of EL students, LTEL students, and reclassified fully English proficient (RFEP) students. Prior to the completion of OCR's investigation, the district voluntarily agreed to enter into a resolution agreement with OCR to resolve the complaint. Under the resolution agreement, the district agreed to revise its master plan to describe EL-specific interventions, including interventions for LTEL students and potential LTEL students in upper elementary grades, and to describe in detail its catch-up plan. The district also committed to providing training to teachers and administrative staff at the school on monitoring and interventions for EL and RFEP students.

Case 2: OCR resolved a complaint against a state department of education alleging that the department discriminated against students with disabilities whose parents are limited English proficient (LEP) by failing to translate special education-related documents and notices into the parents' native languages and failing to provide neutral, qualified translators or interpreters at special education-related meetings and due process hearings. After the investigation, OCR determined that translation and interpretation services were not provided during special education meetings at schools identified by the complainants. The department entered into a resolution agreement to address OCR's compliance concerns. Pursuant to the agreement, OCR required the department to, among other things, include in the file/record of each student with a current Individualized Education Program (IEP) or Section 504 plan (and each student who has been referred for an evaluation, to determine whether the student is a student with a disability) information regarding the preferred oral and written language of the student's parent(s); identify in IEPs and Section 504 plans the preferred spoken language of each student's parent; provide LEP parents of students with disabilities with translated notices of meetings, notices seeking consent, and prior written notices; require schools or the department to provide, upon request from an LEP parent, translation of IEPs, Section 504 plans, and/or evaluation reports that have been paid for by the department; and offer to provide interpreters for parents at social history meetings, IEP meetings, and Section 504 meetings (e.g., annual review meetings, impartial hearings, manifestation determination review meetings, and meetings regarding behavior intervention plans). The agreement further requires the department to implement a system to track requests for translation of IEPs, Section 504 plans, and evaluation reports and requests for interpretation and provision of interpretation services at special education meetings.

Issue Spotlight

Use of Race in Admissions and Scholarships or Financial Aid

The use of racial preferences and race-based criteria by elementary, secondary, and postsecondary institutions in admissions and in the provision of financial aid has been the subject of much debate, several Supreme Court decisions, and numerous complaints filed with OCR. Regulations promulgated under Title VI expressly prohibit recipients from, "on ground of race, color, or national origin[,] … treat[ing] an individual differently from others in determining whether he [or she] satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit[.]" 34 C.F.R. 100.3(a), (b)(1)(v). In addition to this explicit prohibition under Title VI, race discrimination is also barred by the U.S. Constitution. The Fourteenth Amendment's Equal Protection Clause states that "no state shall deny any person within its jurisdiction the equal protection of the laws." Courts have held that case law addressing racial classifications under the Equal Protection Clause is applicable to the use of racial classifications under Title VI. As such, judicial opinions interpreting the Equal Protection Clause guide OCR's enforcement of Title VI.

The U.S. Supreme Court has made clear that a classification based on race is presumptively invalid unless the classification meets a demanding test often referred to as strict scrutiny. When a college or university uses race as a part of its admissions process or as part of its process for awarding financial aid, the institution bears the burden of showing that its use of race in admissions satisfies strict scrutiny.[24] As defined by the Supreme Court, this means that the college or university must demonstrate that its use of race is narrowly tailored to serve a compelling interest.[25]

Although the Supreme Court has held that a school may assert having a diverse student body as a compelling interest, courts have not given complete deference to schools that proclaim having this interest. The second prong of the strict-scrutiny analysis, which requires schools to prove that their race-conscious admissions program is narrowly tailored to meet this compelling interest, is a heavy burden, which requires, among other things, that a school conduct a serious, good faith review of race-neutral and workable alternatives. The Court has also held that if an institution's admissions process uses race, it must also include a flexible and individualized review of applicants; the use of race must not unduly burden applicants of any racial group; and the consideration of race must be subject to periodic review by the institution to determine whether the use of race is still necessary to achieve student body diversity.

Consistent with these and other principles drawn from the Court's jurisprudence, OCR provided guidance stating that the use of racial classifications or racial preferences in admissions policies is impermissible unless the use of race is "narrowly tailored" to meet a "compelling government interest," such as the remediation of past discrimination or, in the context of higher education, to achieve appropriate student body

REGULATORY REFORM

On August 26, 2020, OCR withdrew certain guidance documents regarding the use of race in financial aid and admissions by postsecondary schools. As stated in the withdrawal letter, the documents were rescinded because key portions of each document had been superseded by subsequent U.S. Supreme Court decisions addressing the use of race in higher education.[26] The documents also advocated for policy preferences and positions beyond the requirements of the Constitution and Title VI. Earlier in this administration, and pursuant to the President's Regulatory Reform initiative, OCR withdrew seven policy guidance documents on this topic. These documents, all of which were issued during the prior administration, were withdrawn in 2018 because they advocated policy preferences beyond the requirements of the Constitution and federal law, prematurely decided the legality of particular actions, and suggested that schools take action beyond plain legal requirements.[27] Under the current administration, OCR also reinstated five of its earlier guidance documents on the use of race issued between 2003 and 2008.

The two documents that were withdrawn in FY 2020 are:

- Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964, 59 FR 8756 (February 23, 1994); and
- Dear Colleague Letter to University Counsels on Use of Race in Admissions and Financial Aid (July 30, 1996).

The seven documents previously withdrawn by OCR are:

- Dear Colleague Letter Regarding the Use of Race by Educational Institutions (December 2, 2011);
- Guidance on the Voluntary Use of the Race to Achieve Diversity in Postsecondary Education (December 2, 2011);
- Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools (December 2, 2011);
- Dear Colleague Letter on the Voluntary Use of Race to Achieve Diversity in Higher Education After *Fisher v. University of Texas at Austin* [Fisher I] (September 27, 2013);
- Questions and Answers About *Fisher v. Univ. of Texas at Austin* [Fisher I] (September 27, 2013);
- Dear Colleague Letter on the Supreme Court Ruling in *Schuette v. Coalition to Defend Affirmative Action* (May 6, 2014); and
- Questions and Answers About *Fisher v. Univ. of Texas at Austin* [Fisher II] (September 30, 2016).

diversity.[28] OCR's guidance also identified certain factors that OCR will rely on to determine whether an institution's use of race satisfies the strict scrutiny test.[29] For example, when OCR receives a complaint alleging that a school uses race as a factor in its decision-making in violation of Title VI, OCR applies the following principles, drawn from case law, to determine whether a school's conduct violates Title VI:

- The use of race must be essential to an institution's mission and stated goals;
- The diversity sought by the postsecondary institution must be broader than mere racial diversity;
- Quotas and set-asides based on race are always impermissible;
- Schools must provide individualized consideration to applicants, and there must be no undue burden on applicants of other races;
- Before using race, there must be serious, good faith consideration of workable, race-neutral alternatives; and
- Periodic reviews are necessary, and the use of race must have a logical end point.

