



U.S. Department of Education
Office for Civil Rights

FISCAL YEAR
2016



Securing Equal Educational Opportunity

Report to the President and
Secretary of Education

Under Section 203(b)(1) of the Department of Education Organization Act

U.S. Department of Education Office for Civil Rights

Catherine E. Lhamon, Assistant Secretary

December 2016

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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This report is also available on the Office for Civil Rights website at <http://www.ed.gov/ocr>.

Any updates to this report will be available at this website.



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Message from the Assistant Secretary for Civil Rights



The Office for Civil Rights (OCR) works to ensure satisfaction of federal civil rights laws at every level of our education system through robust investigation and enforcement, policy guidance, data collection, technical assistance, and customer service. This report highlights the ongoing vital necessity of that work; in schools throughout our nation, students continue to lack access to a quality education or face barriers in the form of discriminatory harassment, violence, or discipline. Every one of these students deserves the educational opportunity Congress, and our nation, promised to them; every one of these students deserves our protection and our support.

As detailed in this report, during fiscal year (FY) 2016, OCR processed nearly 17,000 complaints – exceeding last year’s record high by more than 60 percent – and opened nearly 4,000 investigations (29 percent more than last year).

The case descriptions in this report include a comprehensive resource equity review of a district in Ohio, making good on our country’s fundamental promises about race equity; a set of agreements ensuring that all of Arizona’s English learners will receive appropriate identification and language supports; an agreement that applies to a county-wide school system in California ensuring that students with disabilities are appropriately identified, placed, and served based on their needs; and a resolution ensuring relief for students at a North Dakota university that failed to complete an investigation when a student alleged that she was sexually harassed and assaulted by a professor.

These resolutions represent real change in the lives of students, for which I am deeply grateful. Nonetheless, I will be forever haunted by some of the facts we uncovered during our investigations, including resolutions involving a student with a disability whose teacher told her to kill herself; a nine-year-old whose school subjected him to prone restraint or recovery from restraint for more time than he received instruction, and whose mother heard him crying in a restraint room while she was outside the school in the parking lot on her way to pick him up; an Arab American student whose peers hurled slurs including “terrorist” at her in school hallways; a recent immigrant student being taunted “Welcome to America” as he was physically assaulted, sustaining severe injuries; and a college student whose university, despite her reporting she had been sexually assaulted by a campus security officer, failed to investigate appropriately the potential risk to other students. These facts underscore our ongoing need to safeguard the civil rights guaranteed to all students.

As is our consistent practice, OCR’s dedicated staff used every tool available to us to protect students’ civil rights. This year, OCR published five *Dear Colleague* letters that provide guidance on issues related to students with attention-deficit/hyperactivity disorder (ADHD), gender equity in career and technical education, protections for transgender students, voluntary youth service organizations, and lawful use of race in college admissions. We also responded to 3,901 correspondence inquiries, processed 6,300 hotline calls, facilitated 133 language translation requests, and resolved 8,625 cases.¹

Finally, with this year’s annual report, we mark the end of eight productive years in the Obama Administration of securing equal educational opportunity for students. While numbers alone can never tell the full story, the 76,000 complaints we handled, the 66,000 cases we resolved, the more than 5,400 resolution agreements we reached, and the 34 policy guidance documents we issued between 2009 and 2016 speak volumes about ongoing student need and this agency’s service to our school communities.

We accomplished our work during an eight-year period in which our staff level declined by 8 percent even as our complaint volume skyrocketed by 170 percent. I thank all current and former OCR staff for their consummate skill and dedication, and I remain hopeful that OCR will obtain additional resources to continue to deliver justice for students with skill and speed in the years ahead.

Sincerely,

Catherine E. Lhamon
Assistant Secretary for Civil Rights

Executive Summary and Report Highlights

In FY 2016, OCR promoted equity and excellence in education through conducting investigations and monitoring schools under resolution agreements, promoting greater understanding of how OCR interprets and enforces civil rights laws through the release of policy guidance, providing technical assistance and outreach to foster greater awareness of civil rights laws and obligations, and administering the Civil Rights Data Collection (CRDC).

In FY 2016, the quality and pace of OCR's enforcement work remained high. OCR received a record-high 16,720 complaints, initiated 13 proactive investigations (called compliance reviews), and resolved 8,625 cases overall, including 1,116 resolutions that secured changes protective of students' civil rights in schools around the nation. (See the **Appendix** for the total number of resolution agreements in FY 2016 by jurisdiction, state, and type of investigation.) Over the past eight years, the number of complaints OCR received generally rose in several areas, including complaints related to the restraint or seclusion of students with disabilities; harassment based on race, color, or national origin; web accessibility for students with disabilities; and sexual violence.

OCR developed and released five policy guidance documents and hosted 72 policy-related listening sessions with stakeholders on a variety of topics related to Title IX of the Education Amendments of 1972 (e.g., ensuring equity in career and technical education (CTE) programs to all students regardless of sex), Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (e.g., providing students with attention-deficit/hyperactivity disorder (ADHD) with equal educational opportunity), and Title VI of the Civil Rights Act of 1964 (e.g., clarifying the permissibility, consistent with U.S. Supreme Court jurisprudence, of the voluntary use of race and ethnicity to achieve diversity in schools).

OCR provided more than 295 technical assistance sessions to a wide range of stakeholders – including schools and districts, state education agencies, colleges and universities, parent groups, nonprofit and advocacy organizations, and other federal agencies – and conducted other outreach to galvanize action on important civil rights topics. Notable outreach efforts include convening university presidents to explore the issue of racial harassment on college and university campuses; hosting a conference with the U.S. Department of Housing and Urban Development and the U.S. Department of Transportation to identify effective paths to increase and sustain healthy, non-discriminatory, and diverse schools and communities; and cosponsoring a forum with the White House and Georgetown University to improve school systems' approach to better serve girls of color who have experienced trauma.

OCR released the 2013-14 school year CRDC, which includes data from approximately 97,000 public schools serving about 50 million students nationwide. For the first time, OCR made the entire CRDC data file accessible and downloadable by the public. OCR also prepared to administer the 2015-16 CRDC.

The Office for Civil Rights: Overview and Trends

For more than fifty years, the Office for Civil Rights (OCR) has served our nation's students by enforcing federal civil rights laws that protect them from discrimination.

Mission and Scope

The mission of OCR is to ensure equal access to education and to promote educational excellence across the nation through vigorous enforcement of civil rights laws. OCR's work to eliminate discriminatory barriers to education directly supports the Department's mission to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. OCR safeguards the rights of students through the development of policy guidance to assist schools² and other educational institutions receiving federal financial assistance in understanding how OCR interprets and enforces federal civil rights laws; the investigation of possible violations of civil rights laws; the dissemination of information and technical assistance about students' rights and schools' responsibilities; and the collection of data on key education and civil rights issues in our nation's public schools.

OCR's mandate to eliminate discriminatory barriers in education impacts more than 79 million individuals at institutions that receive federal funds, including all state educational agencies; approximately 18,200 local educational agencies; approximately 7,200 postsecondary institutions, including proprietary schools and community colleges; 80 state vocational rehabilitation agencies and their sub-recipients; and other institutions that receive U.S. Department of Education financial assistance, such as libraries, museums, and correctional institutions.

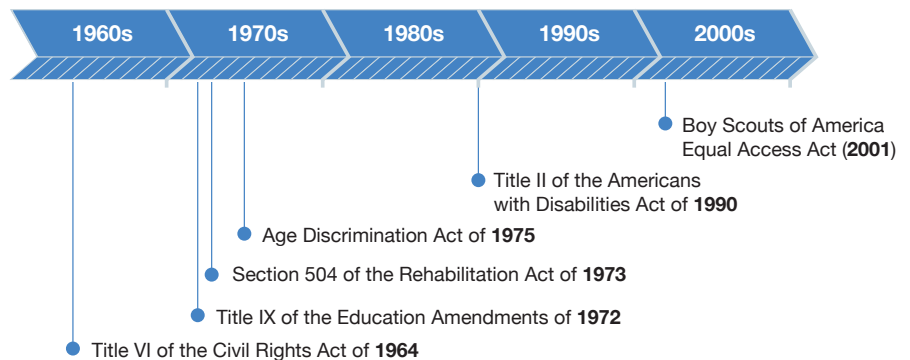
Jurisdiction

OCR ensures equal access to education for our nation's students by enforcing federal civil rights laws and implementing regulations that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in all programs and institutions that receive financial assistance from the Department (see **Figure 1**). These laws are:

- ▲ Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination);
- ▲ Title IX of the Education Amendments of 1972 (prohibiting sex discrimination);
- ▲ Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination);

- ▲ Age Discrimination Act of 1975 (prohibiting age discrimination);
- ▲ Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination in State and local government services -- whether or not programs receive Federal financial assistance); and
- ▲ Boy Scouts of America Equal Access Act of 2001 (prohibiting public elementary and secondary schools, local educational agencies, and state educational agencies from denying equal access or a fair opportunity to meet, or discriminating against, any group officially affiliated with the Boy Scouts of America or any other youth group listed as a patriotic society in Title 36 of the United States Code).

Figure 1: OCR Enforcement Jurisdiction Timeline



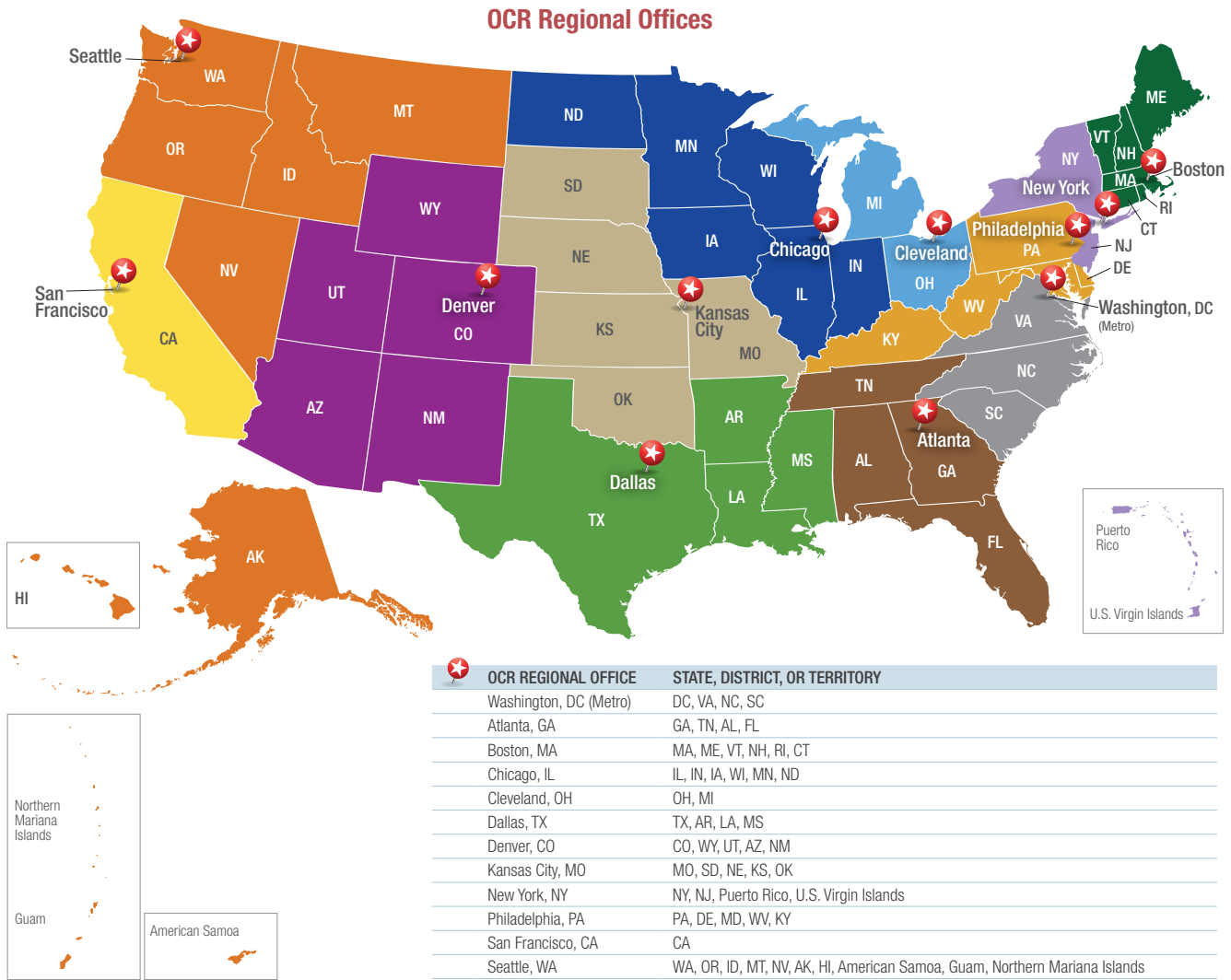
These laws and their implementing regulations represent the Congressional mandate that is the basis for all of OCR's work.

Structure and Functions

The Assistant Secretary for Civil Rights, who serves at the pleasure of the President of the United States and is appointed with the advice and consent of the U.S. Senate, leads the Office for Civil Rights. The Office of the Assistant Secretary for Civil Rights includes a Principal Deputy Assistant Secretary, a Deputy Assistant Secretary for Enforcement, an Acting Deputy Assistant Secretary for Policy, a Deputy Assistant Secretary for Strategic Operations and Outreach, a Deputy Assistant Secretary for Management and Operations, a Chief of Staff, two Senior Counsel, a Special Assistant, and two Confidential Assistants.

OCR serves our nation's students through a headquarters office and twelve regional offices located across the country. Its headquarters and DC Metro enforcement offices are located in Washington, DC, and the remaining 11 enforcement offices are in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, and Seattle (see **Figure 2**).

Figure 2: Map of OCR Regional Offices



Complaint Receipts and Staffing Trends³

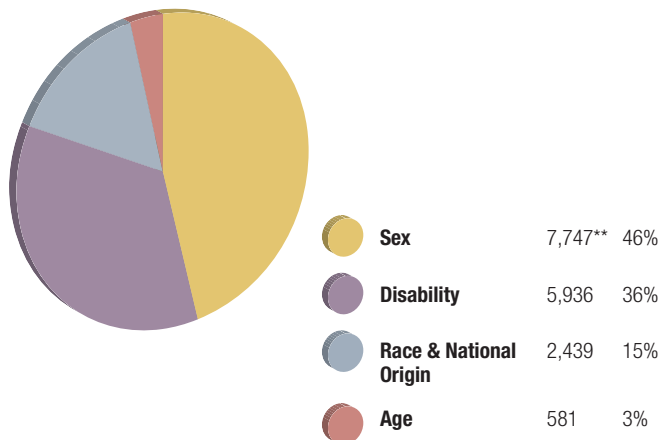
FY 2016 saw a continuation of a decade-long trend of successive record-high complaint receipts and declining staffing levels. OCR received 16,720 complaints in FY 2016, by far the highest one-year total in OCR’s history and 61 percent higher than last year’s total.

In FY 2016, sex discrimination claims comprised 46 percent (7,747) of all complaints received in the year, as compared to 28 percent (2,939) in FY 2015. The majority of Title IX complaints received this year (more than 6,000) were filed by a single complainant alleging discrimination in schools’ athletics programs. Complaints involving discrimination based on disability status comprised 36 percent (5,936) of all complaints this year; race or national origin discrimination complaints comprised 15 percent

(2,439); and age discrimination complaints comprised three percent (581) (see **Figure 3**).

The number of complaints OCR receives annually has increased by 188 percent over the past ten years (FY 2006-2016) and 113 percent over the past five years (FY 2011-2016). In particular, the number of complaints has risen in areas such as restraint and seclusion of students with disabilities (100 percent increase since FY 2011) (see **Figure 4**); sexual violence (277 percent increase at the K-12 level and 831 percent increase at the postsecondary level since FY 2011) (see **Figure 5**); web accessibility for persons with disabilities (511 percent increase since FY 2011) (see **Figure 6**); and harassment on the basis of race, color or national origin (17 percent increase since FY 2011) (see **Figure 8**).

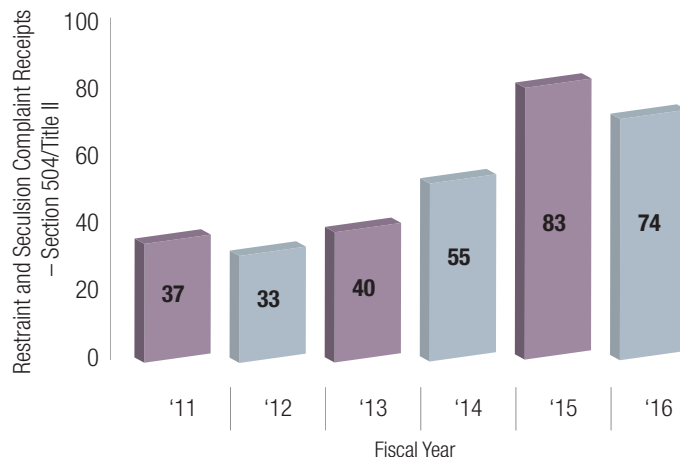
Figure 3: Percentage of Complaints Received by Type of Alleged Discrimination* (FY 2016)



* The numbers above do not reflect the total number of complaints received in FY 2016 because some complaints cover more than one statute and because a small percentage of complaints received in FY 2016 have not yet been categorized by statute.

