

OCR Instructions to the Field re Scope of Complaints

Regional Directors:

These Instructions set forth new internal guidance regarding the scope of the investigation of all OCR cases. This guidance is effective immediately and applies to all complaints currently in evaluation or investigation, as well as newly-filed complaints. These Instructions shall be applied consistently with OCR's Case Processing Manual (CPM), and if any questions arise about how to apply these Instructions consistently with the CPM, please contact your designated Enforcement Director for clarification.

Effective immediately, there is no mandate that any one type of complaint is automatically treated differently than any other type of complaint with respect to the scope of the investigation, the type or amount of data needed to conduct the investigation, or the amount or type of review or oversight needed over the investigation by Headquarters. There is no longer a "sensitive case" or "call home" list; rather, Headquarters and the Regional Offices (Regional Director) will consult regularly to determine on a case-by-case basis whether complex or problematic investigations require Headquarters review or intervention and when trends emerge that require Headquarters oversight or direction. Cases are retroactive and can/will be returned to the respective Regional Office if the RD feels a case can be adjudicated at the regional level.

In particular, OCR will no longer follow the existing investigative rule of obtaining three (3) years of past complaint data/files in order to assess a recipient's compliance, which rule had been stated in *OCR's Approach to Title IX PSE Sexual Violence Complaints* (January 2014) (for internal discussion), *OCR's Approach to the Evaluation, Investigation and Resolution of Title VI Discipline Complaints* (February 12, 2014) (Draft for internal discussion), and other related internal policy documents. For example, if a discipline complaint requires analysis of whether a facially-neutral suspension policy was applied differently against a particular student based on a prohibited classification such as race, the investigative team (supervised by their Team Leader and Regional Director) is empowered to determine what comparative data (CRDC or otherwise) are necessary to, e.g., determine if other similarly-situated students of a different race were, in fact, treated differently from the student on whose behalf the complaint was filed.

The scope of the investigation of all complaints, including ESE discipline and PSE sexual violence complaints, is determined by the statutes and regulations, OCR's published guidance, and the legal theory(ies) applicable to the allegation(s) stated by the complainant. There is no longer a "one size fits all" approach to the investigation of any category of complaints. Based on the investigative requirements set forth in the statutes and regulations, published guidance, and the legal theory(ies) applicable to the allegation(s) stated by the complainant, it is the investigative team's responsibility (under appropriate supervision by Team Leaders and other Regional Office supervisors) to determine on a case-by-case basis the type and scope of evidence that is necessary to support a legally sound investigation and determination, with the understanding that all OCR investigations are to be framed in their scope by the allegations of each particular complaint.

For the sake of clarity, these Instructions mean that OCR will only apply a "systemic" or "class-action" approach where the individual complaint allegations themselves raise systemic or class-wide issues or the investigative team determines a systemic approach is warranted through conversations with the complainant.

Please apply the instructions in this document with the understanding that OCR's goal is to swiftly address compliance issues raised by individual complaint allegations, reach reasonable resolution agreements with defined, enforceable obligations placed upon recipients directly responsive to addressing the concerns raised in the individual complaint being resolved, and encourage voluntary settlements wherever possible.

I trust you will apply these instructions in line with the attitude and approach we are proud to foster here in OCR: that OCR exists to robustly enforce the civil rights laws under our jurisdiction, and we will do so in a neutral, impartial manner and as efficiently as possible. These instructions in particular are designed to empower our investigative staff to clear case backlogs and resolve complaints within a reasonable time-frame, thus providing effective resolution and justice to complainants and recipients.

Thank you for your continued dedication to OCR's core mission to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools. If you have any questions about these instructions, please contact your Enforcement Director. You may also contact me if further clarification is needed.

A handwritten signature in black ink, appearing to read 'C. Jackson', written over a horizontal line.

Candice Jackson

OCR Acting Assistant Secretary for Civil Rights