Below are some examples of the types of complaints that OCR has received, and how OCR has applied these factors consistent with the requirements of Title VI and the Supreme Court's Equal Protection Clause jurisprudence.[30]

Washington University in St. Louis

On August 29, 2019, OCR opened a complaint against Washington University in St. Louis to investigate whether the university was violating Title VI by awarding financial aid to students on the basis of race—either through the James E. McLeod Honors & Awards Program or other race-restricted financial aid programs. During its investigation, OCR reviewed fliers describing the James E. McLeod Honors & Awards Program, information available on the university's website, and information provided by the complainant and the university describing the program. In the course of the investigation, the university acknowledged that monetary awards were provided through the McLeod Program, and that the McLeod Program was only open to Black students. The university also stated that it intended to revise the eligibility criteria for the McLeod Program to ensure that students of all races are eligible to participate. The university also notified OCR of two additional scholarships potentially violative of Title VI created through bequests.

Prior to the completion of OCR's investigation, the university indicated its interest in entering into a voluntary resolution agreement with OCR to address these clear violations of Title VI. Pursuant to this resolution agreement, the university agreed to develop and implement a plan and a proposed timeline for ensuring that the McLeod Program and all race-restricted financial aid programs administered by the university, or on behalf of the university, would be revised to ensure that students were eligible to compete for such programs without regard to race, color, or national origin.[31]

Scotland County School District

On April 27, 2020, OCR received a complaint on behalf of a student in the Scotland County School District that alleged that the district discriminated against the student on the basis of race when the district notified the student that she would not advance to the second round of the selection process for enrollment into the district's Early College High School Program for the upcoming school year (i.e., the 2020–21 school year). Specifically, the complainant alleged that the district used race as a factor in the scoring rubric used in the first round of the selection process for the program and that, but for the student's race, she would have satisfied the district's minimum requirements for advancing to the second round of the selection process.

During its investigation, OCR spoke with district staff and reviewed documentation provided by the district and complainant concerning the district's decision to not advance the student to the second round of the selection process. Specifically, OCR reviewed documentation of the selection process for enrollment into the program for the 2020–21 school year, including the district's scoring rubric used for all students at the time of the student's application and at the time the complaint was filed (the original rubric). OCR's investigation revealed that the original rubric did include race as a factor during the first, second, and third rounds of the selection process. Specifically, the original rubric tracked whether each applicant was a member of an "underrepresented group," and assigned a score ranging from 0 to 4 based on that criteria, which was factored into each applicant's "total" score at the conclusion of each round.

In the course of the investigation, OCR also reviewed a revised scoring rubric provided by the district. The revised rubric was adopted following the student's complaint and indicated that the scores for all applicants during the 2020–21 school year had been recalculated under the revised criteria. OCR confirmed that the revised scoring rubric did not include race as a factor for any round of the selection process and, in conversations with the district, also confirmed that race would not be considered as a factor for selection to the program in violation of Title VI going forward, and that these changes were communicated to the school board.

Based on the foregoing, and pursuant to Section 110 of OCR's CPM, OCR determined that the complaint allegations were appropriate for resolution through OCR's Rapid Resolution Process. Specifically, the district took steps to eliminate any reference to or use of race as a factor in any round or stage in its selection process for enrollment into the program, such that all students, regardless of race, would be equally considered during the selection process.

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 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 2020, OCR received 4,515 complaints alleging a total of 6,950 individual violations of Section 504 and/or Title II. OCR resolved 5,367 complaints containing 8,704 allegations of discrimination based on disability. Of these resolutions, 1,445 Section 504/Title II allegations in 1,042 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 free and appropriate public education (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 23 for more detailed information on the variety of Section 504/Title II allegations received and resolved by OCR during FY 2020. OCR also initiated 19 Section 504/Title II directed investigations in which OCR raised 21 individual disability issues, and resolved 305 directed investigations in which OCR raised individual 509 disability issues, 132 of which were resolved with change.

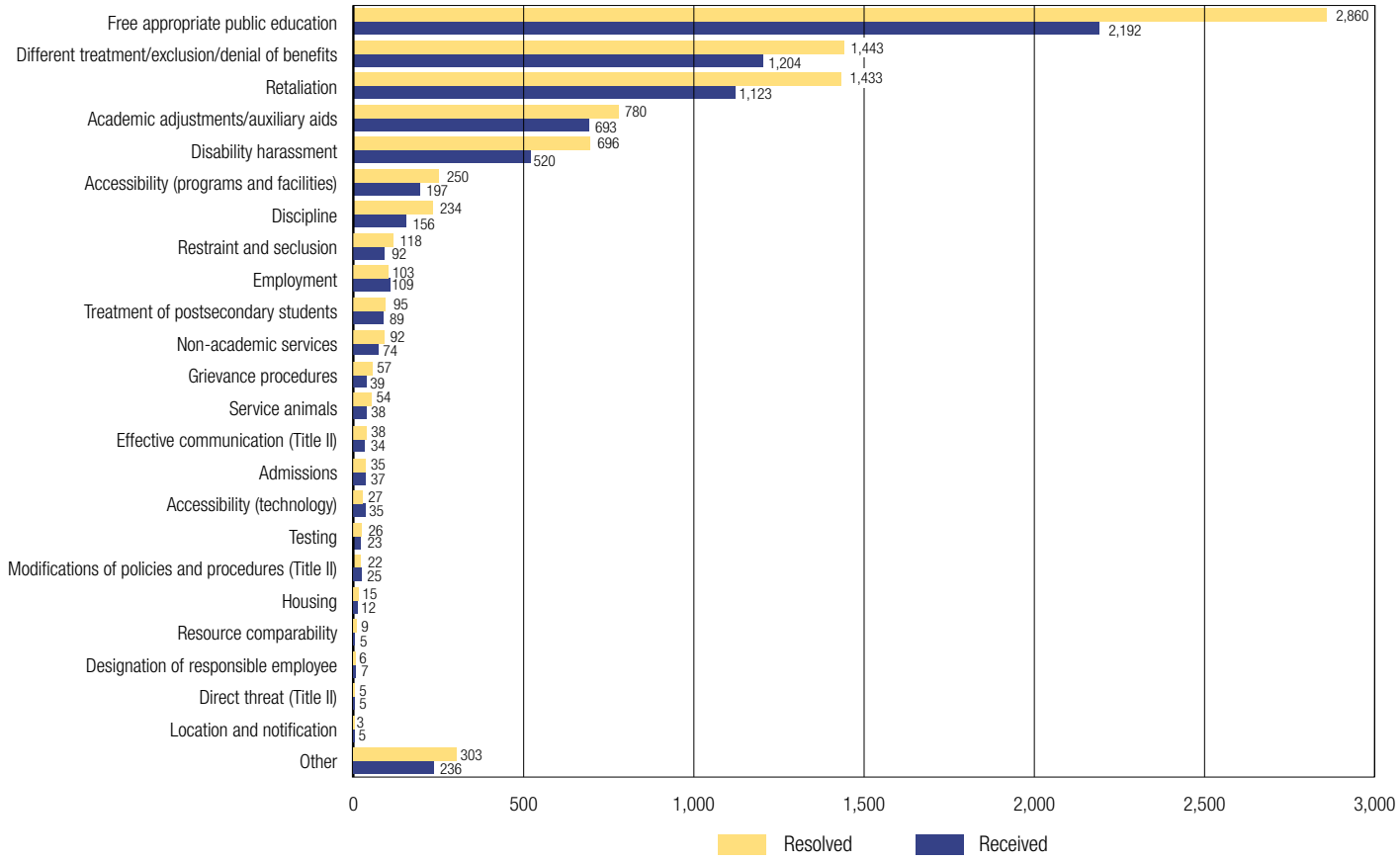
During FYs 2017–20, OCR achieved significant increases in both the number of Section 504/Title II allegations resolved and resolved with