** 6,157 of these are multiple complaints from an individual.

Figure 4: Increase in Number of Complaints Over Time Involving Restraint and Seclusion* of Students with Disabilities**



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

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

OCR's staffing level has generally declined over the life of the agency even though complaint volume has exponentially increased (see **Figure 7**). OCR's staff level at the end of FY 2016 was an estimated 563 Full Time Equivalents (FTE), a slight increase from the all-time low of 540 staff (FTE) OCR had on board in FY 2015. At the end of FY 2016, the number of OCR staff was 11 percent below the level ten years ago (FY 2006). As noted above, OCR's complaint volume has nearly tripled in that time span (16,720 in FY 2016 compared to 5,805 in FY 2006).

Fostering Greater Efficiencies to Maximize Impact

To ensure the successful fulfillment of OCR's mission and the timely handling of cases, OCR has taken aggressive measures to maximize efficiency in operations. OCR increased staff training opportunities and reduced associated costs by shifting from live training and meetings to more cost-efficient online training and videoconferencing. Further, to maximize OCR enforcement staff time on compliance activities, OCR worked to provide more online

Figure 5: Increase in Number of Complaints Over Time Involving Sexual Violence

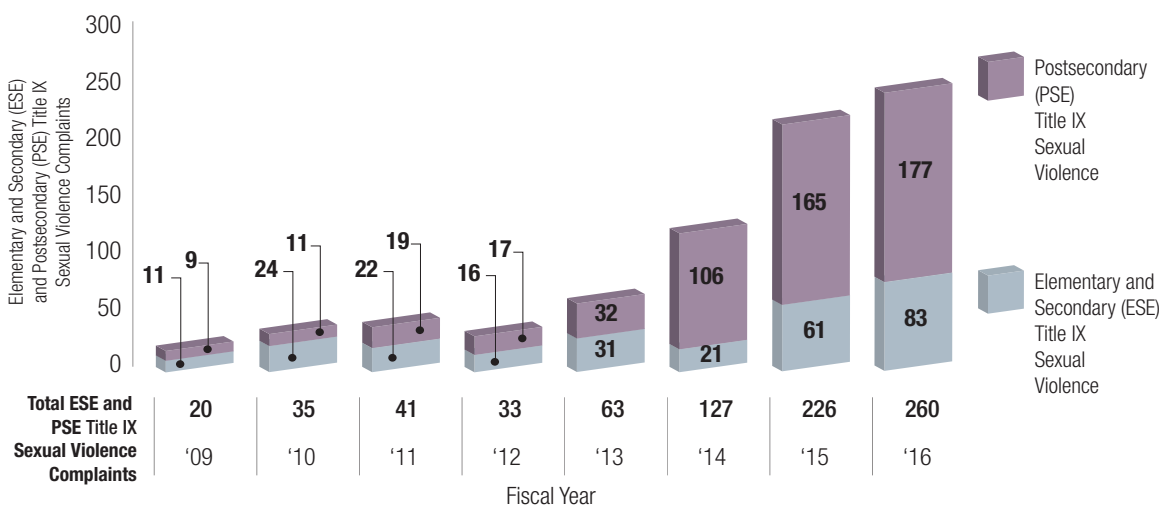
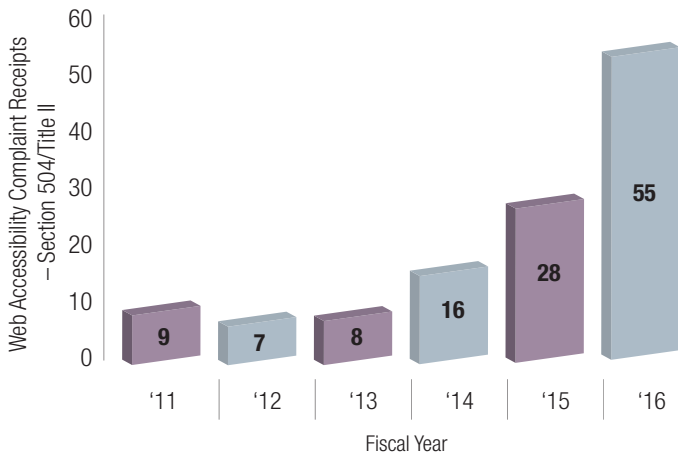
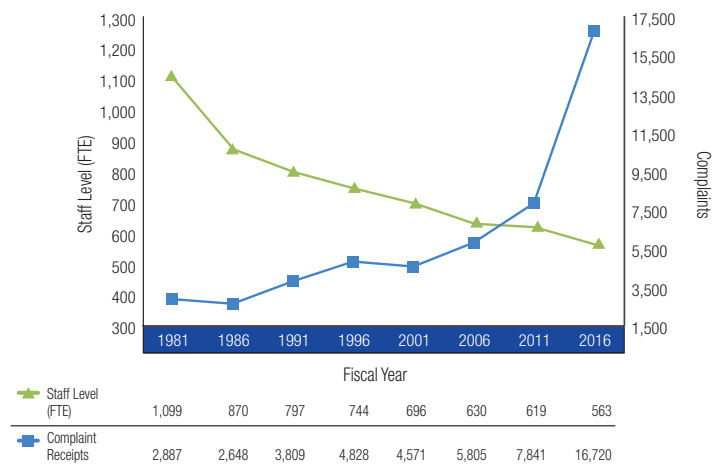


Figure 6: Increase in Number of Complaints Over Time Involving Web Accessibility for Students with Disabilities*



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

Figure 7: OCR Staff Level (FTE*) and Complaints Received, FY 1981-2016



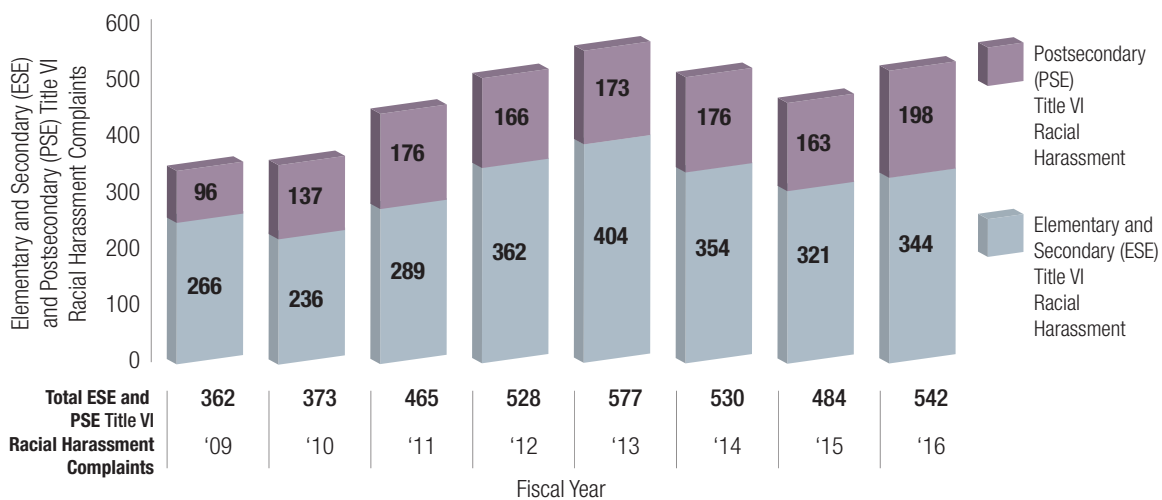
* Full Time Equivalents

information about OCR's work. For example, OCR established a new **OCR Frequently Asked Questions Hub** on its website that includes documents that address all statutes that OCR enforces, the Civil Rights Data Collection (CRDC), and the OCR complaint process, as well as a link to a new civil rights tutorial page that includes technical assistance materials related to OCR's work. In addition to updating materials on its enforcement work, OCR continued to publish additional **policy guidance documents** on its website. These materials inform institutions about their legal obligations while also educating the public about their rights under federal civil rights law. Making this information easily available online serves the dual goals of increasing public awareness of civil rights and reducing staff time needed to respond to public inquiries.

Enhancing Transparency

OCR has elevated its commitment to transparency by improving the way it disseminates information to the public. In FY 2016 OCR continued to update its **website** with case resolution agreements and letters, policy guidance documents, technical assistance materials and information about OCR's enforcement processes, making it among the most highly visible sites throughout the Department of Education with 2,740,988 hits in FY 2016, an increase of 14 percent over last year. Additionally, OCR posted more resolution agreements than ever before in its history, making a total of 1,391 case resolutions (including 2,773 resolution documents) available and searchable online.

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





Additionally, in FY 2016, OCR updated its website to feature new landing pages, including one dedicated to **how requests for religious exemptions under Title IX are handled** and a second clarifying **when discrimination against students of a particular religion can also constitute national origin, ethnicity, or race discrimination** protected under Title VI. The Title IX religious exemptions page includes information about how OCR processes and evaluates religious exemption requests; a list of requests made by institutions and OCR's response; a chart listing all of the institutions that currently hold a religious exemption and those that have a religious exemption request pending with OCR; and a searchable database of Title IX exemption requests and responses, with copies of original documents uploaded for viewing. When Title IX was enacted in 1972, Congress explicitly provided an exemption for schools controlled by religious organizations to the extent that the law's application would be inconsistent with the organization's religious tenets. As of September 30, 2016, 246 institutions held current exemptions. In FY 2016, OCR granted 38 religious exemptions to institutions seeking new or expanded exemptions.

The religious discrimination page has information about the federal laws that protect students from discrimination involving their religion, as well as information about circumstances under which discrimination based on national origin, ethnicity, or race may also be implicated, with links to OCR policy guidance, notable case resolutions, and resources in multiple languages and from other federal agencies. In addition to unveiling the new web page on religious

discrimination, OCR updated its **online civil rights complaint form** to clarify when OCR can investigate complaints of discrimination involving religion because race, ethnicity, or national origin also are implicated and to reaffirm that students, parents, and persons of all faiths can file such complaints with OCR even though the laws OCR enforces do not expressly address religious discrimination in education.

Inquiries from the Public

OCR continued to provide excellent customer service and enhance the public's knowledge of their civil rights by responding to public inquiries for information. Through its Customer Service Team, OCR responded to 5,025 incoming correspondence inquiries and answered 8,019 OCR hotline telephone inquiries in FY 2016. The Department also distributed 701 copies of selected OCR publications in response to inquiries from advocacy groups, educational institutions, state and local educational agencies, parents, students, members of the general public, and enforcement offices.

Fulfilling Freedom of Information Act Requests

Over the past several years, OCR has devoted considerable staff time and financial resources to fulfill Freedom of Information Act (FOIA) requests in a timely manner. In FY 2016, OCR processed 1,244 FOIA requests, a 14 percent increase over the number processed in FY 2015.

Amplifying the Impact: Notable Outreach and Collaborative Activities

Building on work over the last several years, OCR continues to engage in intra- and inter-agency collaboration on priority initiatives and public events.

OCR has made significant contributions to several federal efforts aimed at increasing diversity in schools. In June 2016, the U.S. Department of Education hosted a conference, in collaboration with the U.S. Department of Housing and Urban Development and the U.S. Department of Transportation, to bring together many of the country's foremost practitioners and experts to engage in a dialogue about the value of diversity and opportunity in schools and neighborhoods, and to identify effective paths to increase and sustain healthy, non-discriminatory, racially and socioeconomically diverse school environments. OCR also brought together university presidents and leaders in November 2015 for a convening to explore the issue of racial harassment on college and university campuses, and to develop best practices for creating a campus culture supportive for all students.

As part of the Administration's United State of Women Summit, and in collaboration with the Office of Career, Technical, and Adult Education, OCR released **guidance** (see page 28) to make clear that all students, regardless of their sex, must have equal access to the full range of career and technical education programs offered. The *Dear Colleague* letter clarifies the legal obligations under the civil rights laws to ensure equitable access to career and technical education (CTE) programs and provides examples of issues that may raise concerns regarding compliance with these obligations. While the guidance focuses on discrimination based on sex in CTE programs, OCR works with institutions to ensure that their CTE programs are free from multiple forms of unlawful discrimination, including discrimination based on race, national origin, or disability.

OCR continues participation in the White House Task Force to Protect Students from Sexual Assault (Task Force), established by President Obama in 2014. In September 2016, the Task Force released a **checklist** for school districts, outlining considerations for the development of sexual misconduct policies focused at the elementary and secondary level. Another Task Force deliverable, the **Safe Space to Learn** resource package, which provides a range of materials to support school efforts to eliminate sexual harassment and sexual violence, was released on the same day. OCR also continues its practice of transparency by making available the list of schools OCR is investigating in the area of Title IX sexual violence as well as a searchable database of resolution agreements on its website.



Combating Discrimination against AANHPI and MASSA students

On June 6, 2016, OCR, the U.S. Department of Justice's Civil Rights Division and the White House Initiative on Asian Americans and Pacific Islanders released a **fact sheet** highlighting examples of forms of discrimination that members of the Asian American, Native Hawaiian, and Pacific Islander (AANHPI) and the Muslim, Arab, Sikh, and South Asian (MASSA) communities commonly experience. The fact sheet clarifies the responsibility of schools to take immediate and appropriate action to respond to complaints of discrimination based on race, color, and national origin.

Also in collaboration with the White House, as well as other partners, OCR cosponsored a conference called "Trauma-Informed Approaches in School: Supporting Girls of Color and Rethinking Discipline." The one-day convening brought together states and districts, key researchers and experts, and nonprofit partners to focus on improving school systems' approach to better serve girls of color who have experienced trauma.

OCR's work on the Asian American and Pacific Islander Bullying Prevention Task Force (AAPI Task Force) culminated with the release of the **AAPI Bullying Prevention Task Force Report** in August 2016. The report represented two years of collaborative efforts among the Departments of Education, Justice, and Health and Human Services, and was informed by 29 listening sessions and a nationwide survey on bullying of AAPI students. In addition, OCR worked with the U.S. Department of Justice's Civil Rights Division to release a **fact sheet** about combating discrimination, based on race, color, and national origin, against Asian American, Native Hawaiian, and Pacific Islander and Muslim, Arab, Sikh, and South Asian students (see the text box on this page). The fact sheet was translated into 15 languages.

The Civil Rights Data Collection

Since 1968, the Civil Rights Data Collection (CRDC) has been an important aspect of OCR's overall strategy for administering and enforcing the civil rights statutes for which it is responsible. The CRDC is a biennial survey of the nation's public schools for which local educational agencies, or school districts, are required to submit information.⁴ Its purpose is to collect data on leading civil rights indicators related to access and barriers to educational opportunity from early learning programs through high school. OCR conducts the CRDC for use in its monitoring and enforcement efforts regarding equal educational opportunity, and to disseminate information to the public on the equity health of public schools. Information compiled through the CRDC includes student enrollment and educational programs and services data that are disaggregated by race/ethnicity, sex, English learner status, and disability status. The CRDC is a valuable resource for other Department offices and federal agencies, policymakers and researchers, educators and school officials, parents and students, and the public who seek data on student opportunity and equity.

Improving Quality

In FY 2016, OCR continued with a multi-year effort that began in FY 2013 to improve the data submission system, increase data quality, and reduce burden on school districts in complying with data collection requirements. Building on work completed in FY 2013 and FY 2014 in collaboration with the National Center for Education Statistics (NCES), many new features of the submission system contributed to increased efficiency and data accuracy. School districts benefited from the presentation of the survey items in a new module format, which allowed them to submit data by broad categories. The system enabled districts to conduct automated, customized quality checks of their data before certifying it as complete and accurate. Individualized feedback reports that summarized the data submitted also assisted districts in resolving possible reporting errors and provided them with a visually intuitive depiction of their 2013-14 data before they certified it. In addition, school districts were offered the opportunity to prepare for the 2015-16 CRDC by previewing data elements that will be introduced to the collection. New data elements for the 2015-16 collection were included as optional items in the 2013-14 CRDC data submission system. Furthermore, during the data submission period for the 2013-14 CRDC, OCR developed additional technical assistance materials and disseminated them through a community of practice resource website to address emerging issues and common questions.

As a result of the improvements to the data submission system, and targeted outreach efforts by OCR staff, 99.2 percent (16,785) of school districts submitted and certified their data for the 2013-14 CRDC. The 2013-14 CRDC closed on December 31, 2015 and

Resource Tip: Look up 2013-14 CRDC data for a school or district at <http://ocrdata.ed.gov>.

included 50,035,744 public school students. The district response rate was an increase over the 2011-12 CRDC response rate (98.4 percent).

For the 2013-14 CRDC, OCR implemented a pilot program to support the pre-population of data by eight state educational agencies (SEA), in an effort to improve the quality of CRDC data collected. The collaboration efforts were expanded in FY 2016 for the 2015-16 CRDC; ten SEAs will participate in the collaborative program with their respective school districts. The SEAs pre-populate the CRDC survey forms with data they already collect and submit for other federal reporting to reduce the reporting burden on their school districts. Past efforts resulted in SEAs providing between 40 and 100 percent of the required data elements that otherwise would have to be completed by the school districts.