BY THE NUMBERS

In FY 2020, OCR

- Received 4,515 Section 504/Title II complaints
- Resolved 5,367 Section 504/Title II complaints
- Resolved 1,445 Section 504/Title II allegations in 1,042 complaints with change

Figure 23: Section 504/Title II Allegations Received and Resolved in FY 2020



change compared to FYs 2013–16. During FYs 2017–20, OCR resolved a total of 7,797 allegations of discrimination under Section 504/Title II with change—1,502 more allegations resolved with change than during FYs 2013–16 combined (see Figure 24). This is a 23 percent increase in the number of allegations resolved with change compared to the slow pace of the Obama Administration. These increases occurred in important Section 504 and Title II issue areas, including restraint and seclusion of students with disabilities, harassment or bullying based on disability, and different treatment of students with disabilities.

During FYs 2017–20, OCR achieved a 108 percent increase in the total number of allegations involving the possible inappropriate use of restraint and seclusion resolved by OCR, compared to FYs 2013–16. Over the course of the past four fiscal years, OCR resolved a total of 398 restraint or seclusion allegations—207 more restraint or seclusion allegations than the prior administration resolved during FYs 2013–16. OCR also achieved a 115 percent increase in resolutions with change in the category of restraint and seclusion. During FYs 2017–20, OCR resolved a total of 82 restraint or seclusion allegations with change—44 more restraint or seclusion complaint allegations than resolved with change during FYs 2013–16 combined (see Figure 25).

During the four years of the Trump Administration, OCR achieved a 24 percent increase in the total number of allegations involving disability harassment resolved compared to the last four years of the Obama Administration. Over the course of FYs 2013–16, OCR resolved a total of 2,389 disability harassment allegations. During FYs 2017–20, OCR resolved a total of 2,969 disability harassment allegations, or 580 more allegations resolved than the prior administration. OCR also achieved an 11 percent increase in allegations of disability harassment resolved with change. During FYs 2017–20, OCR resolved a total of 365 disability harassment allegations with change—38 more allegations of disability harassment than resolved with change during FYs 2013–16 (see Figure 26).

Figure 24: Section 504/Title II Allegations Resolved with Change

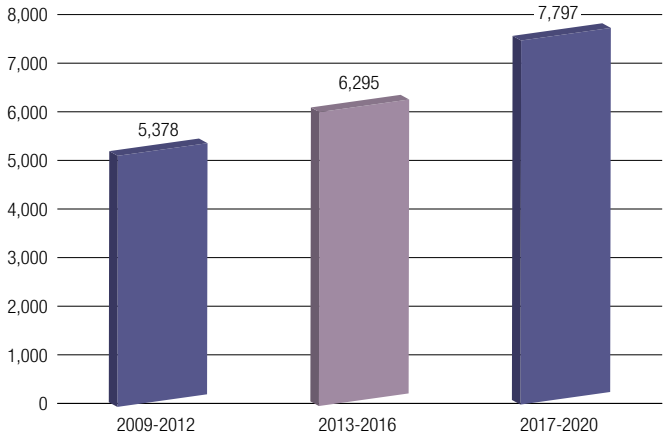
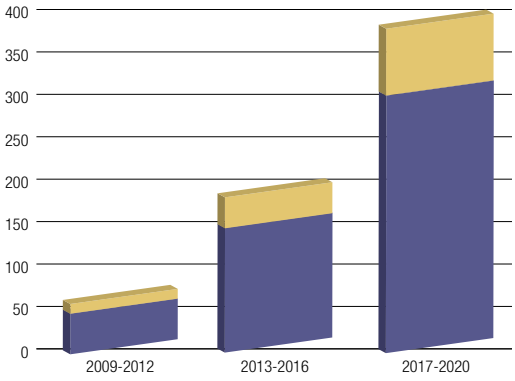
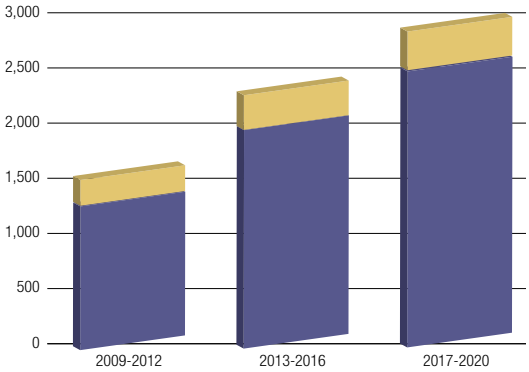


Figure 25: Allegations of Discriminatory Use of Restraint and/or Seclusion on Students with Disabilities Resolved



	2009-2012	2013-2016	2017-2020
Allegations resolved with change	12	38	82
Allegations resolved without change	50	153	316

Figure 26: Allegations of Bullying or Harassment Based on Disability Resolved

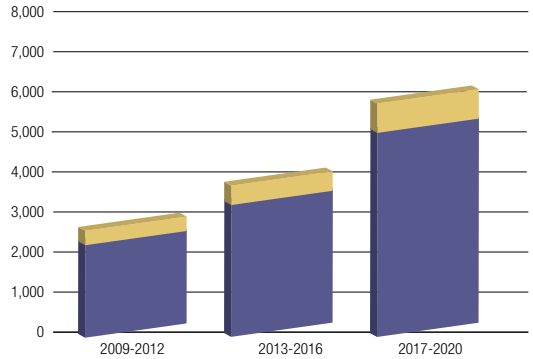


	2009-2012	2013-2016	2017-2020
Allegations resolved with change	243	327	365
Allegations resolved without change	1,356	2,062	2,604

During FYs 2017–20, OCR resolved a total of 6,098 different treatment allegations under Section 504/Title II—a 52 percent increase over the total number of different treatment allegations resolved by the prior administration during FYs 2013–16. During the last four fiscal years, OCR resolved a total of 764 different treatment allegations with change—259 more allegations than were resolved with change over the course of FYs 2013–16. This is a 51 percent increase in the number of allegations of different treatment resolved with change under Section 504 and Title II (see Figure 27).

The complaints and compliance reviews summarized below are a representative sample 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.

Figure 27: Allegations of Different Treatment Based on Disability Resolved



	2009-2012	2013-2016	2017-2020
Allegations resolved with change	376	505	764
Allegations resolved without change	2,447	3,494	5,334

Case Summaries

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

Case 1: OCR resolved a complaint in which the complainant alleged that the district discriminated against a student based on disability when it repeatedly restrained and secluded the student, resulting in the student being denied a FAPE. In addition to interviewing several school personnel familiar with the student, OCR reviewed district records that indicated that the student screamed, cried, threatened self-harm, pleaded with staff to open the door, urinated, and attempted to escape during restraint and seclusion. OCR found that the district was in violation of Section 504 and Title II based on evidence that it had failed to implement the student's IEP (e.g., its provisions on behavioral support and counseling); consider whether compensatory education or counseling services were necessary; re-evaluate the student, despite evidence of which it was aware indicating that he was not receiving a FAPE; initiate a Functional Behavioral Assessment for the student until 15 months after he entered the school; provide the student with psychological services; or remedy the traumatic effects of its restraint and seclusion of the student. To address these violations, the district signed an agreement in which it committed to revise its districtwide restraint and seclusion policy; train school staff on the revised policy; meet and make a determination concerning what compensatory and remedial services it will provide to the student, consistent with federal requirements; and inspect and make any necessary modifications to all school rooms used for seclusions, time-outs, and other disciplinary measures.

Case 2: The complaint alleged, in part, that the school denied the student a FAPE as a result of repeatedly secluding the student. OCR found that the district violated Section 504 and Title II based on evidence establishing that it denied the student a FAPE when it repeatedly subjected him to seclusion, which traumatized the student; failed to reevaluate the student after his parents expressed concerns on several occasions about the traumatic impact of the seclusions on him; and failed to implement the student's IEP (including his Behavioral Intervention Plan), the complete implementation of which would likely have reduced the student misconduct that prompted the use of seclusion. The district agreed to remedy these violations by revising its seclusion policy and procedures to both address the effects of seclusion on students and require the provision of services that such students do not receive while in seclusion, as well as providing annual training to all staff on the revised policies and procedures and offering to meet with the student's parents. The agreement also provided that, if the parents accepted the offer to meet, the school will, consistent with federal requirements, meet and make a determination concerning what compensatory and remedial services it will provide to the student.

Addressing Bullying and Harassment Based on Disability

Case 1: OCR resolved a complaint in which the complainant alleged, in part, that the university discriminated against her on the basis of disability by failing to respond promptly and effectively to her complaints of disability-based harassment by a university professor. OCR found that, although the university granted the complainant's request to withdraw from the professor's course without penalty, the grievance procedures used by the university did not comply with the requirements of Section 504 and Title II. Specifically, OCR found that the university failed to publish notice of the availability of its grievance procedures for individuals with disability-related complaints; that the information the university provided to individuals with disability-related complaints concerning which procedures applied was unclear and inconsistent; that the university official who processed such complaints was inadequately trained; and that the procedures failed to include any time frames for the required "informal review" of complaints. To resolve these violations, the university agreed to revise its grievance procedures consistent with the requirements of Section 504 and Title II (i.e., to include time frames for major stages of the informal review process and a prohibition against retaliation), post the revised procedures on its website, provide students with clear and adequate information on which procedures apply to disability-related complaints and where to file such complaints, and provide training on the revised procedures to all staff responsible for processing grievances.

Ensuring Equal Treatment of Students with Disabilities

Case 1: OCR resolved a complaint alleging that, during the fall of 2016, a school district discriminated on the basis of disability when it excluded a student from participation in the art club—an after-school program

at the middle school—because of the student's disability. Further, the complainant alleged that the district denied the student's transfer to a separate high school on the basis of disability for the 2017–18 school year in retaliation for a February 2017 complaint of discrimination. At the conclusion of its investigation, OCR found that the district failed to ensure that the student had an equal opportunity to participate in the art club because of the student's disability. Specifically, OCR determined that the district's denial of the student's request for an accommodation—without engaging in an individual inquiry or offering an alternative accommodation or any type of assurance that the student would have an equal opportunity to participate—effectively excluded the student from participation in the art club. Pursuant to a resolution agreement, OCR required the district to publicly state on its website that when a school offers after-school activities, it must do so in a manner that affords qualified students with disabilities an equal opportunity for participation, which means making reasonable modifications and providing reasonably necessary aids and services to ensure an equal opportunity for qualified students with disabilities to participate. OCR also required the district to update procedures for OCR's review and approval to ensure that when the district offers after-school activities, it must do so in a manner that affords qualified students with disabilities an equal opportunity to participate; to adopt and implement the procedures once approved by OCR; and to issue a memorandum to notify recipients of the district's newly implemented procedures.

Ensuring the Provision of Free and Appropriate Education and Related Services

Case 1: OCR resolved a complaint that alleged that a district discriminated against a student by failing to consider whether the student's pending evaluation to determine her eligibility for special education or related services, which was initiated before the pandemic-related school closure, could be completed during the period of school closure. During the course of the investigation, the district notified OCR that it had begun to provide in-person evaluations again and would proceed with its evaluation of the student. The district then requested to voluntarily resolve the complaint pursuant to OCR's Rapid Resolution Process, which resulted in a resolution agreement. Under the resolution agreement, the District agreed to complete its evaluation of the student and, after providing proper written notice to the student's parent/guardian and making all reasonable efforts to include the foster parent and legal guardian, convene a group of persons knowledgeable about the student and the evaluations conducted to determine whether she is eligible for special education or related aids and services. The district also agreed to develop an IEP designed to meet the student's individual disability-related needs if she is determined to be eligible. OCR is monitoring the district's implementation of the agreement.

Case 2: OCR resolved a complaint alleging that a school district denied an elementary student a FAPE by failing to implement accommodations listed in the student's Section 504 plan related to his allergies (i.e., a nut-free classroom) and failed to adequately and impartially investigate the internal grievance alleging discrimination against the student. During the course of its investigation, OCR identified additional issues to investigate related to the district's compliance under Section 504 and Title II, including whether the district failed to carefully consider sufficient individualized evaluation data in designing regular or special education and related aids and services to meet the student's individual educational needs; whether the district unreasonably denied the complainant's request that the district copy her sister on all correspondence from the district as a modification of the district's policies, practices, and procedures; and whether the district failed to disseminate an adequate notice of non-discrimination. OCR found evidence of a violation of Section 504 and Title II regarding

each of these issues, which the district eventually agreed to resolve via a resolution agreement pursuant to CPM Section 303(b). Under the resolution agreement, the district agreed to revise its Section 504 and Title II grievance procedure and Section 504 notice of non-discrimination; create a written procedure for processing requests for the district to make reasonable modifications to its policies, practices, or procedures to provide individuals with disabilities an equal opportunity to participate in district programs, activities, and services; conduct Section 504 and Title II training for certain district employees; reimburse the complainant parent for expenses she incurred in transporting the student to a new school; and take certain additional steps if the complainant informed the superintendent that she intends to re-enroll the student in the district during the 2019–20 or 2020–21 school years.

Case 3: OCR resolved a complaint against a school district alleging that the district discriminated against her son on the basis of his disability by failing to provide him with speech/language therapy (SLT) as required by the student's Section 504 plan during the 2019–20 school year. The complainant also alleged that the district discriminated against other students at the school on the basis of their disabilities by failing to provide students with mandated SLT as a related aid and/or service during the 2019–20 school year. Prior to OCR completing its investigation, the district expressed a willingness to voluntarily resolve the complaint. Under the resolution agreement, the district is required to convene a group of persons knowledgeable about the student and other students at the school, such as the Section 504 committee or Committee on Special Education, to determine whether all of these students require any compensatory SLT services as a consequence of the district not providing them with the requisite number of SLT sessions mandated by the students' Section 504 Plans or IEPs. The agreement also requires that if the group of knowledgeable persons determines that any of the students require compensatory services, the district will develop a plan for providing such services to each student. In addition, the agreement requires the district to provide training to staff members and administrators at the school who were responsible for implementing the students' Section 504 plans or IEPs during the 2019–20 school year regarding the requirements of Section 504 as it pertains to the provision of related aids and services.