Improving Transparency and Participation Among Districts

On June 7, 2016, OCR released data for the 2013-14 CRDC. The release included a comprehensive **First Look report** that summarized key data findings about equity and opportunity gaps in our nation's public schools. OCR strives to make the CRDC data readily accessible, useable, and understandable for all CRDC data consumers. In conjunction with Department partners, for the first time, the 2013-14 data file was made available online, as well as in a traditional DVD format. Through September 30, 2016, the online data file has been downloaded more than 2,700 times, and approximately 110 users have requested the public-use data files via DVD.

OCR offers a variety of technical assistance to school districts to support their efforts to submit data for the CRDC. While the vast majority of school districts submit the required data on time, OCR sent letters to the 135 districts (less than one percent of all districts) that did not comply with their obligation to provide civil rights data for the 2013-14 CRDC. The letter required a commitment that these districts submit data for the upcoming 2015-16 CRDC in a timely way and notified the districts that if they failed to make and satisfy that commitment, the Department could take additional administrative action, including placing conditions on their ability to receive federal funding. Sixty-seven percent of these districts subsequently certified that they will submit data for the upcoming collection, and the Department is continuing efforts to secure compliance among the remaining non-responsive districts.

CRDC Data At A Glance

In June 2016, OCR released the results of the 2013-14 CRDC. The 2013-14 universe of public schools and districts is comparable to the 2011-12 universe data collection. New data on preschool and justice facility education programs; civil rights coordinators in school districts; access to distance, credit recovery, and dual enrollment programs; student absenteeism; and the presence of sworn law enforcement officers in schools were presented for the first time in the 2013-14 CRDC. Below are select data highlights⁵:

School Discipline

Black public preschool children are suspended from school at high rates: Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as white preschool children.

- ▲ Black children represent 19 percent of preschool enrollment, but 47 percent of preschool children receiving one or more out-of-school suspensions; in comparison, white children represent 41 percent of preschool enrollment, but 28 percent of preschool children receiving one or more out-of-school suspensions.

Racial disparities in suspensions are also apparent in K-12 schools: While 6 percent of all K-12 students received one or more out-of-school suspensions, the percentage is 18 percent for black boys; 10 percent for black girls; 5 percent for white boys; and 2 percent for white girls (see *Figure 9*).

- ▲ Black K-12 students are 3.8 times as likely to receive one or more out-of-school suspensions as white students.
- ▲ Black girls are 8 percent of enrolled students, but 13 percent of students receiving one or more out-of-school suspensions. Girls of other races did not disproportionately receive one or more out-of-school suspensions.

- ▲ American Indian or Alaska Native, Latino, Native Hawaiian or other Pacific Islander, and multiracial boys are also disproportionately suspended from school, representing 15 percent of K-12 students but 19 percent of K-12 students receiving one or more out-of-school suspensions.

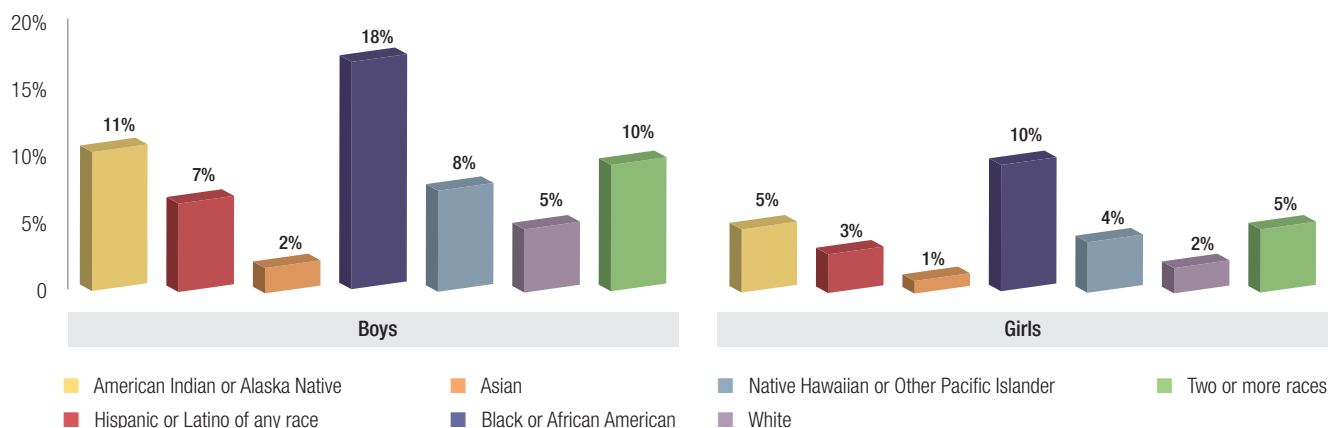
Students with disabilities in grades K-12 are disproportionately suspended from school:

- ▲ Students with disabilities served by IDEA (12 percent) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities (5 percent).

A significant number of schools have sworn law enforcement officers (SLEOs), including school resource officers:

- ▲ 24 percent of elementary schools (grades K-6, excluding justice facilities) have SLEOs; 42 percent of high schools (grades 9-12, excluding justice facilities) have SLEOs.
- ▲ 51 percent of high schools with high black and Latino student enrollment have SLEOs.

Figure 9: Students receiving one or more out-of-school suspensions, by race/ethnicity and sex



SOURCE: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2013-14.

Early Learning

More than half of school districts provide public pre-school programs beyond providing those services required by federal law for children with disabilities — but many children are still left without access to early learning:

- ▲ By law, all school districts must provide special education and related services for preschool children with disabilities under the Individuals with Disabilities Education Act (IDEA). In addition, 54 percent of all school districts report providing preschool programs to children not served by IDEA.

Among school districts that report offering preschool programs for children not served by IDEA, nearly half provide full-day preschool:

- ▲ 48 percent of these school districts offer full-day preschool programs.
- ▲ 70 percent of these school districts offer part-day preschool programs.

(Percentages above do not sum to 100 percent because districts can offer both full-day and part-day programs.)

Of the school districts that offer preschool programs for children not served by IDEA, 73 percent extend preschool eligibility to all children in the district (but do not necessarily provide preschool programs universally to every child):

- ▲ The remaining 27 percent of school districts extend preschool eligibility to children from low-income families or children in Title I schools, but not to all children.

Most, but not all, public preschools are free: Of the school districts that provide preschool programs for children not served by IDEA, 86 percent offer part-day or full-day preschool at no cost; the remaining 14 percent require parents or guardians to pay for part or all of the cost to enroll children in preschool.

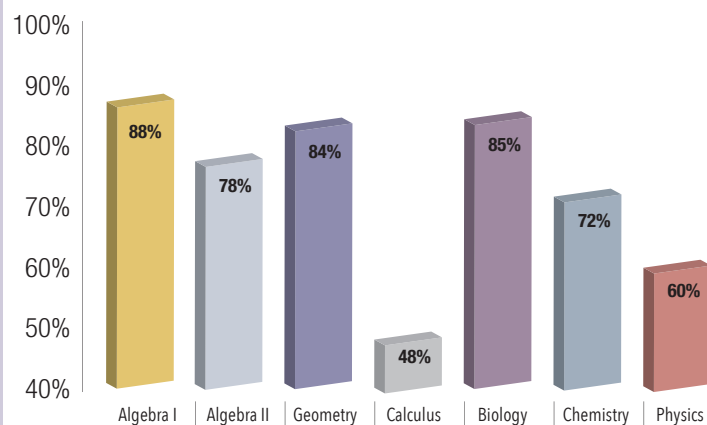
College and Career Readiness

High-rigor course access is not a reality across all of our nation's schools: Nationwide, 48 percent of high schools offer calculus; 60 percent offer physics; 72 percent offer chemistry; and 78 percent offer Algebra II (see **Figure 10**).

Black and Latino students have less access to high-level math and science courses:

- ▲ 33 percent of high schools with high black and Latino student enrollment⁶ offer calculus, compared to 56 percent of high schools with low black and Latino student enrollment.

Figure 10: Percentage of high schools offering mathematics and science courses



SOURCE: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2013-14.

- ▲ 48 percent of high schools with high black and Latino student enrollment offer physics, compared to 67 percent of high schools with low black and Latino student enrollment.

Course enrollment rates differ by disability and English learner status:

- ▲ Students with disabilities served by IDEA are 12 percent of students in schools that offer Algebra II and 6 percent of students enrolled in Algebra II; they are 11 percent of students in schools that offer calculus and 1 percent of students enrolled in calculus; and they are 11 percent of students in schools that offer physics and 6 percent of students enrolled in physics.
- ▲ English learners are 5 percent of students in schools that offer Algebra II and 4 percent of students enrolled in Algebra II; they are 5 percent of students in schools that offer calculus and 1 percent of students enrolled in calculus; and they are 5 percent of students in schools that offer physics and 4 percent of students enrolled in physics.

Girls are underrepresented among students enrolled in physics, but not in calculus:

- ▲ Girls represent 49 percent of all students nationwide and 49 percent of students enrolled in calculus, but 46 percent of students enrolled in physics.
 - To close the participation gap in physics, more than 91,000 additional girls would need to participate in physics classes nationwide.

Student enrollment in Advanced Placement (AP) courses is unequal:

- ▲ Black and Latino students represent 38 percent of students in schools that offer AP courses, but 29 percent of students enrolled in at least one AP course.
- ▲ English learners represent 5 percent of students in schools that offer AP courses, but 2 percent of the students enrolled in at least one AP course.
- ▲ Students with disabilities served by IDEA represent 11 percent of all students in schools that offer AP courses, but fewer than 2 percent of students enrolled in at least one AP course.

Chronic Student Absenteeism

Nationwide, more than 6.8 million students – or 14 percent of all students – are chronically absent (absent 15 or more school days during the school year).

More than 3 million high school students – or 19 percent of all high school students – are chronically absent.

- ▲ 20 percent or more of American Indian or Alaska Native (27 percent), Native Hawaiian or other Pacific Islander (25 percent), black (23 percent), multiracial (21 percent), and Latino (21 percent) high school students are chronically absent.
- ▲ High school students with disabilities served by IDEA are 1.4 times as likely to be chronically absent as high school students without disabilities.
- ▲ 21 percent of all English learner high school students are chronically absent.

More than 3.8 million elementary school students – or 11 percent of all elementary school students – are chronically absent.

- ▲ American Indian or Alaska Native and Native Hawaiian or other Pacific Islander elementary school students are almost twice as likely (1.9 times) to be chronically absent as white elementary school students.
- ▲ Black elementary school students are 1.4 times as likely to be chronically absent as white elementary school students.
- ▲ Elementary school students with disabilities served by IDEA are 1.5 times as likely to be chronically absent as elementary school students without disabilities.

Education in Justice Facilities

The 2013-14 CRDC collected, for the first time, the days and hours of educational programs – consisting of credit-granting courses and classroom instruction through grade 12 – at justice facilities.

Justice facilities are short- and long-term public or private facilities (including correctional facilities, detention centers, jails, and prisons) that confine (before or after adjudication or conviction) juveniles under 18 years of age, adults who are 18 years of age and older, or both; however, the CRDC included data only from justice facilities confining individuals up to 21 years of age.

- ▲ On average, justice facilities report offering 26 hours per week of educational programming during their regular school year. But more than one in seven (15 percent) offers less than 20 hours per week during the school year – which is less than four hours each day in a five-day week.
- ▲ More than one in five justice facilities (21 percent) reports having fewer than 180 days in a regular school year, and one in 20 (5 percent) reports having fewer than 170 days.



Teacher and Staffing Equity

Black, Latino, and American Indian or Alaska Native students are more likely to attend schools with higher concentrations of inexperienced teachers:

- ▲ 7 percent of black students, 6 percent of Latino students, and 6 percent of American Indian or Alaska Native students attend schools where more than 20 percent of teachers are in their first year of teaching, compared to 3 percent of white students and 3 percent of Asian students.

Most high school students have access to a school counselor: About 95 percent of high school students have access to at least one school counselor.

- ▲ But 21 percent of high schools and about 850,000 high school students nationwide do not have access to any school counselor.
- ▲ 1.6 million students attend a school with a SLEO, but not a school counselor.

Policy Guidance: An Overview

During FY 2016, OCR issued five policy guidance documents addressing issues ranging from the needs of students with attention-deficit/hyperactivity disorder (ADHD) to gender equity in career and technical education in career and technical education (CTE) (see **Figure 11**).

These documents serve to assist schools and other educational institutions receiving federal financial assistance in understanding how OCR interprets and enforces federal civil rights laws. In some instances, the guidance OCR issues directly responds to emerging trends reflected in the Civil Rights Data Collection (CRDC); re-requests OCR receives for technical assistance; compliance issues in career and technical education programs as identified through the Methods of Administration program; and OCR's own complaint investigations and compliance reviews. When appropriate, OCR

issues guidance jointly with other civil rights offices, such as the Civil Rights Division at the U.S. Department of Justice (DOJ). Educational institutions may use OCR's policy guidance to help understand the law, adjusting their own policies and practices to enhance civil rights protections for students and avoid civil rights violations, which can reduce the need for OCR enforcement. Students, families, and communities often utilize OCR's guidance to better understand students' civil rights. OCR continued to engage with relevant stakeholders while developing policy guidance to ensure that its guidance continues to reflect and respond to issues schools and students may confront. In FY 2016, OCR held 72 listening sessions addressing topics across all substantive areas OCR enforces, and included representatives from leading education and civil rights organizations across the country.

Figure 11: Policy Guidance Issued in FY 2016

STATUTE	ISSUE/RELEASE DATE	DESCRIPTION
Title VI	Use of Race/Diversity September 30, 2016	Clarifies the ruling made by the U.S. Supreme Court in <i>Fisher v. University of Texas at Austin (Fisher II)</i> and reiterates the continued support of the Departments of Education and Justice for the voluntary use of race and ethnicity to achieve diversity in education
Title IX	Voluntary Youth Service Organizations December 15, 2015	Explains the circumstances under which a school district lawfully may work with outside organizations that provide single-sex programming
	Rights of Transgender Students* May 13, 2016 (released jointly with DOJ)	Discusses schools' Title IX obligations regarding transgender students and explains how the Departments evaluate a school's compliance with these obligations
	Gender Equity in Career and Technical Education June 15, 2016 (released jointly with Office for Career, Technical, and Adult Education)	Reiterates that all students, regardless of their sex, must have equal access to the full range of CTE programs offered
Section 504/Title II	Attention-Deficit/Hyperactivity Disorder (ADHD) July 26, 2016	Clarifies the obligation of schools to provide students with ADHD with equal educational opportunity

* This guidance is the subject of litigation against several federal agencies and officials pending before a federal district court in *Texas v. United States*, 7:16-cv-00054 (N.D. Tex. 2016). On August 21, and October 18, 2016, the court issued a preliminary injunction and clarification order, respectively, regarding the Departments' ability to rely on parts of the May 13 guidance related to "intimate" facilities. The Departments have appealed the August 21 and October 18 rulings to the Fifth Circuit Court of Appeals. See *Texas v. United States*, No. 16-11534 (5th Cir. Oct. 20, 2016). In the meantime, OCR has taken steps to ensure compliance with the preliminary injunction, as clarified. Since the ruling in *Texas*, several other courts have issued preliminary injunctions in favor of individual transgender plaintiffs under Title IX or denied preliminary injunctions sought against the government. See, e.g., *Students & Parents for Privacy v. U.S. Dep't of Educ.*, No. 16-cv-4945, ECF No. 134 (N.D. Ill. Oct. 18, 2016); *Whitaker v. Kenosha Unified Sch. Dist. No. 1*, No. 16-cv-943, ECF No. 10 (E.D. Wis. Sept. 22, 2016); *Highland Bd. of Ed. v. U.S. Dep't of Educ.*, 2016 WL 5372349, at *11 (S.D. Ohio Sept. 26, 2016); *Carcaño v. McCrory*, No. 1:16-cv-236, ECF No. 127 (M.D.N.C. Aug. 26, 2016). The only court of appeals to consider the issue held that OCR's interpretation of its Title IX regulations was the result of its "fair and considered judgment," and was "in line with the existing guidances and regulations of a number of federal agencies." See *G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 720 (4th Cir. 2016), *mandate recalled and stayed*, *Gloucester Cnty. Sch. Bd. v. G.G.*, No. 16A52 (Aug. 3, 2016), *cert. granted*, No. 16-273 (Oct. 28, 2016).

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

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities operated by recipients of federal funds. It 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.” In the education arena, Title VI’s protections apply to all public elementary and secondary schools and colleges and universities—public or private—that receive federal financial assistance. Its protections extend to all aspects of these institutions’ programs and activities. When enforcing Title VI, OCR works to ensure equal access to education services and benefits and to prevent acts of retaliation against those who report Title VI violations.

Policy Guidance: During FY 2016, OCR issued a *Questions and Answers* document detailing the U.S. Supreme Court ruling in *Fisher v. University of Texas at Austin (Fisher II)* and reiterating the continued support of the Departments of Education and Justice for the voluntary use of race and ethnicity to achieve diversity in education.