Ensuring Effective Accommodations

Case 1: OCR resolved a complaint that alleged that a college failed to provide a student with the accommodations necessary to ensure that the student had an equal opportunity to participate in a disciplinary hearing in a non-discriminatory manner. Specifically, the complaint alleged that the college did not permit the student to attend the hearing telephonically as an accommodation for his autism and social anxiety disorder. OCR had compliance concerns with respect to whether the college appropriately responded to the student's requests for accommodations, including whether the college denied these requests without engaging in an appropriate process with the student, whether the college provided an explanation as to why the requests for accommodations were being denied, and whether the student was given the opportunity to provide additional information or an explanation concerning the necessity of the accommodations. Prior to the completion of OCR's investigation, the college voluntarily agreed to enter into a resolution agreement with OCR to resolve the complaint allegations and address OCR's compliance concerns. In the resolution agreement, the college agreed to develop written procedures for providing accommodations to students with disabilities in disciplinary hearings and to provide the student with an opportunity to request a new hearing under the newly developed procedures.

Case 2: The complainant alleged that a college's service animal policy violated Section 504 and Title II because it required that each owner of a service animal register it with the college, obtain a photo ID for it, ensure that the photo ID was visible on it at all times, and ensure that it completes obedience training. OCR found that the college violated the above laws because its policy included additional requirements not permitted by law. Specifically, OCR noted that the college is only legally permitted to ask an individual accompanied by an animal two questions to determine if the animal qualifies as a service animal: (1) if the animal is required because of a disability and (2) what work or task the animal has been trained to perform. The college agreed to remedy this violation by eliminating the unlawful requirements from its service animal policy, and any document that refers to that policy (e.g., its student catalog), notify the college community of the revised policy, and provide training for all college administrators on the revised policy and the requirements of Section 504 and Title II relating to service animals.

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.

During FY 2020, OCR received 465 complaints alleging one or more violations of the Age Discrimination Act. Of the 10,185 complaints that OCR resolved in FY 2020, 518 (5.1 percent) included at least one alleged violation of the Age Discrimination Act. OCR resolved 9 of those complaints (1.74 percent of Age Discrimination Act complaint resolutions overall) with change, although a large majority of the Age Act allegations 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, employment, and retaliation against individuals who asserted their rights or those of others under the Age Discrimination Act.

Separately, the Boy Scouts of America Equal Access Act prohibits any public elementary and secondary school, or SEA or LEA that receives Department funds, from discriminating against any group that is officially affiliated with the Boy Scouts of America and any other youth group listed in Title 36 of the U.S. Code as a patriotic society. Specifically, the statute prohibits covered entities that provide meeting spaces for outside groups from denying the Boy Scouts of America and other protected youth groups equal access to or a fair opportunity to meet.

Of the 10,185 complaints received in FY 2020, OCR received 14 complaints (0.13 percent of total complaints) that alleged at least one violation of the Boy Scouts Act. OCR resolved 14 complaints containing an allegation of discrimination under the Boy Scouts Act, and none of the allegations raised under the Boy Scouts Act in FY 2020 were considered resolved with change.

The Civil Rights Data Collection

As Secretary DeVos has unambiguously stated, "Protecting all students' civil rights is at the core of OCR's mission, and in order to meet that challenge, we need reliable, accurate data and true partnership with state education agencies and school districts." To meet this mission, the CRDC collects data related to OCR's civil rights enforcement responsibilities at the pre-K through 12th grade levels, including charter schools, magnet schools or programs, alternative schools, schools serving students with disabilities, and long-term secure juvenile justice facilities. The CRDC has been published by OCR since 1968. OCR is authorized to collect data that are necessary to ensure compliance with civil rights laws within its jurisdiction, pursuant to the Department of Education Organization Act, 20 U.S.C. § 3413(c)(1).

The CRDC is a long-standing 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/or disability. Under the Trump Administration, OCR has prioritized improving data accuracy and reliability so that the CRDC will be even more effective. In FY 2020, OCR's increased focus on data quality and improved collection efforts has benefitted stakeholders, schools, families, and those who are committed to eliminating roadblocks to quality education for all students.

2017–18 CRDC

On October 15, 2020, OCR released the 2017–18 CRDC.[32] The data, which was self-reported and self-certified by 17,604 public school districts and 97,632 public schools and educational programs, represents roughly 50.9 million students, and covers a broad array of civil rights-related topics. The 2017–18 CRDC data form required school districts and their schools to collect and input as many as 1,700 data points.

As a result of OCR's recent efforts, the 2017–18 CRDC contained several improved data quality elements across several categories. By identifying and correcting statistical anomalies and increasing post-collection outreach to give school districts an opportunity to submit amended data, the 2017–18 CRDC was improved immensely. Immediately after the window to report data through OCR's submission system closed for the 2017–18 CRDC, OCR began a data quality correction phase during which school districts made corrections to erroneous data directly through the CRDC submission system. OCR also conducted greater outreach to school districts with potentially anomalous restraint and seclusion data submissions, and allocated additional resources for technical support, such as clarifying proper understanding of reporting requirements, and working with school districts to ensure that detailed, written corrective plans were put into place when data were incomplete. In FY 2020, OCR allocated additional technical support resources, clarified proper understandings of reporting requirements, and worked with school districts to ensure that detailed, written corrective action plans were put into place to address any identified issues with incomplete data.

In addition to the release of the 2017–18 CRDC, OCR also released two issue briefs on topics about which Secretary DeVos had raised concerns: the possible inappropriate use of restraint and seclusion on students with disabilities[33] and sexual violence in K-12 schools.[34]

ISSUE BRIEF: THE USE OF RESTRAINT AND SECLUSION ON CHILDREN WITH DISABILITIES IN K-12 SCHOOLS

While federal law does not specifically prohibit the use of restraint and seclusion, there are circumstances under Section 504 and Title II in which the use of restraint and seclusion may constitute discrimination against students with disabilities. In response to the Department's ongoing initiative, OCR's issue brief provides data relevant to the use of restraint and seclusion on students with disabilities.[35]

During the 2017–18 collection year, approximately 101,990 students of the approximately 50.9 million students enrolled in the nation's public schools were subjected to physical restraint, mechanical restraint and/or seclusion. The data revealed that 70,833 students were subjected to physical restraint, 3,619 students were subjected to mechanical restraint, and 27,538 students were subjected to seclusion. Eighty percent (56,905 students) of all students physically restrained were students with disabilities served under IDEA, and 41 percent (1,494 students) of all students mechanically restrained were students with disabilities. Seventy-seven percent (21,277) of all students secluded were students with disabilities. Among IDEA students who were subjected to physical restraint, 83 percent were males and 17 percent were females. Likewise, among IDEA students who were subjected to seclusion, 84 percent (27,938) were male students, compared to 16 percent female students.

ISSUE BRIEF: SEXUAL VIOLENCE IN K-12 SCHOOLS

In response to the Department's FY 2020 initiative, OCR published a second issue brief highlighting the troubling rise of sexual violence incidents in K-12 schools. The CRDC data survey form defines sexual assault as involving threatened rape, fondling, indecent liberties, or child molestation and indicates that both male and female students can be victims of sexual assault. The CRDC instructs that the classification of these incidents should take into consideration the age and development of the offender(s) to avoid, for example, misclassification of actions of young children when the student is not cognizant of the potential sexual connotations.

From 2009 to 2019, OCR's receipt of sexual harassment and sexual violence complaints at the K-12 level more than tripled. In addition, for collection year 2017–18 alone, the total reported incidents of sexual violence were 14,938—a 55 percent increase when compared to the prior collection year (9,649 reported incidents). In addition, there were approximately 786 reported incidents of rape or attempted rape—nearly double (99 percent increase) the number of incidents reported for the prior collection year (394 incidents). Lastly, as it relates to sexual assault involving threatened rape, fondling, indecent liberties, or child molestation, there was a 53 percent increase of reported incidents of sexual assault (14,152) when compared to the prior collection year (9,255).

Proposed Changes to the 2020–21 CRDC

During FY 2020, OCR proposed and considered changes to the next CRDC to support OCR's enforcement efforts and to balance the administrative burden on LEAs and schools of collecting and reporting civil rights data while furthering OCR's ongoing mission of protecting students' civil rights. OCR published its proposed changes to the data collection in the Federal Register for two rounds of public comment—an initial 60-day public comment period, which began in September 2019, and a second, 30-day public comment period, which started in July 2020.

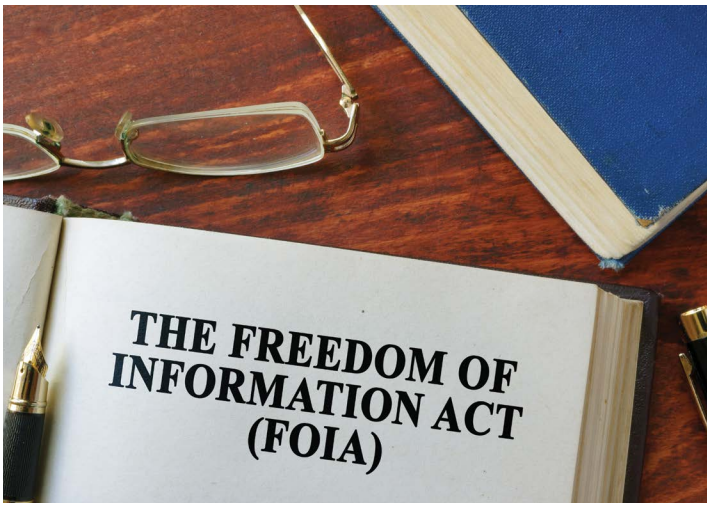
As part of its effort to support the enforcement of civil rights laws while considering the administrative burden of collecting data, OCR's proposed changes also supported President Trump's Executive Order 13777, Enforcing the Regulatory Reform Agenda, which directs federal agencies to alleviate unnecessary regulatory burdens. Consistent with these directives, OCR proposed to retire data elements which do not support OCR's enforcement efforts or further OCR's core mission of upholding students' civil rights or impose a significant unjustified burden on LEAs and schools. The elements selected for removal were carefully considered in both the burden they impose on LEAs and their benefit to OCR's mission of enforcing civil rights. OCR also proposed to modify existing elements or add data elements based on what OCR has identified as particularly acute civil rights issues of pressing concern. The two key areas where OCR has proposed additional elements, described below, are areas where OCR believes additional data are needed to better inform its civil rights enforcement and technical assistance activities. In addition to the two key areas, other elements were also either modified or added to improve efficiency in data collection.

In response to the increase in the number of cases that OCR has seen annually involving sexual violence, the experience of OCR's enforcement offices, and the gravity of these offenses, for the next CRDC, OCR proposed to collect more detailed data on incidents involving rape or attempted rape and sexual assault. The proposed data elements aim to collect, for the first time, detailed data on documented incidents of rape, attempted rape, or sexual assault committed by a student and those documented incidents committed by a school staff member. OCR also proposed to collect detailed data on how schools respond to allegations of sexual violence made against school staff members, including the number of such allegations against a school staff member that were followed by a resignation or retirement prior to final discipline or termination, the number of such allegations against a school staff member that resulted in a determination of responsibility, and the number of such allegations against a school staff member that were followed by a duty reassignment.

Similarly, in response to data from past collections suggesting that incidents of harassment or bullying on the basis of religion were increasingly prevalent in schools, OCR also proposed to expand its collection to include, for the first time, the number of incidents of harassment or bullying on the basis of perceived religion for each of 14 religion categories, as identified by the Federal Bureau of Investigation's Hate Crime Data Collection Guidelines and Training Manual. OCR believes that collecting this data will be helpful in identifying patterns of conduct, especially patterns of ethnic or ancestral harassment related to religious discrimination.

Additional proposed changes for the 2020–21 CRDC include expanding the collection of counts of students enrolled in the International Baccalaureate Diploma Programme; expanding counts of students enrolled in one or more AP courses to include the numbers of students served under Section 504 of the Rehabilitation Act by sex; and combining the collection of preschool children who received one out-of-school suspension counts and the collection of preschool children who received more than one out-of-school suspension counts into one collection of preschool children who received one or more out-of-school suspension counts.

Freedom of Information Act Requests



The Freedom of Information Act

The Freedom of Information Act (FOIA), enacted in 1966, is a federal law that establishes the public's right to request existing records from federal government agencies. 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 FY 2020, OCR received 913 FOIA requests and processed 1,016 FOIA requests. Although 913 is the lowest number of FOIA requests OCR has received in at least 12 years, OCR's FOIA requests still represent 38 percent of the total number of requests received by the Department in FY 2020. Moreover, during FYs 2017, 2018, 2019, and 2020 combined, OCR received 5,039 requests—an increase of 331 FOIA requests received compared to the last four fiscal years under the previous administration (FYs 2013, 2014, 2015, and 2016).

OCR's New Dedicated FOIA Team

As mentioned above, OCR receives and responds to the plurality 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. While OCR staff have been able to meet these large requests, many 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. However, prior to FY 2020, OCR had no dedicated team to work on processing FOIA requests and instead relied on OCR staff throughout headquarters and regional offices to perform FOIA work when their schedules allowed.

Given that OCR has received record-high numbers of FOIA requests in recent years, OCR established a separate team of dedicated FOIA professionals to facilitate the expeditious processing of FOIA requests for OCR records in FY 2020. Consisting of a director, team leader, six FOIA professionals, and an attorney, the FOIA team is focused on ensuring that records released under FOIA are in response to, and within the scope of, a properly described records request. Recognizing OCR's legal obligations to respond under FOIA, and in response to the marked increase in FOIA filings, the new FOIA team is focused exclusively on fulfilling FOIA requests and processing new FOIA requests in a more timely and efficient manner.