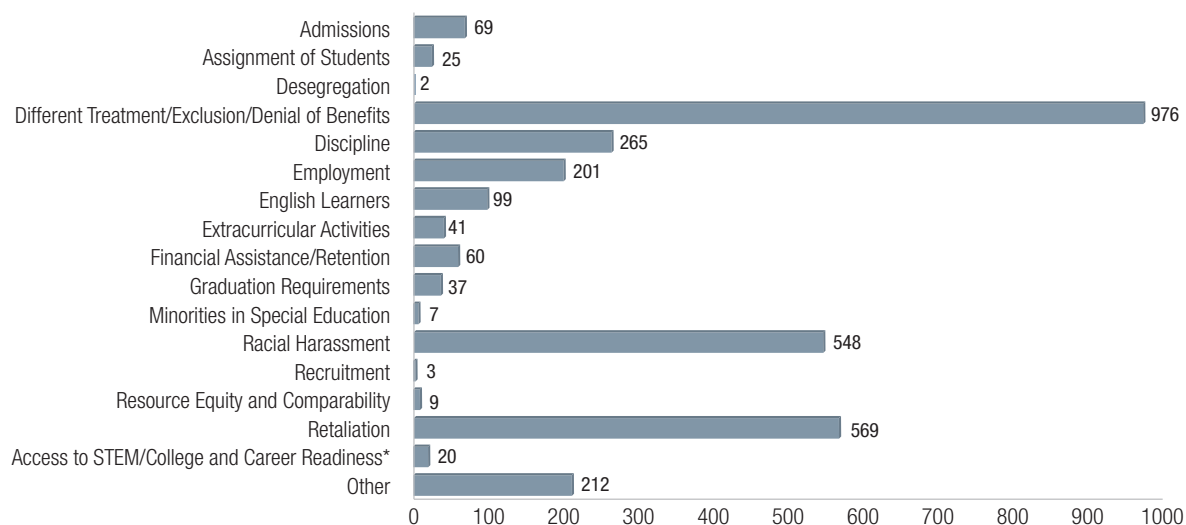
Technical Assistance: Educators, as well as parents and students, should have the knowledge and skills to identify, prevent,

Guidance on Voluntary Use of Race in Admissions

On September 30, 2016, OCR issued a *Questions and Answers* document that provides information regarding the U.S. Supreme Court’s ruling in *Fisher v. University of Texas at Austin (Fisher II)* and reiterates the support of the Departments of Education and Justice for the voluntary use of race and ethnicity to engender diversity in education. The Q&A:

- explains that, in its 2016 *Fisher II* ruling, the U.S. Supreme Court upheld the ability of public colleges and universities to use applicants’ race as a factor in admissions when such use is narrowly tailored to further a compelling interest;
- clarifies that the 2011 guidance documents issued by the Departments of Education and Justice about the voluntary use of race in K-12 and postsecondary institutions remain in effect; and
- reiterates the Departments’ commitment to supporting diversity in education.

Figure 12: Number of Title VI Issues Raised in OCR Complaints (FY 2016)



Total Number of Complaints Raising Title VI Issues, FY 2016 = 2,439

Note: A single complaint can raise multiple issues; therefore, the total number of issues raised will exceed the number of complaints received.

*STEM refers to science, technology, engineering, and mathematics. College and Career Readiness refers to access to high-level, college preparatory courses and rigorous curricula, such as honors and Advanced Placement (AP) courses.

and address discrimination, or get help when it does occur. Every year, OCR provides technical assistance to schools and communities around the country on both longstanding and emerging civil rights issues. In FY 2016, OCR engaged in nearly 100 technical assistance events on Title VI-related issues. These events included presentations on OCR's discipline guidance package and technical assistance on issues faced by English learner (EL) students.

Enforcement: In FY 2016, OCR received nearly 2,450 Title VI-related complaints and launched seven systemic, proactive investigations (compliance reviews) that, collectively, address a broad range of Title VI-related issues in institutions across the nation (see **Figure 12**). These issues range from allegations of discrimination against EL students to allegations of differential disciplinary policy on the basis of race. Over the course of the fiscal year, OCR resolved 2,218 Title VI complaints.

The following cases are illustrative of OCR's investigatory work over the past year to enforce Title VI. These cases were selected to portray the diversity of issues, complainants, institutions, geographical regions, and remedies in OCR's enforcement work. They represent a small portion of OCR's total number of resolutions in FY 2016, and comprise only cases that resulted in a resolution agreement or Early Complaint Resolution (ECR) (see page 21 for an explanation of ECR) between October 1, 2015 and September 30, 2016.

Combating Harassment on the Basis of Race, Color, or National Origin

John Doe School District⁷: In March 2016, OCR resolved a complaint alleging that a student perceived to be Arab American was subjected to a hostile environment created by repeated acts of harassment based on perceived national origin and race. Shortly after the student began to wear a hijab, the student alleged that she was the target of a series of public, humiliating acts of both verbal and physical harassment by other students. These incidents, which led to the student leaving the district, included being referred to as a "terrorist" in school hallways. OCR found that, while the school did respond to each individual incident and indicated that the student had access to a guidance counselor and a peer mentor, the school treated each incident as isolated rather than also addressing the broader hostile climate of the school. Additionally, OCR found that there were no efforts to extend counseling to the impacted student despite the school's awareness of the degree to which the harassment upset her. To remedy the hostile environment, the district entered into a resolution agreement with OCR that requires it to revise its definition of harassment in its policies; release a statement supporting its commitment to combating harassment; provide prompt trainings about harassment to teachers, administrators and students; and invite the student to return to the district. Additionally, the agreement required the district to develop a climate survey to administer in the student's former school and to plan additional steps based on the results.



John Doe School District⁸: In May 2016, OCR resolved a complaint alleging that the district was aware of racially based harassment of a black student by multiple peers but failed to take appropriate action to address it. The student described making multiple reports to school officials about being the target of racial slurs and negative social media posts to which the school did not respond. After an incident in which the student reported being called a racial slur – resulting in a fight between her and two of the students accused of harassing her – the student's parent filed a written complaint with the school. The school disciplined the two other students for their participation in the fight but not for racial harassment, and the school did not formally investigate the written complaint submitted on behalf of the student. OCR concluded that the school did not promptly or equitably investigate a complaint of harassment of which it had notice and did not take adequate steps to remedy the hostile environment to which the student was subjected. To address this noncompliance, the district entered into a resolution agreement that requires the district to take action to end and reverse the effects of the hostile environment, such as through providing academic support and counseling and a contact person to whom the student can reach out with further concerns if she chooses to re-enroll; revise its policies and procedures; document any future reports of racial harassment; and conduct training sessions on racial harassment for students and employees.

Albuquerque Public Schools (NM): In March 2016, OCR resolved a complaint alleging that the district discriminated on the basis of national origin by failing to respond adequately to the complainant's claims of harassment of students and parents by school teachers. Specifically, the complainant alleged that several staff members belittled students and parents of Latino descent in

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their tone and speech. During the course of the investigation, OCR found that the district did not investigate the allegations about the harassment of Spanish-speaking students and parents. Additionally, OCR found that the school district discriminated on the basis of national origin by failing to provide the school's English learners with language development services taught by teachers with the appropriate state-required education endorsements (coursework taken either as a part of a teacher certificate program or after regular certificate has been obtained) for the 2014-15 school year. In its resolution agreement with OCR, the district agreed to revise its policies and procedures and provide staff training on how to respond to allegations of harassment. Moreover, the district agreed to designate an administrator or consultant to review all complaints of national origin/racial harassment and identify if actions are needed to redress the effects of a hostile environment. The district took steps to redress issues regarding language development staffing by hiring qualified and appropriately endorsed teachers for the 2015-16 school year and also agreed to develop a team knowledgeable about student and English language acquisition instruction to individually assess the amount of compensatory services needed, if any, for each EL student, and to draft an action plan to offer these services.

Melrose Public Schools (MA): In January 2016, OCR resolved a complaint alleging that a student was subjected to harassment on the basis of race. After investigation, OCR found that a teacher publicly chided a black student—attending school in the district under a voluntary integration effort—for allegedly engaging in “plantation” behavior. The comment, as well as subsequent comments the teacher made in a meeting held among the student, teacher, and principal, directly analogized the student's interaction with the teacher to the relationship between a master and slave. The district, through its own investigation into the incident, concluded that, while the comment was in poor judgment, it did not constitute harassment or create a hostile environment. However, OCR established that, while there were conflicting reports of the teacher's exact phrasing, the student was twice addressed with a racially charged term in a way that isolated and humiliated the student with no motivation other than the student's race. OCR also concluded that the district's investigation did not fully examine the teacher's conduct, or its impact on the student or other students, and that the district failed to take interim measures to support the affected student. OCR also cited the district's failure during its internal investigation to document reports and meetings, or to interview student and staff witnesses; given this, OCR found that the student was subject to a hostile environment. To remedy this, the district agreed to identify a Title VI coordinator, design and implement a program of effective training for both staff and students to address discrimination and harassment under Title VI, and promptly and effectively investigate all complaints.

John Doe School District⁹: In August 2016, OCR resolved a complaint alleging that the district discriminated against a student, who was a recent immigrant to the United States, on the basis

of national origin when he was assaulted by classmates and was told “Welcome to America” during the assault. OCR also investigated whether the district failed to provide meaningful access to important information about the alleged assault in a language the student's parent could understand. OCR learned that, after the assault—as a result of which the student received severe injuries—the student's mother had a meeting with an administrator at which the school asked a school employee, who was not trained in providing interpretation, to interpret for the student and his mother. During the investigation, OCR had concerns that the district had not followed its own grievance procedures following the assault and failed to determine whether the assault was motivated by the student's national origin, whether a hostile climate existed as a result of the incident, and whether the student needed any support upon his return to school. OCR was further concerned that the school employee who provided interpretation and obtained a statement from the student following the incident did not have appropriate training to provide oral interpretation. The district entered into a resolution agreement with OCR in which the district agreed to develop guidance and provide training on discriminatory harassment, develop a written procedure describing how parents may request interpretation or translation services, and create individualized support and tutoring plans for the student (who subsequently dropped out of the school) should the student re-enroll in the district.

ALSO: See **John Doe Tribal School**, p. 38 (combating harassment on the bases of race and disability status)

Protecting the Equal Rights of All Students to Attend Public School Regardless of Immigration or Citizenship Status

Alamo Heights Independent School District (TX): In March 2016, OCR resolved a complaint alleging that the district discriminated against students on the basis of national origin by requiring the student's social security card and the parent's driver's license for students seeking enrollment, thereby discouraging noncitizen students from enrolling. OCR's investigation identified an additional compliance concern regarding the recipient's stated policy requiring a student's birth certificate for new student enrollment. After OCR advised the district of this concern and prior to the completion of OCR's investigation, the district made changes to its enrollment policy to allow new students to submit any document from an expanded list of legal or school documents to show proof of identity and age to ensure the district's enrollment policies and practices do not discriminate on the basis of race, color, or national origin. Specifically, OCR's resolution ensured that the district's enrollment policies and practices do not chill or discourage the participation, or lead to the exclusion, of students based on their or their parents' actual or perceived citizenship and/or immigration status. OCR confirmed that the enrollment policy had been changed to allow alternative documents to establish the identity and age of a student.

Los Fresnos Consolidated Independent School District (TX):

In October 2015, OCR resolved a complaint alleging that the district discriminated against Mexican nationals by requiring them, without exception, to produce a birth certificate in order to enroll in district schools. Additionally, the complaint alleged that the district does not provide equal educational opportunities to EL students due to its failure to appropriately assess and place students in their proper classes. Before the conclusion of OCR's investigation, the district voluntarily entered into a resolution agreement to address the concerns raised in the complaint. The agreement commits the district to provide staff training on the use of home language surveys and to develop additional methods of identifying EL students, such as teacher referrals, to ensure that every student with a primary home language other than English will be appropriately identified and assessed. Further, the district agreed to provide similar training on the administration of placement assessments; review and revise enrollment policies and publish them in English and Spanish; affirm that multiple documents besides a birth certificate are acceptable forms of identification; and provide compensatory services for any student not properly identified or placed in appropriate classes or programs.

Ensuring Nondiscrimination in School Closures

Newark Public Schools (NJ): In December 2015, OCR resolved three complaints alleging that Newark Public Schools discriminated against black and Latino students and students with disabilities by closing several schools at the end of the 2011-12 and 2013-14 school years. OCR conducted a statistical analysis and determined that the number of black students and students with disabilities affected by the school closings in the district at the end of the 2011-12 school year was disproportionately large in comparison to white and other students, but that the number of affected Latino students was not disproportionately large. Based on data obtained during OCR's investigation, there were indications that the students from the closed schools may have been academically harmed by the closures. Prior to OCR's completing its investigation, the district voluntarily committed to resolve the complaint by entering into a resolution agreement requiring it to develop and complete an assessment of the academic performance of transferring students; compare the academic performance of transferring students at the receiving schools to other students; develop and complete an assessment of transportation services provided to transferring students; develop and complete an assessment of pupil capacity and the availability of facilities and resources at the receiving schools; convene a group of knowledgeable persons to complete an assessment of the continuation of services to transferring students with disabilities; and provide compensatory services to all transferred students with disabilities whom the group determines require compensatory services.

“Today’s announcement is a step in the right direction for Toledo schools and a sign that the district is taking the civil rights of its black students more seriously. Without the Department of Education’s proactive review of Toledo’s compliance with the Civil Rights Act of 1964, these changes would not be on the horizon.”

NANCY ZIRKIN

Executive Vice President, The Leadership Conference
On Civil And Human Rights, January 2016

Ensuring Equal Access to Educational Opportunities and Resources

Toledo Public Schools (OH): In January 2016, OCR resolved a compliance review of Toledo Public Schools undertaken to assess whether the district was providing black students with equal access to educational resources. Prior to the completion of the investigation, the district entered a resolution agreement to ensure that students have equal resources, particularly with respect to experienced teachers, teachers with master's degrees, effective and qualified building leaders, libraries and library resources, and live instruction for higher level distance learning courses. The district agreed to complete a comprehensive evaluation of established professional development programs for teachers and school leaders to ensure equitable distribution of effective and qualified teachers throughout the district; provide more access to live instruction for students taking higher level distance learning courses; and develop a master library staffing schedule designed to ensure that all students can access school libraries with the same frequency, and can check out the same number of books, as other students throughout the district.

Ensuring Equal Opportunities for English Learners

East Ramapo Central School District (NY): In October 2015, OCR resolved a complaint against the district, which was alleged to have discriminated on the bases of race and national origin by offering out-of-district placements to white disabled students at a higher rate than to similarly situated non-white disabled students and by providing white EL students with language services and programs that it did not provide for Spanish-speaking EL students. OCR's investigation found a statistically significant disproportionate number of white disabled students placed out-of-district in the 2010-11 school year. Additionally, OCR determined that the

district offered a half-day special education kindergarten class in Yiddish but no other kindergarten classes that were conducted in a language other than English. Prior to OCR's completing its investigation, the district entered into a resolution agreement committing the district to develop and adopt guidelines to ensure that it does not discriminate on the basis of race or national origin when determining a placement pursuant to a disabled student's Individualized Education Plan (IEP) or Section 504 plan; provide documentation to OCR regarding the placement of each student with a disability and the student's race/national origin for the 2015-16 and 2016-17 school years; and develop and adopt a policy and procedure for identifying all EL students in the district, as well as for maintaining a sufficient number of certified, trained teachers and staff to implement an alternative language program for EL students.

Jefferson Parish Public Schools (LA): In October 2015, OCR entered into a resolution agreement with the district after two separate complainants alleged discrimination against EL students based on their national origin by failing to provide them with equal educational opportunities. OCR investigated whether the district failed to provide equal educational opportunities to national-origin-minority EL students by failing to provide appropriate staffing and staff development in its alternative language program, and improperly placing and exiting EL students, in violation of Title VI. When reviewing the district's ESL (English as a Second Language) and paraprofessional staff at its schools, OCR identified concerns regarding inconsistent or high student-to-teacher ratios for EL students and a lack of information to conclude whether or not the district designated paraprofessionals to service EL students. Prior to the conclusion of the investigation, the district entered into a resolution agreement committing the district to assess whether it has sufficient qualified teachers and staff support to run its alternative language program, hire additional certified alternative language program teachers if necessary, improve its evaluation of ESL teachers, provide training for teachers and teachers' aides on ESL instructional methodologies, revise its policies and monitor student progress to ensure proper identification for and exiting from alternative language instruction, and report to OCR on progress made in these areas.

Arizona Department of Education (AZ): In April and May of 2016, OCR, in partnership with the Department of Justice (DOJ), entered into two voluntary resolution agreements with the Arizona Department of Education (ADE) ensuring correct identification of EL students as well as language support services for students who had been either prematurely exited from or incorrectly identified as not requiring these services. These resolution agreements came as a direct result of OCR's and DOJ's monitoring of a prior 2012 resolution agreement with ADE. The prior resolution agreement addressed the OCR/DOJ finding that the criteria for testing English proficiency led to thousands of EL students being prematurely classified as English proficient and removed from EL services, as well as students seeking initial placement for EL services who were incorrectly labelled as English proficient and denied services

OCR Early Complaint Resolutions

To facilitate the expeditious resolution of allegations of discrimination, OCR offers Early Complaint Resolution (ECR), a voluntary mediation process designed to bring parties together to agree on appropriate next steps. In ECR cases, OCR serves as an impartial, confidential facilitator between the complainant and the institution rather than directly negotiating with the institution to reach an agreement to resolve the case. ECR is designed to occur early in the case investigation process. OCR will monitor the process of ECRs to ensure adequate time for completion of OCR's investigation in the event that ECR is unsuccessful. Where ECR is unsuccessful, OCR proceeds with investigation of the complaint allegations to ensure timely resolution of the case.