During FY 2020, OCR's new FOIA team relieved OCR attorneys of the burden of processing FOIA requests to better focus on their primary duties of case investigation and resolution. The FOIA team also streamlined OCR FOIA requests by proactively redacting and publicly posting OCR's letters of finding to the OCR website, thereby reducing the need for FOIA requests. Through this process, OCR's FOIA team has consistently applied FOIA exemptions to the same or similar types of records and aided in OCR's overall effectiveness and efficiency.

Looking Ahead

OCR's mission is "ensuring equal access to education and promoting educational excellence throughout the nation through vigorous enforcement of civil rights."[36] This responsibility is not one to be taken lightly. OCR is committed to ensuring that *all* students, regardless of race, color, national origin, sex, disability, or age, receive equal access to a high-quality education. As a part of this commitment, OCR must continue to maintain the fair and vigorous enforcement of civil rights laws as its primary focus, thereby ensuring compliance by educational institutions nationwide.

"Our new Title IX rule demonstrates that commitment to all students and their safety. It protects them by holding schools accountable for responding to incidents of sexual misconduct and requires each institution to adopt fair, transparent, and reliable processes for addressing Title IX complaints. This rule empowers survivors of sexual harassment to ensure that schools take all allegations seriously, and we are proud of our work on this issue. We will continue to enforce Title IX and ensure that all students are protected from unlawful sex discrimination."

U.S. Secretary of Education Betsy DeVos

Unfortunately, from 2009 to 2016, OCR acted as an advocacy organization, using its role as a law enforcement agency to promote political agendas, and using "Dear Colleague" letters to unlawfully rewrite federal civil rights laws without the benefit of notice or comment by the public. Often, this involved expanding the scope of individual complaints so significantly that children and families waited for years to receive relief, while OCR spent years reviewing decades of data, purportedly in search of systemic violations. The Trump Administration has demonstrated that, when it comes to civil rights enforcement, having the right approach matters. The previous approach to civil rights enforcement indisputably failed students. The data outlined in this report demonstrate that.

This administration's focus on reorienting OCR to be a neutral, impartial law enforcement agency has allowed OCR to significantly reduce the tragic backlog of civil rights complaints inherited from the Obama Administration—while bringing about timely and meaningful change at thousands of schools, to the benefit of students and families across this nation. During the past four years, complaint investigations have been conducted without bias, driven by the needs of the particular students harmed, and guided by a fidelity to the law, as passed by Congress. Moving forward, OCR must dedicate its efforts to ensuring that the backlog of cases does not grow again and that families receive timely resolution of their cases. OCR must remain committed to fulfilling its purpose as an independent and neutral arbiter of the law, as it is written, and maintain transparency in its case investigation procedures. If OCR does not respect the clear lines of its jurisdictional authority and purpose, families across this country will suffer, by being denied the expedient enforcement of federal civil rights laws and relief from actual discrimination.

The Trump Administration has put a framework into place that will allow OCR to pursue the vigorous enforcement of civil rights, provide timely relief to students and families, and work collaboratively with recipients to address noncompliance. While its primary function is to investigate and resolve complaints of discrimination, OCR will continue to dedicate resources to proactive investigations focused on critical civil rights issues of national concern. Through ongoing compliance reviews and directed investigations, OCR must continue to address issues of access to online and web-based learning for students with disabilities, sexual harassment and sexual assault in K-12 schools, and the possible inappropriate use of restraint and seclusion on students with disabilities. OCR must use the CRDC prudently, mindful of its purpose—to collect data that are necessary to ensure compliance with civil rights laws, and where appropriate, mindful of the burden it places on recipients. OCR has also affirmed its commitment to working with institutions—prior to the filing of any complaint—to help them better understand their responsibilities under the laws that OCR enforces. Through the OPEN Center, OCR must continue to provide technical assistance and support to schools, educators, families, and students to ensure better awareness of their obligations and protections under federal non-discrimination laws.

As a law enforcement agency, it is not OCR's role to issue sub-regulatory guidance documents that impose new obligations not contemplated by the statutes or regulations OCR enforces. Where clarity in the law is needed, the difference is once again about having the right approach. Under Secretary DeVos's leadership, the Department amended the Title IX regulations to enshrine protections from sexual harassment for the first time, doing so through the formal notice-and-comment rulemaking procedures mandated by Congress. As a result of over two years of wide-ranging research, careful deliberation, and critical input from the American people—including over 124,000 public comments—the Department took the historic step of codifying schools' obligations to respond to reports of sexual harassment. The Title IX regulation, which became effective on August 14, 2020, carries the full force of law, and provides a consistent and clear framework for adjudicating Title IX complaints on which survivors, the accused, and schools can rely for decades to come.

Robust enforcement of the new Title IX regulation must continue in the years to come—and students and parents must demand it. The regulations establish new protections for survivors and institutionalize procedural protections that create safer educational communities that will benefit and protect all students. In the past four years, other issues have arisen under the statutes that OCR enforces that will demand continued attention. For example, OCR has investigated hundreds of complaints involving single-sex scholarships that implicate federal civil rights laws. Finally, in the face of a growing trend of allowing biological males who identify as transgender females to compete athletically against biological females, it is imperative that OCR remains steadfast in its commitment to protecting women's athletics and preserving Title IX's original purpose.

Vigorous enforcement of Title VI—consistent with Supreme Court precedent—must also continue to be a priority for OCR. The continued use of racial preferences or race-based criteria in admissions and financial aid cannot be ignored; and the troubling rise of anti-Semitism on campuses and in schools nationwide cannot be ignored. Each day, OCR works to ensure that all students have equal access to a safe, nurturing, quality learning environment, free from discrimination. It fights to create opportunity and give a voice to those children and families who are invisible to or forgotten by too many. In so doing, OCR must keep in mind the fundamental principles of federal civil rights laws and the legal principles that protect all students from discrimination on the basis of race, no matter who they are or where they are from.

Finally, over the past year, the nation faced an unprecedented national emergency in COVID-19 that disrupted learning for students everywhere and, in some cases, complicated recipients' ability to comply with federal non-discrimination laws. As Secretary DeVos repeatedly stated, however, "Learning should not stop or be denied because schools fear federal regulators or fear doing something different." Too many students have fallen further behind because schools failed to transition and adapt to meet their needs. This is particularly the case for our most vulnerable students—including unrepresented populations and children with disabilities, who are at risk of falling through the cracks the longer schools remain closed. OCR has supported the efforts of local education leaders and schools, while ensuring that schools were mindful of their continuing civil rights obligations each step of the way. OCR provided critical guidance and technical assistance as schools transitioned to distance learning, implemented creative solutions to emerging problems, and are now welcoming or are preparing to welcome students back in the classroom. OCR must continue to vigorously enforce federal civil rights laws—even in the midst of COVID-19—and must continue to forcefully protect the right of every student to learn in an environment that is safe and free from discrimination, whether that learning takes place in the classroom or online.

USE OF RACE-EXCLUSIONARY POLICIES OR PRACTICES IN SCHOOLS

The nation has experienced significant strife that stirred debate about racial discrimination and inequality. Each day, educators across the country strive to ensure that all students have equal access to a safe, nurturing, quality learning environment, free from discrimination. As school districts and leaders in the higher education community seek to bring awareness to these important issues, they must keep in mind the fundamental principles of federal civil rights laws and the legal principles that protect all students and staff—regardless of race—from discrimination on the basis of race.