In FY 2016, OCR resolved 309 complaints through ECR, comprising 28 percent of complaints that resulted in substantive civil rights changes by or agreements with recipients and four percent of all complaints resolved. Most typically, substantive resolutions achieved through ECR addressed the following issues:

- Free Appropriate Public Education (FAPE) (136)
- Different treatment/exclusion/denial of benefits (42)
- Retaliation (44)
- Academic adjustments (41)

On average, ECR cases took approximately 136 days to reach agreement between the parties, compared to an average of 244 days for non-ECR cases that resulted in substantive civil rights changes or agreements. Although the shortened timeline to achieve resolutions was the result of multiple factors (including the fact that more complex cases tend not to be selected for ECR) and not the ECR process alone, the ECR process expedited the resolution of certain cases that might have taken longer to resolve if they were to go through regular processing – while still achieving substantive changes and remedies for complainants, as chronicled in several enforcement resolution descriptions in this report.

ECR cases in this report are listed under a "John Doe" school, college, or university, and appear on pages 22, 31, and 34.

altogether. The 2012 agreement expressly contemplated evaluation of progress during monitoring and securing additional steps as necessary, and, in the course of this monitoring, OCR's and DOJ's analysis showed that, without additional remedies, thousands of EL students across the state each year would not be served effectively. The new agreements require ADE to raise its proficiency criteria for English proficiency tests, retest and provide support services for potentially affected students, and submit testing reports and results to OCR and DOJ for the next three school years.

Salt Lake City School District (UT): In August 2016, OCR resolved this complaint alleging that the district discriminated on the bases of national origin and disability. Specifically, the complainant alleged that the district discriminated against EL students at a middle school by implementing policies and procedures that do not consider language in the special education evaluation and placement processes, thereby resulting in an overrepresentation of the students in special education. During the investigation, staff acknowledged the use of the phrase “special education trumps EL services” by some district staff, and that some EL students with disabilities were not provided EL and special education services. OCR also had concerns that special education-related matters were not consistently interpreted or translated for EL parents, that the district’s EL policies and procedures include a process for early exiting of students from EL services despite their not being proficient in the four English skill areas, and that several EL students should have been but were not monitored following their exit from the EL program. To resolve the complaint, the district entered into a resolution agreement committing the district to update its policies and procedures regarding the evaluation and placement of EL students to ensure that EL students are not overrepresented in special education and are not placed in special education solely based on English language ability; evaluate whether EL students already receiving special education have been appropriately placed in special education and, if not, return them to the regular education setting; ensure that EL students with disabilities who did not receive appropriate instruction from qualified teachers are assessed for and receive compensatory services; ensure meaningful communication with parents, especially with limited English proficient (LEP) parents related to special education matters; and review its EL plan to ensure that students are not exited from the EL program prematurely.

John Doe School District¹⁰: In April 2016, OCR resolved a complaint alleging that the district discriminated against a parent on the basis of national origin (Korean) when the district did not provide information about its investigation and discipline of a student to a parent in a language that the student’s parent could understand, and on the bases of race and national origin when the district refused to speak with the parent and the security personnel were hostile to the parent and grandparent during the investigation of the student’s conduct. Prior to the conclusion of OCR’s investigation, the district entered into an Early Complaint Resolution agreement with the complainant, committing the district to translate school discipline documents into the parent’s native language by the beginning of the 2016-17 school year, provide training to school administrators on appropriate professional communications, and provide language and interpreter services as required by Title VI.

ALSO: See **Albuquerque Public Schools (NM)**, p. 18 (harassment on the basis of national origin and ensuring equal opportunities for English learners)

ALSO: See **Los Fresnos Consolidated Independent School District (TX)**, p. 20 (protecting equal rights regardless of immigration or citizenship status and ensuring equal opportunities for English learners)

Combating Discriminatory Discipline

Lodi Unified School District (CA): In August 2016, OCR resolved a complaint alleging that a black student was discriminated against on the basis of race when he was disciplined more harshly than a white student. The white student called the black student a racial epithet, and the black student beat up the white student in response on the following day. OCR’s investigation raised concerns because the district had identified the behaviors as having similar consequences but a harsher punishment was applied to the black student. The investigation also raised concerns about the school’s overrepresentation of black students receiving discipline at all levels compared to white students. OCR found that the district allowed school sites to deviate from the district-wide conduct policy—permitting more and less harsh discipline to be imposed at particular school sites and discretion regarding which policy to follow for particular students—which contrasted with the district’s policy goal to ensure consistency across schools. Additionally, some school site policies permitted imposition of discipline that was not in compliance with state law. Black students were almost seven times more likely than white students to receive in- or out-of-school suspension for tardiness or truancy in 2014-15, even though suspending students for these reasons is not permitted by California state law. OCR found that such deviations from policy and law had a disparate, adverse impact on black students in violation of Title VI and its implementing regulations. OCR also identified concerns regarding different treatment of black students districtwide and the district’s response to peer racial harassment. The agreement requires the district to provide student-focused remedies such as supports and interventions, as well as early intervention for at-risk students; issue written guidance and training regarding racial harassment; identify the root causes for the district’s racial disparities; develop a way to distinguish between those disciplinary infractions appropriately handled by school staff and serious threats to school safety or criminal conduct that might be best handled by law enforcement; revise its Memoranda of Understanding with local police departments to include clear definitions and limits to the role of school resource officers (SROs) in their interactions with students; and collect data on SRO involvement in discipline.

Oklahoma City Public Schools (OK): In April 2016, OCR resolved an investigation of the district to determine whether the district discriminated against black students in its administration of student

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discipline. The data showed that black students were significantly overrepresented in all of the district's disciplinary actions. For the 2014-15 school year, black students accounted for 42 percent of in-school suspensions although they represented only 26 percent of the student population. Likewise, for the 2011-12 school year, black students received in-school and out-of-school suspensions, were referred to law enforcement, and were arrested for school-related incidents at a disproportionately high rate when compared to their enrollment in the district. In addition, OCR's review of the district's discipline practices revealed concerns about incomplete or inconsistent recordkeeping, data collection, provision of due process rights, administration of discipline, and information provided to parents of suspended students, as well as a lack of clarity in disciplinary sanctions such as "defiance of authority" or "disrespect." Prior to the conclusion of the investigation, the district created the Office of School Climate and Student Discipline, hired a director of school climate and student discipline and three student behavior specialists, and began implementing training on Positive Behavioral Interventions and Supports (PBIS) in schools. To remedy the remaining issues, the district also agreed to review and revise its discipline policies, practices, and discipline code; provide annual training on discipline for staff; and implement student committees and working groups that allow students, parents, and community leaders to make suggestions to help improve the effectiveness of the district's discipline policies, practices, and procedures.

John Doe School District¹¹: In April 2016, OCR resolved a complaint that alleged that the district discriminated against a black student based on race when it suspended the student for ten days for engaging in a physical altercation with a white student, resulting in criminal charges being filed against him for assault and battery, whereas the white student received an overnight suspension that

did not result in any days missed from school for the infraction of "altercation/confrontation." Following the incident, the principal met with the SRO and reported to OCR that, based on the severity of the injuries to the white student, the principal "recommended" that the SRO charge the black student with assault and battery but recommended against charging the white student because "he did not think he should be charged." During OCR's investigation, the school amended the black student's discipline record to reflect the same offense as was charged the white student. Prior to the completion of OCR's investigation, the district entered into a resolution agreement with OCR that requires the district to conduct training for all school administrators explaining their obligations under Title VI, including the

appropriate delineation of responsibilities between school officials and SROs. The agreement clarifies that, while the final decision as to what charges to file against students is at the sole discretion of the SRO, the SRO should not handle possible violations of school policy or the student code of conduct or otherwise be involved in routine discipline issues unless it is necessary for the safe operation of the school.

K-6 Charter Academy (CA): In November 2015, OCR resolved a complaint that the school discriminated against a student on the basis of race when it formally suspended him and used early dismissal of the student as a response to misbehavior. The school did not consider such dismissals to be disciplinary and therefore did not maintain records related to these incidents. OCR found that the school did not create a racially hostile environment for the student. However, OCR indicated the school's removal of students for disciplinary reasons without due process or recordkeeping raised concerns because this practice made it impossible for the school to determine whether it was meeting its obligation of ensuring nondiscrimination with respect to discipline. OCR also had concerns whether the school was consistently following its own discipline procedures. The resolution agreement requires the school to discontinue the practice of sending students home informally, to review its discipline practices and procedures, and to develop and implement a recordkeeping system that tracks all disciplinary incidents. The school has created a discipline committee in response to the student's internal complaint; the committee is charged, among other tasks, with investigating perceptions among students that students of particular races are treated more favorably by the school's administrators.

Title IX: Discrimination Based on Sex

Title IX of the Education Amendments of 1972 (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 recipients of federal financial assistance, including colleges, universities, and public school districts. OCR enforces Title IX to ensure that students have equal access to educational opportunity.

Policy Guidance: During FY 2016, OCR issued three guidance documents or packages that address Title IX: (1) a *Dear Colleague* letter outlining the circumstances under which a school district lawfully may work with outside organizations that provide single-sex programming, (2) a joint *Dear Colleague* letter with the Department of Justice (DOJ) discussing schools’ Title IX obligations regarding transgender students and explaining how the Departments evaluate a school’s compliance with these obligations¹² and (3) a *Dear Colleague* letter reiterating schools’ obligations to ensure equal access to all students, regardless of sex, to the full range of career and technical education (CTE) programs offered.

Technical Assistance: Educators, parents, and students should have the knowledge and skills to identify, prevent, and address discrimination or get help when it does occur. Every year, OCR provides technical assistance to schools and communities around the country on both longstanding and emerging civil rights issues. In FY 2016, OCR engaged in 110 technical assistance events on Title IX-related issues. These events included presentations on the rights

of pregnant and parenting students under Title IX and the responsibilities of schools to respond to sexual violence under Title IX.

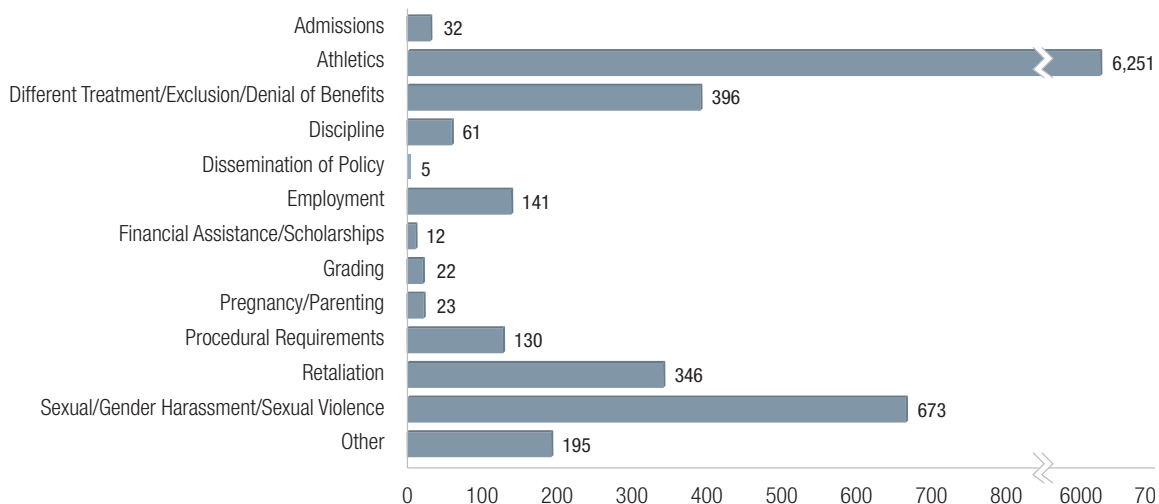
Enforcement: In FY 2016, OCR received 7,747 (of which 6,157 are multiple complaints from an individual) Title IX–related complaints and launched four proactive investigations (compliance reviews) that, collectively, address a broad range of Title IX-related issues across the nation, including sexual violence at the elementary, secondary, and postsecondary levels; equal access to athletic opportunities; and harassment (see *Figure 13*). Over the course of FY 2016, OCR resolved 1,346 Title IX complaints.

The following cases are illustrative of OCR’s investigatory work over the past year to enforce Title IX. These cases were selected to portray the diversity of issues, complainants, institutions, geographical regions, and remedies in OCR’s enforcement work. They represent a small portion of OCR’s total number of resolutions in FY 2016, and comprise only cases that resulted in a resolution agreement or Early Complaint Resolution (ECR) (see page 21 for an explanation of ECR) between October 1, 2015 and September 30, 2016.

Eradicating Sexual Harassment and Sexual Violence

John Doe School District¹³: In April 2016, OCR resolved a Title IX complaint alleging that the district failed to adequately respond to a student’s allegation of sexual harassment and sexual assault. The student alleged that she was sexually assaulted by a group of male students in the boys’ locker room. After investigation, OCR

Figure 13: Number of Title IX Issues Raised in OCR Complaints, by Issue (FY 2016)



Total Number of Complaints Raising Title IX Issues, FY 2016 = 7,747

Note: A single complaint can raise multiple issues; therefore, the total number of issues raised will exceed the number of complaints received.



found that the district failed to provide an adequate response to prevent the recurrence, and remedy the effects, of sexual harassment by not offering the student academic services or any kind of safety plan to ensure her safety upon her return to school after she was assaulted; by aggravating the hostile environment when it sent a misleading notification to all parents that the incident, as reported to police, was false, after which other students started spreading rumors and avoided the student; and by not disciplining the offending student for sexual harassment or assault, but rather for “disrespect” and “reckless endangerment.” OCR also found that the district, which has more than 125,000 students, did not have a Title IX coordinator at the time of the incident. To remedy these issues, the district entered into a resolution agreement with OCR committing the district to revise its policies and procedures and its Student Code of Conduct, designate a Title IX coordinator, revise and develop training curriculum for employees, conduct annual climate checks, and offer counseling and academic services for the student.

Citrus College (CA): In June 2016, OCR resolved a complaint that alleged that student employees and customers at the college’s bookstore were being sexually harassed by a college employee who also worked there. The complaint further alleged that aspects of the college’s response were delayed and/or inadequate, although the college did eventually find through its investigation that the employee engaged in sexual harassment for a period of time and terminated his employment. OCR concurred with the college’s determination of sexual harassment but found the college non-

“Young women should be able to shatter the glass ceiling in manufacturing, engineering and other careers that are traditionally thought to be male-oriented. Kudos to the Department of Education for providing civil rights guidance to ensure equitable gender access and participation in career and technical education programs.”

RANDI WEINGARTEN

President, American Federation of Teachers, June 2016

compliant with Title IX due to procedural concerns. OCR found that affected students were not informed about the reasons for delays in the college’s investigation, there was a one month delay in providing interim measures, the college’s investigation was not sufficiently prompt, and the college failed to provide adequate notice of its non-discrimination policy. OCR also found that the college’s grievance procedures did not include prompt timeframes, an equal opportunity to appeal, a prohibition against retaliation, or an explanation of the responsibilities of college staff to report sexual harassment and assault. To remedy the noncompliance, the agreement with OCR requires the college to revise its procedures, implement annual staff training regarding Title IX procedures, conduct mandatory training



for new students and annual online training for continuing students, administer an anonymous survey at the bookstore, notify students who were employed at the bookstore since October 2009 of the results of the investigation and the availability of counseling services and other remedies, and inform OCR of any other complaints filed by students against the former employee or any other bookstore employee for the next year.

Minot State University (ND): In July 2016, OCR resolved a complaint alleging that the university failed to respond adequately when given notice of sexual harassment and sexual assault of a student by a professor. The student alleged that the professor solicited sex and implied he would be able to prevent the student from achieving her professional goals. Further, the student alleged that the university did not respond to her initial complaint for over a month. OCR found that the university improperly halted its investigation when the accused professor resigned, did not offer interim measures such as a no contact order, and did not make a determination of whether the student was subjected to a hostile environment or issue a notice of findings. Additionally, OCR's investigation revealed that, at the time of the complaint, the university did not have a designated Title IX coordinator; its policies, procedures, and notice of nondiscrimination were noncompliant; staff members charged with overseeing hearings or otherwise integral to resolving Title IX complaints were not properly trained; several other recent sexual misconduct cases were mishandled in that the investigatory process failed to adhere to stated school policy, denying complainants and accused students a prompt and equitable response to reports of sexual harassment and sexual violence. Additionally, when a student reported seven incidents of sexual harassment from two students, the university failed to interview one of the students, interviewed the other about only one of the incidents, failed to investigate the remaining incidents, did not provide interim services to the complainant, held a hearing that the accused students declined to attend, and imposed penalties including expulsion on the

two students. A rehearing took place despite the lack of an appeal from the accused students, which resulted in the revocation of the expulsions without making any findings, and yet the complainant did not receive a right to appeal. To remedy the noncompliance, the university entered into a resolution agreement that requires it to retain an equity consultant, release a statement to the community about how to report instances of sexual harassment, revise its policies, properly train staff tasked with resolving Title IX complaints, retain an equity consultant proficient in Title IX and complete an assessment to determine whether the university has sufficient staff to investigate and resolve complaints, implement a standardized process for documenting investigations and reports, conduct periodic climate checks, and convene a committee to identify strategies to improve, review prior reports, and monitor the effectiveness of these programs.

Occidental College (CA): In June 2016, OCR resolved an investigation of whether the college adequately resolved internal complaints of sexual violence. OCR found that the college had developed legally compliant policies and procedures for addressing complaints of sexual harassment, appropriately disseminated a notice of nondiscrimination, and had trained its Title IX coordinator and investigators to address complaints of sexual harassment. However, OCR also identified several cases from the 2012-13 school year that were not resolved promptly and substantiated concerns that college staff were not aware of their responsibility to safeguard student speech and abstain from interfering with student advocacy. In several instances, the investigation raised concerns that college administrators acted to dissuade students from speaking out to ensure that reports of sexual violence were being addressed promptly and effectively on campus. The college agreed to adopt a newly revised misconduct policy and procedure; provide three years of complaint files to OCR and proactively review each complaint file to ensure that the college provides a prompt and equitable resolution of each complaint; develop and provide mandatory annual training



Guidance on Rights of Transgender Students¹⁴

On May 13, 2016, OCR issued a *Dear Colleague letter* jointly with DOJ that explains a school's (including elementary, secondary, and postsecondary institutions') Title IX obligations regarding transgender students and how the Departments evaluate a school's adherence to these standards. Specifically, the guidance explains a school's obligations to:

- respond promptly and effectively to sex-based harassment of all students, including harassment based on a student's actual or perceived gender identity, transgender status, or gender transition;
- treat students consistent with their gender identity even if their school records or identification documents indicate a different sex;
- allow students to participate in sex-segregated activities consistent with their gender identity; and
- protect students' privacy related to their transgender status under Title IX and the Family Educational Rights and Privacy Act.

for staff and faculty on the grievance process, its implementation, and their responsibilities to ensure that interference and retaliation do not occur for protected activities; and conduct an annual survey to monitor the school climate and address concerns raised.

Frostburg State University (MD): In September 2016, OCR resolved two complaints alleging that two students were discriminated against on the basis of sex when the university failed to adequately respond to their reports of sexual assault. The investigation found that the university violated Title IX with respect to both complaints and was not prompt or equitable in its responses to the majority of the 43 reports of sexual harassment and/or assault received between January 2011 and November 2014. The university's Title IX coordinator only received notice of five of the 43 reports in that time period and therefore could not provide Title IX coordination for the institution. With respect to one complainant, the university did not provide adequate interim measures to the student, and the Dean of Students told OCR investigators that he did not consider an accused student's repeated violation of a no-contact order to be a form of sexual harassment. The resolution agreement requires the university to reimburse the two complainants for relevant expenses, review reports it had received to determine whether more relief should be provided, provide to OCR sexual harassment and assault reports the university receives on an annual basis through the monitoring of the case, change its policies and

Guidance on Gender Equity in Career and Technical Education

On June 15, 2016, OCR and the Office of Career, Technical, and Adult Education issued a *Dear Colleague letter* explaining that all students, regardless of their sex, must be provided equal access to the full range of career and technical education (CTE) programs offered in secondary and postsecondary institutions. The letter clarifies obligations under the laws enforced by the Department to ensure equity in access to these programs. It includes:

- information on requirements and relevant data under the Perkins Act related to participation in non-traditional fields;
- an overview of the applicable legal obligations under Title IX of the Education Amendments of 1972 and the Vocational Education Program Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap; and
- practical examples of issues that may raise concerns regarding compliance with these legal obligations.



and provide remedies as warranted; publish an anti-harassment statement and revise Title IX grievance procedures; provide training to ensure that all members of the college community are trained regularly on Title IX requirements related to sexual harassment and sexual violence; enhance outreach to and feedback from students including by conducting campus climate surveys; and convene a Title IX committee to develop a plan to educate students and staff about sexual harassment and assault.

ALSO: See **John Doe School District**, p. 37 (ensuring appropriate educational support for students with disabilities and eradicating sexual harassment and sexual violence)

Redressing Gender Identity Discrimination

Dorchester County School District Two (SC)¹⁵: In June 2016, OCR resolved a complaint alleging that the district was discriminating against an elementary school transgender student by prohibiting her from using the girls' restrooms at her school consistent with her gender identity and requiring that she use a private restroom in her school's office or nurse's station. The student's female classmates took restroom breaks as a group, on their way to or from lunch or recess, while the student was required to leave the group to go to a private restroom. OCR found the district in violation of Title IX because the female transgender student was not given access to the girls' bathroom consistent with her gender identity. However, OCR determined that the district's policies and procedures complied with Title IX. The resolution agreement with OCR requires the district to provide the student with access to the girls' bathrooms at her elementary school; provide the student and her parents with the option of requesting, at any point during the student's enrollment in the district, that a support team be convened to ensure that the student's access and opportunity to participate in all programs and activities is not denied or limited based on her gender identity, and

notice of nondiscrimination, provide training for the entire university community, and develop a committee to create a plan for educating students and staff about sexual harassment and sexual assault.

Wesley College (DE): In September 2016, OCR resolved a complaint that the college discriminated against a student who had been accused of sexual misconduct. OCR determined that the college violated the Title IX rights of this student, along with three others also accused in the same incident, by failing to provide them with essential procedural protections and to adhere to the safeguards provided for in its own disciplinary policies and procedures. In this case, the accused student was not interviewed during the investigation of the complaint against him, but an interim suspension was imposed the same day as the college received the report against him. He was provided incorrect policies and procedures by the college, and he reported that he did not receive a copy of the incident report or information contained in the report prior to the hearing. In addition, the accused students were not afforded an opportunity for an interview during the investigation, and thus were not provided the opportunity to provide witnesses or other evidence during the investigation. The investigation further revealed a lack of notice to the community identifying the individual responsible for investigating and resolving Title IX complaints as well as other deficiencies in the college's Title IX procedures. In the resolution agreement reached with OCR, the college committed to determine whether it engaged in a sufficient level of inquiry prior to imposing an interim suspension on the accused students, and provide specific remedial actions as warranted; complete its investigation of the incident and re-investigate or address investigative deficiencies,

Guidance on Voluntary Youth Service Organizations

On December 15, 2015, OCR issued a *Dear Colleague letter* explaining school districts' responsibilities under Title IX when partnering with outside organizations that provide single-sex programs to a school district's students. Specifically, the guidance:

- reminds school districts that Title IX prohibits them from providing significant assistance to any outside organization that unlawfully discriminates on the basis of sex;
- explains that Title IX does not apply to the membership practices of voluntary youth service organizations;
- reiterates that membership in voluntary youth service organizations must be voluntary; and
- clarifies school districts' obligation under Title IX to ensure that girls and boys have comparable educational opportunities overall.

that she is otherwise protected from gender-based discrimination at school; revise its policies and procedures to include gender-based discrimination as a form of discrimination based on sex; and provide annual training to district- and school-level administrators on the district's obligation to prevent and address gender-based discrimination.

Ensuring Equal Access to Athletic Opportunities and Benefits

School District of Superior (WI): In February 2016, OCR resolved a complaint filed against the school district alleging that the district subjected female athletes to discrimination on the basis of sex in the district's high school interscholastic athletics program by failing to provide boys and girls with equal athletic facilities. OCR determined that the district did not meet its Title IX obligations because disparities existed in the quality of locker rooms and in the practice and competitive facilities provided to male and female sports teams. For example, the boys' baseball team played on a turf field of excellent quality, whereas the girls' softball team played on an inadequately maintained grass field that had holes and drainage problems and lacked proper fencing and the lighting needed for evening practice and games. To resolve these disparities, the district agreed to provide equal athletic opportunities for both sexes through the provision of locker rooms and practice and competitive facilities of equal quality. Further, the district agreed to conduct a self-assessment of the athletic facilities afforded to male and female athletes and develop a plan to address any disparities evidenced by the self-assessment.

Erie Community College (NY): In March 2016, OCR resolved a complaint involving the provision of equal athletic opportunities to female students at the college. OCR's investigation revealed substantial disparities between the enrollment of female students and their participation in collegiate athletics. For example, during the 2013-14 academic year, females constituted 48 percent of enrolled students, but only 33 percent of athletic participants. OCR



SECURING EQUAL EDUCATIONAL OPPORTUNITY

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found that the college had not established a history and continuing practice of athletic program expansion responsive to the interests of female students and that, although the college had increased the number of women's sports since creating the women's athletics program, it had also added several men's sports teams, including a football team, just a few years prior to cutting several teams, including three women's sports teams. OCR determined that since the 2009-10 academic year, five women's teams had been cut, including the women's swimming, diving, track, cross-country, and golf teams; that if women express an interest in a sport that is not offered, they are told that the sport is not available; and that women have expressed an interest in sports that had been eliminated. The college entered into a resolution agreement with OCR in which it committed to survey women in its student body to determine possible interest and ability in sports not offered by the college; consider any requests to college administrators, coaches, or staff to add a particular sport to the program or elevate a sport from a club or intramural sport to intercollegiate status; create and implement a nondiscriminatory policy or procedure for requesting the addition of sports and ensuring the effective communication of the policy or procedure to students and others; examine participa-

tion rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the college draws its students to determine possible additional sports for women; and, if the college identifies a sport or sports in which there is sufficient but unmet interest, add athletics opportunities until the school is fully accommodating the expressed interests and abilities of female students, or until the participation rate for female students is substantially proportionate to their rate of their enrollment.

Montana State University Billings (MT): In September 2016, OCR resolved a compliance review focused on whether the university discriminates against female students by denying them an equal opportunity to participate in intercollegiate athletics, and whether the university discriminates against male or female students by not awarding athletic financial assistance in proportion to the number of students of each sex participating in the university's athletic programs. OCR found that the university did not provide participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments in the last three years. In the 2014-15 school year, for example, female students comprised 58 percent of the undergraduate population but only 44 percent of the athletic programs. The investigation also found, however, that the university's financial assistance allocation generally favored female athletic programs. Under the resolution agreement, the university committed to conduct an assessment regarding whether its intercollegiate athletic program is meeting the Three-Part Test described in OCR guidance¹⁵; decide which part of the Three-Part Test it wishes to meet; develop an action plan to meet the interests and abilities of the underrepresented sex; submit the plan to OCR for review and approval; review its athletic financial awards (AFA) to determine compliance with the one percent rule; and submit an AFA report to OCR for approval.

Reviewing Single-Sex Education Programs

Broward County Public Schools (FL): In August 2016, OCR resolved a complaint alleging that schools in this district fostered sex discrimination by instituting single-sex programs in the school's English, math, science, and social studies classes. Specifically, the complainant alleged that the district classified students by sex without adequate justification, used teaching methods that promote broad gender stereotypes, failed to ensure voluntary participation of students, failed to provide a substantially coeducational alternative, and failed to properly evaluate the single-sex programs. The investigation found that the schools implementing single-sex education violated Title IX because they did not provide any justification or sufficient information to demonstrate why single-sex education helped the district achieve its academic goals. Additionally, OCR found that enrollment into the single-sex curriculum was not voluntary, and the district did not offer a substantially coeducational alternative. The agreement commits the district to discontinue offering single-sex classes at all schools and to certify in writing to OCR that notices of discontinuation were distributed to all parents and/or guardians of

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students enrolled in all of the schools in which the district offered single-sex classes during the 2015-16 school year.

Bay Village City School District (OH): In June 2016, OCR resolved a complaint alleging that the district discriminated against male students on the basis of sex by making a non-audition choir course available only to female students. OCR determined that the district denied boys equal benefit from the district's educational program because the male non-audition choir was an extracurricular activity instead of a course with academic credit like the girls' choir. To remedy this noncompliance, the district entered into a resolution agreement that requires them to create a plan to give male students an equal opportunity in choir course offerings, revise the admission criteria for the ensemble in question to remove the sex restriction, widely publish these new policies, provide training to administrators on Title IX, and ensure that future academic and extracurricular offerings are provided in accordance with Title IX.

Protecting Pregnant and Parenting Students

Western Illinois University (IL): In June 2016, OCR resolved a complaint alleging that a student faced discrimination on the basis of sex when she was told by a professor she could not make up course assignments while on medical leave after giving birth. The student alleged that the professor notified her by email a few weeks after giving birth that she would not be permitted to turn in an assignment that was previously due. The professor also refused to accept an assignment due less than a month after her child was born because the student was not physically in class to fulfill the

requirements of the assignment. Before the conclusion of OCR's investigation into this matter, the university entered into a resolution agreement in which it committed to offer the student options that included completing alternative assignments in place of the ones she was not permitted to make up or having her grade re-calculated to omit the assignments she was not permitted to make up. Additionally, the university agreed to train its faculty and administrators on its policy requiring faculty members to make necessary modifications for pregnant students, and to provide all faculty and students with a copy of the policy as well as the university's procedures for reporting discrimination.

John Doe College¹⁶: In September 2016, OCR resolved a complaint alleging that the college discriminated against a student on the basis of sex when he was not permitted to submit late assignments in two of his courses following his absences due to the birth of a child. The complainant alleged that, in contrast, female classmates were permitted to turn in assignments after absences due to the birth of a child. OCR facilitated an Early Complaint Resolution between the college and the complainant in which the college agreed to credit \$2,500 to the complainant's student account for tuition and permit him to complete any outstanding assignments he was previously denied the opportunity to complete in the two designated courses.

Eliminating Retaliation for Exercising Civil Rights

John Doe University¹⁷: In November 2015, OCR resolved a complaint alleging that the university retaliated against a student after she filed a Title IX sexual harassment complaint. Specifically, the complainant alleged that the university Women's Center prohibited her from continuing to serve as a volunteer advocate on a hotline for campus sexual assault survivors after she filed a complaint against the university. The complainant also alleged that she was told the Women's Center and its employees could not provide resources or support to her as a survivor because she filed a complaint against the university. Prior to the conclusion of OCR's investigation, the university entered into an Early Complaint Resolution with the complainant committing the university to revise its policies and procedures to include information on Title IX's prohibition against retaliation as well as campus resources for victim advocacy and legal assistance, train employees on Title IX policies and procedures, and provide the complainant with access to counseling services.

Section 504 And ADA Title II: Discrimination Based on Disability

OCR protects the rights of persons with disabilities, including students and parents, under two federal laws in the education context. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity operated by recipients of federal funds. It states: “No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....” Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on 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.”

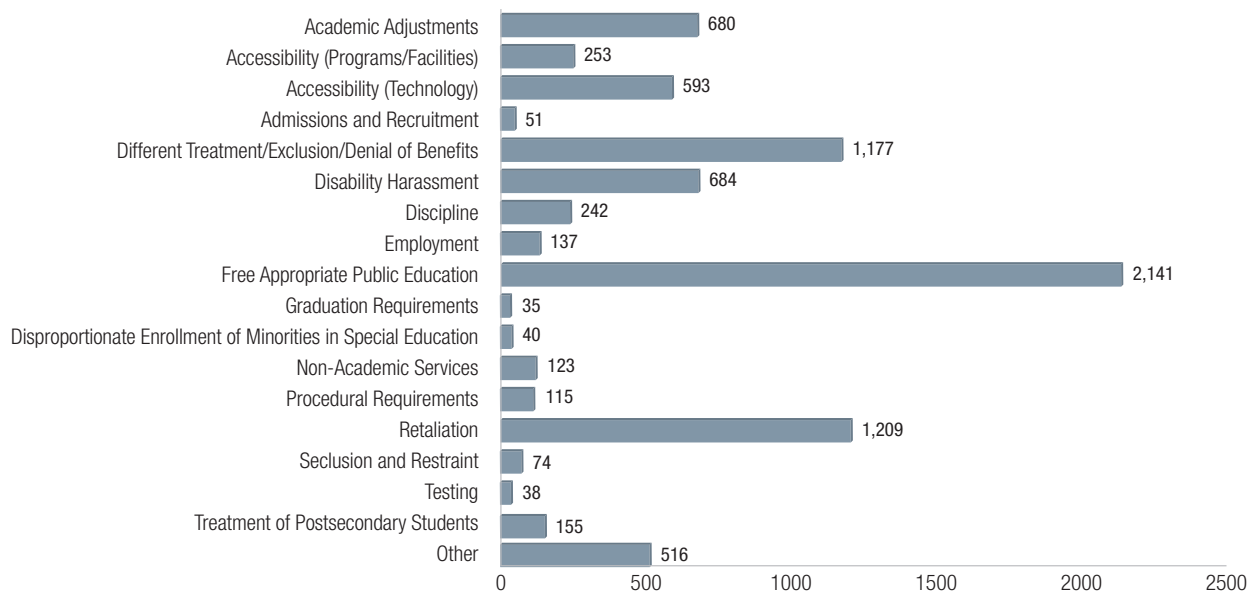
Policy Guidance: During FY 2016, OCR issued guidance, in the form of a *Dear Colleague* letter and accompanying Resource Guide, clarifying the obligation of schools to provide students with attention-deficit/hyperactivity disorder (ADHD) with equal educational opportunity under Section 504. OCR also issued a *Know Your Rights* document providing a brief overview of the guidance.