OCR is aware of concerning reports recently that schools across the country are discriminating on the basis of race in different ways. Sometimes, these reports have involved schools' purported efforts to promote diversity and equity among students but are nevertheless prohibited because they violate Title VI. OCR has received complaints concerning the use of race-exclusionary policies or practices in schools. OCR has also opened investigations involving such complaints, including two directed investigations involving race-exclusionary practices. A few of those investigations are briefly described below.

- A teacher in a Chicago-area school district filed a complaint with OCR alleging that the district implemented a series of racial "equity" policies and programs that discriminated against staff, students, and job applicants; implemented certain policies and programs that discriminate against staff, students, and job applicants, including segregating staff and students into affinity groups based on race; used "Black Lives Matter" materials to advocate to students that white individuals bear collective guilt for racism, police brutality, and other social ills; and failed to discipline some students appropriately by allegedly taking race into consideration in its disciplinary decisions.
- OCR opened a directed investigation based on reports that a university in Kentucky segregated by race its incoming resident assistants for training purposes. As part of what the university called "White Accountability Training," resident advisors who identified as white were allegedly given training on "microaggressions" and "white privilege," while resident assistants who identify as "black, indigenous, [or] people of color," were given separate training.
- OCR opened a directed investigation to examine whether a university in New York is discriminating on the basis of race, color, or national origin by offering and/or providing an exemption from the requirement to obtain vaccinations to students "who identify as Black, Indigenous, or as a Person of Color" based on their race, color, or national origin.

OCR has concerns that using curricular or training materials for students or staff which are based on racial classifications or stereotypes of individuals—solely based on their race—may violate Title VI by requiring school personnel to engage in activities that result in the different treatment of students based on their race, or which constitute racial harassment.[37] Such policies or pedagogical practices that perpetuate the idea that students may be categorized by race, assigned a set of characteristics, and be considered to possess certain characteristics based on that race, may subject students or staff to discrimination in violation of Title VI.

OCR must take its obligation to ensure equal access to education seriously; this must apply to all students regardless of race. Recipients cannot engage in race discrimination, either by treating individuals differently due to their race, or by creating a racially hostile environment. While OCR is bound to adhere to the First Amendment's free speech protections, these racially exclusive practices could result in a violation of Title VI. OCR must take its obligation to ensure equal access to education seriously and continue its vigorous enforcement of Title VI on behalf of all students.

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 educational institution receiving federal financial assistance from the U.S. Department of Education.
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, or a finding of no violation.
3. Office for Civil Rights, *Case Processing Manual* (2020), https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.
4. Per OCR's Case Processing Manual (CPM), a complainant filing on behalf of another person will be required to secure any necessary written consent from the individual.
5. A single complaint often contains more than one allegation of discrimination. Please note that this report includes data on both the total number of individual allegations and the total number of complaints.
6. 34 C.F.R. §§ 100.7(a), 106.71, 104.61, 108.9, 110.30, and 28 C.F.R. §35.172(a).
7. The Office for Civil Rights' Blog can be found at the following link: https://www2.ed.gov/about/offices/list/ocr/blog/index.html.
8. U.S. 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.
9. "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.
10. Issue Brief on Sexual Violence in K-12 Schools, OCR, https://www2.ed.gov/about/offices/list/ocr/docs/sexual-violence.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.
11. "U.S. 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.
12. "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.
13. 20 U.S.C. § 1681(a)(3).
14. 34 C.F.R. § 106.12(a).
15. 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.
16. 34 C.F.R. § 106.41(a), (b).
17. 34 C.F.R. § 106.41(c)-(c)(1) (In determining whether equal athletic opportunities are available, [OCR] will consider … whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes[.]").
18. Pursuant to Section 103 of OCR's Case Processing Manual, OCR may open complaints against other recipients if it determines that they, too, are involved in incidents of alleged discrimination. In light of the allegations in this complaint, OCR opened five additional investigations against Bloomfield Public Schools, Hartford Board of Education, Canton Board of Education, Cromwell School District, and Danbury Board of Education.
19. *Bostock,* 140 S. Ct. at 1743.
20. *Id.* at 1753.
21. *Id.* at 1739, 1741.
22. Revised Letter of Impending Enforcement Action, August 31, 2020, https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01194025-a2.pdf.
23. *Bostock,* at 1741 (2020).
24. *See Gratz v. Bollinger,* 539 U.S. 244 (2003).
25. *See Grutter v. Bollinger,* 539 U.S. 306 (2003).
26. *See Fisher v. Univ. of Texas at Austin,* 136 S. Ct. 2198 (2016) (Fisher II), Fisher v. Univ. of Texas at Austin, 570 U.S. 297 (2013) (Fisher I), and Grutter v. Bollinger, 539 U.S. 306 (2003)
27. See recission letter, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-vi-201807.pdf.
28. *Dear Colleague Letter on the Use of Race in Postsecondary Admissions,* (2008) https://www2.ed.gov/about/offices/list/ocr/letters/raceadmissionpse.html.
29. *Id.*
30. In addition to the cases mentioned, OCR has received complaints against several high-profile institutions alleging an unlawful use of race in admissions. A full list of Elementary, Secondary, and Post-Secondary Schools currently under investigation by OCR is available at: https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/tvi.html. This list is a snapshot of data on aspects of law that OCR enforces as it existed at a particular point in time (i.e., the last Friday of each month), and search results are organized by the types of discrimination issues under investigation.
31. In addition to OCR's case involving Washington University in St. Louis, OCR opened a joint investigation with DOJ into a complaint alleging that Yale University discriminated against Asian American applicants, in violation of Title VI, by treating Asian American applicants differently than non-Asian American applicants during the admissions process. More information about this case, including the U.S. Department of Justice finding that Yale University violated Title VI is available at the following link: https://www.justice.gov/opa/pr/justice-department-sues-yale-university-illegal-discrimination-practices-undergraduate.
32. "U.S. Department of Education Releases 2017-18 Civil Rights Data Collection OCR's press release on the 2017–18 CRDC," press release, October 15, 2020, https://www.ed.gov/news/press-releases/us-department-education-releases-2017-18-civil-rights-data-collection.
33. Issue Brief on the Inappropriate Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools is publicly available, OCR, https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.
34. Issue Brief on Sexual Violence in K-12 Schools is publicly available, OCR, https://www2.ed.gov/about/offices/list/ocr/docs/sexual-violence.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.
35. Specifically, under the CRDC, *physical restraint* is defined as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely, whereas *mechanical restraint* is the use of any device or equipment to restrict a student's freedom of movement. *Seclusion* is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.
36. https://www2.ed.gov/about/offices/list/ocr/aboutocr.html.
37. The Department of Education lacks general jurisdiction over curricular decisions made by school districts. *See* 20 U.S. Code § 3403(b) (noting limits on the "direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system."). However, OCR possesses jurisdiction in rare cases, where curricular decisions themselves may constitute illegal discrimination under federal civil rights laws, such as Title VI. *See id.* (recognizing jurisdiction "to the extent authorized by law").

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