Technical Assistance: In FY 2016, OCR staff delivered 172 technical assistance presentations across the country on disability rights issues. Topics included the obligations of schools, districts, and institutions of higher learning to provide equal access to the full range of programs, services, and activities available to other students; how entities may formulate policies, practices, and procedures that do not discriminate against students with disabilities; and how to remedy potential Section 504 or Title II violations once they are identified.

Enforcement: In FY 2016, OCR received nearly 6,000 complaints alleging violations of disability laws and covering a broad range of issues (see **Figure 14**). Over the course of FY 2016, OCR successfully resolved 5,232 Section 504/Title II-related complaints.

The following cases are illustrative of OCR’s investigatory work over the past year to enforce Section 504 and Title II. These cases were selected to portray the diversity of issues, complainants, institutions, geographical regions, and remedies in OCR’s enforcement work. They represent a small portion of OCR’s total number of resolutions in FY 2016, and comprise only cases that resulted in a resolution agreement or Early Complaint Resolution (ECR) (see page 21 for an explanation of ECR) between October 1, 2015 and September 30, 2016.

Figure 14: Number of Disability Issues Raised in OCR Complaints (FY 2016)



Total Number of Complaints Raising Disability Issues, FY 2016 = 5,936

Note: A single complaint can raise multiple issues; therefore, the total number of issues raised will exceed the number of complaints received.

Ensuring Equal Access to Comparable Educational Opportunities: Recruitment, Admissions, and Enrollment

Ferris State University (MI): In July 2016, OCR resolved a complaint alleging the university discriminated against a student on the basis of perceived disability by withdrawing him from his academic program and imposing conditions on his ability to reapply. OCR found that the university subjected the student to different treatment by involuntarily withdrawing him from his program using a



process that did not exist under university policies and procedures, not affording the student due process prior to removing him from the program, taking security measures against the student, and reporting him to a state agency. OCR also found that the evidence did not support that the student posed a direct threat to the health or safety of others such that the university would not have been required under Section 504 or Title II to permit the student to participate in its program. Finally, OCR found that the university was not in compliance with the Section 504 and Title II regulatory

“The National Disability Rights Network is pleased to see the release of a guidance package concerning the rights of students with ADHD . . . which will assist advocates and families in accessing the information and becoming knowledgeable about their rights.”

NATIONAL DISABILITY RIGHTS NETWORK
July 2016

requirements concerning grievance procedures and a compliance coordinator. The agreement requires the university to reimburse the student tuition and fees related to his time in the program, amend the student’s transcript, offer to assist the student in transferring to a different institution/program, revise the university’s policies and procedures regarding mental-health crises and involuntary medical withdrawals, designate a Section 504/Title II coordinator, and publish and implement Section 504/II grievance procedures.

Reed College (OR): In September 2016, OCR resolved a complaint alleging that the college discriminated against students with disabilities by refusing to modify its housing policies to ensure that students who require on-campus housing for disability-related reasons are provided appropriate housing that affords them an equal opportunity to participate in the college’s programs, and by failing to maintain a Section 504 grievance procedure that provides a prompt and equitable resolution of disability-related discrimination complaints. OCR found that on-campus housing itself was not an accommodation offered by the college despite the fact that several students with disabilities had sought on-campus housing as an accommodation for their disability-related needs. The resolution agreement requires the college to review and revise its housing and disability policies, procedures, and practices, as well as its disability grievance procedures; provide training to all disability support services and residential staff regarding the college’s revised housing and disability policies and procedures; provide training to all staff involved in the implementation of the college’s disability grievance procedure regarding the college’s revised disability grievance procedures; and communicate the college’s revised policies and procedures to all staff and students.

Ensuring Appropriate Educational Support for Students with Disabilities

Mesa Community College (AZ): In June 2016, OCR resolved a complaint that alleged that the college discriminated on the basis of disability when it failed to permit a student to bring her service animal to class. The complaint also alleged a member of the college faculty retaliated against the student by threatening to reduce the student's grade after she advocated for allowing to be accompanied by her service animal. In response to the complaint, the college confirmed that service animals are welcome in accordance with college policy. To remedy the issues identified, the college agreed to reverse any unexcused absence the student received in her class and re-evaluate her final grade in the course; document and retain the record of the student's right to the accommodation of a service animal; and conduct annual training on the college's service animal policy.

Gwinnett County Public Schools (GA): In December 2015, OCR resolved a complaint alleging that students with disabilities enrolled in the district's Supported Training and Rehabilitative Instruction in Vocational Education (STRIVE) Program were subjected to a shortened school day. After investigating the STRIVE program, students' Individualized Education Plans (IEPs), and bus schedules, and after conducting interviews with the complainant and four members of the district staff, OCR found that the district had failed to provide students with disabilities enrolled in the STRIVE program with a full school day that is comparable to the school day provided to students without disabilities. To remedy these issues, in the resolution agreement, the school district agreed to provide a written offer of compensatory services in the amount of 81 hours of school during the summer of 2016 for each student who participated in the district's STRIVE program for a full day during the 2014-15 school year; increase the daily hours of service for STRIVE students by 26 minutes so that the instructional day for STRIVE students is comparable to the instructional school day for students in regular high schools; and provide training to administrators and teaching staff on the district's obligation under Section 504 and Title II to provide a full instructional day to students with disabilities unless the student's Section 504 team or IEP team determines that a shortened school day is necessary to meet the students' individual needs.

John Doe School District¹⁸: In October 2015, OCR facilitated an agreement to resolve a complaint alleging that the district discriminated against a parent on the basis of disability when it failed to provide the parent with an interpreter for a mandatory parent meeting. Through an Early Complaint Resolution between the district and the complainant, the district agreed to provide training to all district faculty and staff about their obligations to provide effective



communication and how to work with students, parents/guardians, and community members with hearing impairments, including best practices and a protocol for reserving interpreter services; review its relevant policies to ensure compliance with Section 504 and Title II; identify individuals at each school to serve as contacts for parents/guardians and community members with hearing impairments; and communicate to all parents/guardians and district faculty and staff on its steps to communicate effectively with parents with hearing impairments.

District of Columbia Public Schools (DC): In October 2015, OCR resolved a complaint that alleged that the school district discriminated on the basis of disability (Post Traumatic Stress Disorder, or PTSD) when it failed to provide a student with a free appropriate public education (FAPE) by not providing her related aids and services for her disability and removing her from the Spanish immersion program in the fall of 2014, causing her to drop out of the school. OCR found that, as early as the 2013-14 school year, the district had evidence that the student might have a disability requiring special education or related aids and services, yet did not provide such aids and services until December 2014 at the earliest and therefore failed, in violation of Section 504 and Title II, to provide timely special education or related aids and services during the 2014-15 school year. In addition, during the investigation, OCR found that, in violation of Section 504 and Title II, the school believed that it was justified in factoring in the student's disability in the decision to remove her from the Spanish immersion program at the beginning of the 2014-15 school year, even prior to providing her with any aids or services. To remedy these violations, the district agreed to offer the student's parents the opportunity to have the student considered for, and, if she is eligible, provide, compensatory or remedial education services, as well as to evaluate the student – should she re-enroll in the district – to determine whether she is



eligible for, and, if so, provide, special education or related aids and services to meet the FAPE requirement.

Alabama State Department of Education (AL): In September 2016, OCR resolved a complaint alleging that the Department denied the complainant's daughter a reader accommodation for the ACT Aspire examination because her reading level was not at least two grade levels below the fifth grade level. OCR determined that the Department's policy created a bright-line rule that eliminates the individualized assessment by the student's Section 504 team or IEP team as to whether a student with a disability requires the reader accommodation for the ACT Aspire exam. By eviscerating the student's Section 504/IEP team's responsibility to make the accommodation decision on an individualized basis, OCR determined that the policy failed to comply with Section 504 and Title II. The Department entered into a resolution agreement in which it agreed to revise its ACT Aspire reader accommodation policy to comply with the requirements of Section 504 and Title II as it relates to individualized educational decisions, and to implement, publish, and notify all necessary parties of the revised policy once it has been approved by OCR.

San Bernardino County Office of Education (CA): In August 2016, OCR entered into an agreement with the San Bernardino County Office of Education to resolve a compliance review regarding services for students with disabilities at court and community schools. OCR found that the county did not have adequate procedures to identify students with disabilities. OCR also found that students who had been identified as disabled in their home district received services that were based largely on county resources rather than on a determination of their individual special needs and were underserved as a result. OCR also found that the county was not providing all of the services required by the students' special

Guidance on Equal Opportunity for Students with ADHD

On July 26, 2016, OCR issued a *Dear Colleague letter and a Resource Guide* on students with attention-deficit/hyperactivity disorder (ADHD), as well as an accompanying *Know Your Rights* document. The guidance clarifies the obligation of elementary and secondary school districts to provide students with ADHD with an equal educational opportunity. Specifically, the guidance:

- explains that schools must evaluate a student when a student needs or is believed to need special education or related aids or services;
- discusses the obligation to provide services based on students' specific needs and not based on generalizations about disabilities, or ADHD in particular;
- clarifies that students who experience behavioral challenges, or present as unfocused or distractible, could have ADHD and may need an evaluation to determine their educational needs; and
- reminds schools that they must provide parents and guardians with due process and allow them to appeal decisions regarding the identification, evaluation, or educational placement of students with disabilities, including students with ADHD.

education plans. OCR found the county in violation of Section 504 and Title II and their implementing regulations. Additionally, OCR had concerns regarding suspension of students who may not have been identified or have received accommodations for their disabilities; the absence of an effective tracking system for identifying students with disabilities, obtaining their records in a timely manner, and maintaining special education records and evaluation information; and a need for a higher level of coordination and interaction between staff serving students with disabilities in the alternative and court schools and the special education program. The resolution agreement with OCR requires the county to ensure that students with disabilities are provided with FAPE based on individualized placement decisions; that all students with disabilities are appropriately identified, placed, and served based on their needs; that the alternative education program provides a continuum of special education and related services in a nonrestrictive environment; and that all students with IEPs or Section 504 plans will receive no significant change in their instructional setting.

Duval County School District (FL): In October 2015, OCR resolved a complaint alleging that a student faced discrimination on the basis of disability when the district did not evaluate the student in a timely manner or make individualized determinations when



it developed the student's Section 504 plan. OCR found that the district made determinations regarding what services to provide based on factors external to the student's identified needs. In one instance, an administrator informed the complainant that the school does not afford accommodations other than extended time on tests and time and a half on homework. The Section 504 team failed to consider the services requested, whether the student actually needed those services, and whether the services or alternatives could allow the student to continue to participate in the International Baccalaureate program. The resolution agreement with OCR requires the district to revise its Section 504 policies and procedures to clearly indicate Section 504 plans will be based on individualized needs; notify all staff members in writing of their obligations under Section 504 and Title II; initiate annual training for all staff and faculty; initiate training to the Section 504 coordinator at the school regarding his/her responsibilities under Section 504; expunge the failing grades the student received during the term in question; and conduct reviews of all students who have or are suspected of having a disability to ensure they are not being denied FAPE or an equal opportunity to participate in the school's program.

John Doe Charter School¹⁹: In September 2016, OCR resolved two complaints alleging, among other issues, that the school failed to provide two students with FAPE by not evaluating them for special education services or services under Section 504. After Student A was diagnosed with cancer and underwent emergency surgery, the school began providing Student A with one to two hours of homebound services per week. OCR determined that the school did not conduct evaluations or develop a plan designed to meet the individual educational needs of Student A, and instead repeatedly put off creating a formal educational plan so that school staff could see how Student A proceeded through his medical issues. Student A eventually transferred to a different school. OCR concluded that the school failed to provide the parent with procedural safeguards and failed to secure FAPE for Student A and thus violated Section 504. In the complaint involving Student B, the complainant alleged

that the school knew Student B had a disability but did not evaluate for or provide Student B with services under the IDEA or Section 504, resulting in a denial of FAPE. While OCR made no determination on whether the school's actions with respect to Student B violated Section 504, OCR identified concerns that the school failed to provide the parent with procedural safeguards (by not holding a Section 504 meeting) and failed to provide Student B with FAPE. In the resolution agreement, the school agreed to update policies and procedures concerning evaluation and eligibility for services under Section 504 and/or the IDEA and homebound services; train staff members and administrators on their obligation to evaluate and provide services to any student who needs or is believed to need special education or related services; and, if either Student A or Student B returns to the school, convene the appropriate Section 504 or IEP team to determine what special education and compensatory services may be required.

John Doe School District²⁰: In April 2016, OCR resolved a complaint alleging that the school district failed to implement a student's Section 504 plan regarding the administering of insulin for the student's diabetes by requiring the complainant (the student's parent) to come to school on several occasions to administer insulin, and that the district further discriminated against the parents of students with diabetes by requiring them to attend field trips to provide insulin services. In the course of the investigation, OCR found that the student's Section 504 plan required the district's nurse to monitor and provide insulin to the student during the 2015-16 school year, yet on more than ten occasions the complainant was called to school to administer insulin when the nurse was not scheduled to be working during the official school day. OCR found that, while the student's Section 504 plan requires a backup staff member be given training on providing the student with insulin, the designated staff member did not know she was in the Section 504 plan and was not familiar with the needs of the student. In addition, while there was no policy requiring parents of students with diabetes to attend field trips, OCR determined that district staff expected parents to attend and made no other arrangements for the student's insulin-related accommodations to be provided during school trips. OCR also found that persons knowledgeable of the student's accommodations did not participate in the creation of portions of the student's Section 504 plan and that records were not properly kept. To remedy these issues, the district agreed to have a meeting to review and revise the student's Section 504 plan to address the student's needs, reimburse the complainant for mileage and missed work time for each time the complainant was called in to provide the student with insulin, and develop policies and procedures for students who require health care as part of their Section 504 plan, including procedures for nurse absences and use of substitutes, staff training, and field trip accommodations.

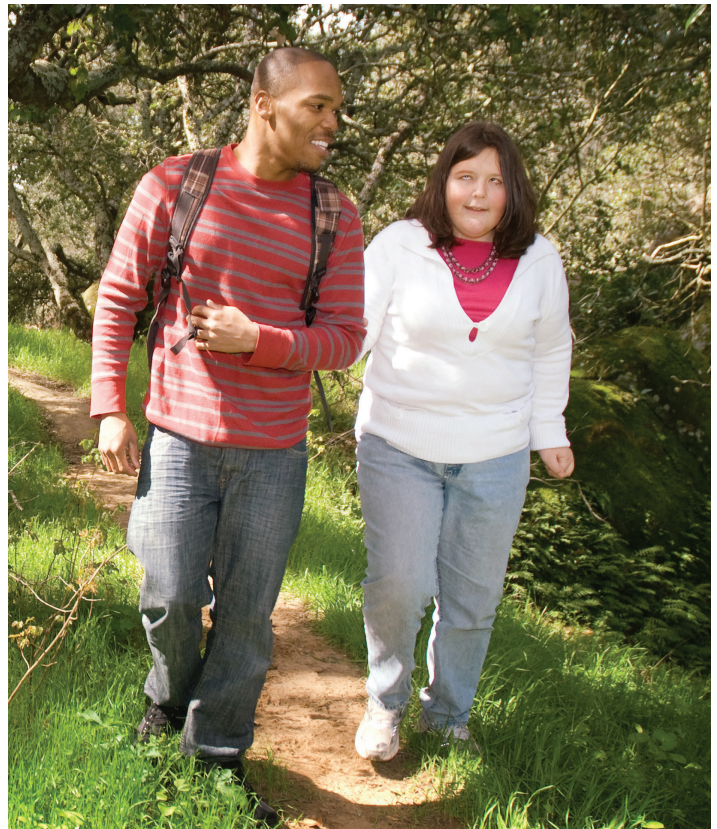
John Doe School District²¹: In June 2016, OCR resolved a complaint alleging discrimination against a student based on disability and sex. OCR found that the district inappropriately required the student's parent to provide a medical diagnosis at her own cost, and did not adequately evaluate the student in a timely fashion to determine whether he had a disability or what services would best meet his need to ensure that he received FAPE. OCR also found that the district had notice of alleged sexual harassment against the student but did not investigate the allegations under Title IX or its own Title IX procedures, and that the investigation it did conduct was not thorough or appropriately documented and did not meet the requirements of Title IX. OCR further found that the district did not have adequate policies, procedures, or practices for ensuring prompt and equitable responses to complaints of sex discrimination under Title IX, and for addressing any sexually hostile environment at the district or the district's high school. OCR also found that, after the student and parent filed a complaint regarding an alleged sexual assault, the district retaliated by trying to intimidate the student and his parent into dropping the complaint. To remedy these issues the district entered into a resolution agreement in which the district agreed to revise and publish its Title IX harassment policies and procedures; to provide staff and student training and information sessions in regards to district policies and grievance procedures; and to conduct a school climate survey, establish a student committee and Title IX working group, and develop a monitoring plan to assess the effectiveness of steps taken pursuant to the agreement. The district also agreed to reimburse the parent's out-of-pocket costs for counseling for the student for one year, reconsider whether the student's behavior in response to harassment warranted disciplinary action, and provide compensatory education, if the student chooses, as a result of the failure of the district to adequately evaluate the student's eligibility for disability services.

ALSO: See **Newark Public Schools (NJ)**, p. 20 (nondiscrimination in school closures and ensuring appropriate educational support for students of color and students with disabilities)

ALSO: See **East Ramapo Central School District**, p. 20 (ensuring equal opportunities for English learners and appropriate educational support for students with disabilities)

ALSO: See **Salt Lake City School District (UT)**, p. 22 (ensuring equal opportunities for English learners and appropriate educational support for students with disabilities)

ALSO: See **Oakland Unified School District (CA)**, p. 39 (curbing restraint and seclusion and ensuring appropriate educational support for students of color and students with disabilities)



Eliminating Retaliation for Exercising Civil Rights

Hampton City Schools (VA): In July 2016, OCR resolved a complaint that alleged that the district retaliated against a parent, who was also a district employee, for advocating for her child with a disability who was enrolled in the district. During its investigation, OCR determined that the district retaliated against the parent for advocating on behalf of her daughter by informing the parent's employer that it did not want the parent to continue working in the district's school, which resulted in the termination of her services at that school. As a result, OCR found the district in violation of the civil rights laws enforced by OCR that prohibit retaliation for opposing discriminatory practices or for participating in OCR's complaint resolution process. To remedy these issues, in the resolution agreement with OCR, the school district agreed to amend its policies to prohibit retaliation against individuals who have engaged in activities protected by federal law, clarify the procedure for filing a complaint alleging retaliation, disseminate a memo to all administrators that provides information on unlawful retaliation, post a notice stating that the district prohibits retaliation against individuals who have engaged in activities protected by federal law, provide training to administrators on retaliation, and compensate, as appropriate, the complainant (parent) for the expenses that she incurred as a result of the district's retaliation during the 2014-15 and 2015-16 school years.

Combating Bullying and Harassment on the Basis of Ability Status

John Doe School District²²: In August 2016, OCR resolved a complaint that alleged that a student was subjected to discrimination on the basis of disability. Specifically, while in a school hallway, a teacher made derogatory comments to a student with multiple mental health diagnoses about the student's prior suicide attempt and urged the student to kill herself. This exchange happened in the presence of other students. The investigation revealed that the school disciplined the student for assaulting the teacher in response to the teacher's comments by issuing ten days of out-of-school suspension and assigning her to an alternative school. OCR concluded that the school operated a disability-based hostile environment for the student that the district failed to assess or address. Regarding the teacher's behavior, the district's investigation focused solely on whether the teacher violated the district's code of ethics and the state's Professional Standards Code. Additionally, OCR concluded the district's Section 504 procedures and notice of nondiscrimination violated Section 504. The resolution agreement requires a written apology to the student; an offer for district-provided counseling for the student; a manifestation meeting to determine whether or not the student's charged offense for assaulting the teacher at the time the teacher made the suicide comment (as well as any other disciplinary incidents during the school year) were manifestations of the student's disabilities; investigation of whether the staff have subjected the student to any other instances of disability harassment; revision of the nondiscrimination notice and 504 grievance procedures; annual staff training on the updated notice and procedures; and a yearly climate check with students and staff to assess the presence and effects of disability harassment.

John Doe Tribal School²³: In July 2016, OCR resolved a complaint alleging that a tribal school discriminated against her son because he is a Native American student with a learning disability. Specifically, the parent alleged that a teacher denied the student's



request for permission to use the bathroom and prompted him to urinate in a water bottle, which resulted in peers mocking and harassing him, and that the school failed to investigate her complaint appropriately. While OCR's investigation did not show any evidence to conclude that the teacher discriminated against the student based on race/national origin or disability, it did show that the school failed to conduct an investigation under its grievance procedures, and that those grievance procedures did not meet the requirements of Section 504. The procedures did not include time frames, allowed too much uncertainty about whether an investigation will be conducted, and did not include information on the prohibition against retaliating against those who file complaints of discrimination. The school's notice of non-discrimination also lacked the phone number for the compliance officer. In the resulting resolution agreement with OCR, the school agreed to revise its policies and grievance procedures for responding to disability discrimination complaints, disseminate them to all students, parents, and school staff, and train staff annually about responding to such complaints.

Safeguarding Accessibility of Appropriate Technology

Educational Testing Service (NJ): In December 2015, OCR resolved a complaint against the Educational Testing Service (ETS), the world's largest private nonprofit educational testing and assessment organization, which administers the GRE, TOEFL, and PRAXIS tests, among others. The complainant alleged that ETS did not allow testing applicants seeking testing accommodations to use its online registration system, thereby discriminating on the basis of disability. During the investigation, OCR confirmed that ETS required testing applicants with disabilities seeking testing accommodations to submit test registration materials to ETS by mail, courier, or fax, whereas other test takers could submit test registration materials online. Additionally, OCR found that ETS did not allow testing applicants with disabilities seeking testing accommodations to select a test date and location until after it had reviewed the documentation supporting the request for testing accommodations and approved the request. Testing applicants with disabilities seeking testing accommodations, even after obtaining approval for accommodations, were not able to use the online registration system and instead had to register by telephone. The resolution with OCR requires ETS to develop procedures and a plan designed to enable test takers with disabilities seeking accommodations to submit test registration information online; request testing accommodations and submit supporting materials for the requested accommodations through ETS's website or online registration platform; and permit test takers seeking testing accommodations to indicate their preferred test dates and test sites online through ETS's website or online registration platform.

Guam Department of Education: In June 2016, OCR reached a settlement agreement with the Guam Department of Education to ensure website accessibility for people with disabilities. The complainant alleged that a number of pages on the department's website were not accessible to people with disabilities. During the course of the investigation, OCR found that the websites utilized by the department failed to provide the "alt tags" that describe images to blind and low-vision users who utilize special software. Another issue included that some important content of the websites were only accessible by computer mouse, which meant that content was not available to those who are blind, have low vision, or disabilities affecting fine motor control. To remedy these issues, the department entered into a resolution agreement in which it agreed to ensure equal opportunity for people with disabilities by selecting an auditor with the requisite knowledge and experience to identify barriers to accessing the department's web pages, develop a corrective action plan to prioritize the removal of online barriers, and ensure that all new website content and functionality be accessible to people with disabilities. Additionally, the department agreed to provide website accessibility training to all appropriate personnel.

Curbing Restraint and Seclusion

Oakland Unified School District (CA): In June 2016, OCR resolved a complaint alleging that a nine-year-old student faced discrimination on the basis of disability when school officials at the non-public school in which the district placed the student, with the consent of the student's parents, restrained him 92 times over an 11-month period from April 2013 through February 2014. The investigation confirmed the allegations and found that, in total, the student was held face down for 2,200 minutes. In contrast to the non-public school, the district utilizes positive behavior interventions and supports and does not allow prone restraint to be used against students in its schools. The student spent more time in seclusion or a recovery room than in instruction during the indicated time period and experienced a regression in academic performance. OCR determined that the restraint and seclusion of the student were severe and pervasive enough to diminish the student's ability to benefit from education and participate in educational activities, constituting a hostile educational environment for the student. OCR found the district in violation of Section 504 and Title II by failing to implement the student's IEP and failing to respond to notice of a hostile environment. The resolution agreement includes a provision that the district will no longer contract with non-public institutions that condone prone restraint. The district must also develop a master contract to be universally applied to all non-public schools it contracts with that includes a prohibition on the use of restraint and protocols for reporting instances in which restraint is used. The agreement provides for an evaluation of the student to assess the adverse effects related to the use of prone restraint, the convening of an IEP team meeting to develop a plan for compensatory education and services for the student, and training regarding the adverse effects of restraint and successful alternative intervention methods for special education administrators and staff responsible for monitoring children at non-public schools in the district.

Enforcement Activity Under Other Statutes

OCR also has jurisdiction over two additional civil rights laws: the Age Discrimination Act of 1975 and the Boy Scouts of America Equal Access Act (2001).

The Age Discrimination Act of 1975

The Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities that receive federal financial assistance. This prohibition extends to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive federal financial assistance from the U.S. Department of Education. Programs or activities that receive such funds must provide aids, benefits, or services in a nondiscriminatory manner. These include (but are not limited to) admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, and housing. Though the Act does not limit protections against discrimination to a certain age group, it does allow for exceptions such as when colleges offer special programs that are geared toward providing special benefits to children and the elderly. In FY 2016, OCR received 581 complaints under the Age Discrimination Act and resolved 601 complaints. Common remedies in OCR resolutions include provisions that require training for staff, updating and disseminating nondiscrimination policies, and investigation by the institution into the specific incidents that resulted in the allegation of age discrimination.

The Boy Scouts of America Equal Access Act (2001)

OCR also enforces the Boy Scouts of America Equal Access Act. Under this 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 at the school, before or after school hours, 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 in Title 36 of the United States Code as a patriotic society. In FY 2016, OCR received 22 complaints under the Boy Scouts Act and resolved 20 cases. Many of the complaints filed under this statute sought enforcement of the requirement that institutions' nondiscrimination policies include a statement about the Boy Scouts Act and its provisions.



Looking Ahead

OCR's abiding goal is to ensure that all students – irrespective of their race, ethnicity, national origin, sex, or disability status – are afforded equity and opportunity in schools, from preschool to post-secondary education. The preceding pages illustrate OCR's activities in FY 2016 to secure that equity and opportunity for students.

This past year, the cases we reviewed and investigated have again served as a reminder that discrimination still pervades far too many schools, but also that the capacity of many schools to resist and redress discrimination is deep.

In the future, addressing the steep rise in the number civil rights complaints will be challenging for OCR, which must continue to investigate and resolve cases with rigor and speed to protect students' civil rights and ensure they have an equal opportunity to reach their full potential. With its dedicated and expert staff, and with sufficient resources, OCR can and will succeed in meeting this obligation.

We look forward to continuing to execute Congress' mandate of nondiscrimination and equity for students nationwide.



APPENDIX: Index of Cases Resolved With Agreements

Total number of resolution agreements in FY 2016 by jurisdiction, statute, and type of investigation

State, District, or Territory	Title VI			Title IX			Disability			Age			TOTAL Per State*
	TOTAL	Complaints	Compliance Reviews	TOTAL	Complaints	Compliance Reviews	TOTAL	Complaints	Compliance Reviews	TOTAL	Complaints	Compliance Reviews	
AK				1	1		2	2					3
AL							8	8					8
AR							5	5					5
AS													0
AZ	1	1		2	2		39	39					42
CA	17	17		12	12		70	69	1				99
CO				2	2		16	16					18
CT							2	2					2
DC	2	2											2
DE	1	1					4	4					5
FL	2	2		1	1		21	21					24
GA	2	2		1	1		8	8					11
GU							1	1					1
HI													0
IA							1	1					1
ID							2	2					2
IL	2	2		6	5	1	14	14					22
IN							7	7					7
KS				1	1		5	5					6
KY				1	1		6	6					7
LA	2	2					2	2					4
MA	1	1					13	13					14
MD				4	4		9	9					13
ME							1	1					1
MH													0
MI	1	1		3	3		63	63					67
MN	1	1					6	6					7
MO							21	21					21
MS							1	1					1
MT				2	1	1	4	4					6
NC	1	1		3	2	1	20	20					24
ND				1	1		8	8					9
NE				1	1		2	2					3
NH							4	4					4
NJ	5	5		3	3		15	15					23
NM	1	1		1	1		9	9					11
NV							5	5					5
NY	6	6		9	9		26	26		1	1		42**
OH	3	2	1	3	3		16	16					22
OK	2	2		1	1		6	6					9
OR				2	1	1	11	11					13
PA	2	2		5	5		18	18		1	1		26**
PR							12	12					12
RI				1	1		3	3					4
SC				2	2		8	8					10
SD							3	3					3
TN							13	13					13
TX	1	1		3	3		27	27					31
UT	1	1					7	7					8
VA	1	1					18	18					19
VI							2	2					2
VT							2	2					2
WA				6	6		7	7					13
WI				1	1		6	6					7
WV	1	1					7	7					8
WY	1	1					1	1					2
TOTAL Per Statute	57			78			587			2			724**

* There were no resolution agreements involving the Boy Scouts of America Equal Access Act in FY 2016.

** 698 cases resulted in resolution agreements during FY 2016. However the total listed here reflects the fact that many cases included issues across multiple statutes. Additionally, there were 2 claims of age discrimination that are included in this total.

Endnotes

- ¹ In this document, unless otherwise specified, “resolved cases” include cases that resulted in dismissal, administrative closure, a finding of no violation, an early complaint resolution, a resolution requiring action by institutions without a resolution agreement, or a resolution agreement. Note: the number of cases resolved in FY 2016 includes cases received prior to FY 2016.
- ² In this document, 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.
- ³ Throughout this document, data on the number of complaints in discrete issue areas received by OCR in prior fiscal years may vary slightly when compared to data in discrete issue areas reported in previous publications. This is because case information continues to be updated in OCR’s database as cases are processed or investigated, resulting in changes in the categorization of some cases. The data contained in this annual report is current as of October 14, 2016.
- ⁴ Section 203(c)(1) of the 1979 *Department of Education Organization Act* conveys to the Assistant Secretary for Civil Rights the authority to “collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights.” See 20 U.S.C. § 3413(c)(1). In addition, the civil rights laws enforced by OCR and their implementing regulations require recipients of the Department’s federal financial assistance to submit to OCR “complete and accurate compliance reports at such times, and in such form and containing such information” as OCR “may determine to be necessary to enable [OCR] to ascertain whether the recipient has complied or is complying” with these laws and implementing regulations. See 34 CFR § 100.6(b), 34 CFR § 106.71, and 34 CFR § 104.61.
- ⁵ For a fuller summary of findings from the 2013-14 Civil Rights Data Collection, see <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2013-14.html>.
- ⁶ In this document, “high/low black and Latino enrollment” refers to schools with more than 75 percent and less than 25 percent black and Latino student enrollment, respectively.
- ⁷ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ⁸ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ⁹ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ¹⁰ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ¹¹ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ¹² This guidance is the subject of litigation against several federal agencies and officials pending before a federal district court in *Texas v. United States*, 7:16-cv-00054 (N.D.Tex. 2016). On August 21, and October 18, 2016, the court issued a preliminary injunction and clarification order, respectively, regarding the Departments’ ability to rely on parts of the May 13 guidance related to “intimate” facilities. The Departments have appealed the August 21 and October 18 rulings to the Fifth Circuit Court of Appeals. See *Texas v. United States*, No. 16-11534 (5th Cir. Oct. 20, 2016). In the meantime, OCR has taken steps to ensure compliance with the preliminary injunction, as clarified. Since the ruling in *Texas*, several other courts have issued preliminary injunctions in favor of individual transgender plaintiffs under Title IX or denied preliminary injunctions sought against the government. See, e.g., *Students & Parents for Privacy v. U.S. Dep’t of Educ.*, No. 16-cv-4945, ECF No. 134 (N.D. Ill. Oct. 18, 2016); *Whitaker v. Kenosha Unified Sch. Dist. No. 1*, No. 16-cv-943, ECF No. 10 (E.D. Wis. Sept. 22, 2016); *Highland Bd. of Ed. v. U.S. Dep’t of Educ.*, 2016 WL 5372349, at *11 (S.D. Ohio Sept. 26, 2016); *Carcaño v. McCrory*, No. 1:16-cv-236, ECF No. 127 (M.D.N.C. Aug. 26, 2016). The only court of appeals to consider the issue held that OCR’s interpretation of its Title IX regulations was the result of its “fair and considered judgment,” and was “in line with the existing guidances and regulations of a number of federal agencies.” See *G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 720 (4th Cir. 2016), *mandate recalled and stayed*, *Gloucester Cnty. Sch. Bd. v. G.G.*, No. 16A52 (Aug. 3, 2016), *cert. granted*, No. 16-273 (Oct. 28, 2016).
- ¹³ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ¹⁴ The treatment of transgender students is the subject of litigation against several federal agencies and officials pending before a federal district court in *Texas v. United States*, 7:16-cv-00054 (N.D.T.X. 2016). See also Endnote 12.
- ¹⁵ See Endnote 12.
- ¹⁶ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ¹⁷ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ¹⁸ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- ¹⁷ See <http://www2.ed.gov/about/offices/list/ocr/letters/col-league-20100420.pdf>.
- ¹⁹ OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
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United States Department of Education

John B. King, Jr., Secretary

Catherine E. Lhamon, Assistant Secretary for Civil Rights

Lyndon Baines Johnson Building

Department of Education

400 Maryland Avenue, SW , Washington, DC 20202-1100

Telephone: 800-421-3481 | FAX: 202-453-6012

TDD: 877-521-2172

Email: OCR@ed.gov | www.ed.gov/ocr



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