



**U.S. Department of Education
Office for Civil Rights**

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

Fiscal Years 2017-18

U.S. Department of Education Office for Civil Rights

Kenneth L. Marcus, Assistant Secretary

March 2020

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

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U.S. Department of Education, Office for Civil Rights

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

Under Section 203(b)(1) of the Department of Education Organization Act, FY 2017-18, Washington, DC.

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



It is my pleasure to present the U.S. Department of Education's Office for Civil Rights' (OCR) Annual Report to the Secretary, the President, and the Congress for fiscal years 2017-18. This report details OCR's accomplishments, substantive achievements, and performance results during the first two fiscal years of the Trump Administration. It has been my privilege to return to OCR and serve again with the

committed and hardworking professionals who enforce the federal civil rights laws on behalf of our nation's students and their families.

Despite inheriting a backlog of over 7,800 unresolved cases at the start of the current administration, OCR has improved productivity and efficiency while maintaining high-quality standards. During the first two fiscal years of this administration, OCR resolved almost double the number of complaints per year compared to the previous eight years. In fact, OCR resolved on average over 3,200 more complaints than it received during these two fiscal years. By comparison, the previous administration resolved 1,200 fewer complaints than it received per year.

More significantly, OCR has achieved a 60% increase in complaints resolved with change, or complaint resolutions involving education institutions agreeing to make changes to address a civil rights violation or concern. Within this period, in absolute numbers, OCR resolved, on average, 647 more complaints with change per year compared to the prior eight years. These two fiscal years have seen:

- a 30% increase in Title VI allegations resolved with change,
- a 60% increase in the number of disability-related allegations resolved with change, and
- an 80% increase in Title IX allegations resolved with change.

These accomplishments are due in significant part to three guiding principles that have governed the way this administration has approached civil rights enforcement. The first principle is that civil rights enforcement is law enforcement. This means that when a student or family comes to OCR with a problem or challenge, OCR's focus is on the evidence presented and the requirements of law. The second principle is that we will enforce the laws in full as they were written and passed by Congress, signed by the President, and interpreted by the courts, no more and no less. OCR will no longer issue sub-regulatory guidance that exceeds or alters the terms of federal law. Third, we have rescinded guidance or policies that are not in line with the law as passed by Congress. Accordingly, we have conducted our activities within statutory requirements.

In summary, we are strengthening OCR as a more effective, efficient, neutral, and impartial law enforcement agency investigating and resolving proven violations of our nation's civil rights laws.

As U.S. Secretary of Education Betsy DeVos has said, "We must never lose sight of our mission: providing each child with the chance to pursue a great education in a safe and nurturing environment." This Annual Report to the Secretary, the President, and the Congress details the many ways in which OCR strives to meet this mission.

Respectfully submitted,

Kenneth L. Marcus

Assistant Secretary for Civil Rights

"Every child in America deserves to be in a safe environment that is free from discrimination."

U.S. Secretary of Education Betsy DeVos

Executive Summary and Report Highlights

During the first two years of the Trump Administration, the Office for Civil Rights (OCR) fulfilled its mission of ensuring equal access to education through the efficient and effective investigation and resolution of complaints, conducting proactive compliance reviews, clarifying obligations under the federal civil rights laws, restoring local flexibility through regulatory reform, and administering the Civil Rights Data Collection (CRDC).

In fiscal years (FYs) 2017 and 2018, OCR resolved more cases than ever before. During this time period, OCR received a total of 25,277 complaints, initiated three proactive investigations, and resolved 31,937 cases overall, including 61 proactive investigations initiated by the previous administration. Most significantly, however, during the first two years of the current administration, OCR obtained 3,503 case resolutions that required schools to implement substantive changes to address civil rights violations and concerns affecting students across the nation.

The current administration inherited a backlog of 7,800 cases when it took office on January 20, 2017. In the first two fiscal years under this administration, OCR received an average of 12,638 complaints per year and resolved an average of 15,935 complaints each year. During the prior eight fiscal years (FYs 2009-16), OCR had received an average of 9,511 complaints per year and resolved less than that — merely 8,239 complaints per year.

OCR resolved, on average, 3,297 more complaints per year than it received in FYs 2017-18. In the prior eight fiscal years, OCR resolved, on average, 1,263 fewer complaints than it received. In FYs 2017-18, OCR also saw a dramatic increase in complaint resolutions with change. For the two fiscal years, OCR averaged 1,722 resolutions with change per year, or 649 more resolutions with change per year compared to the average number during the prior eight years — a 60% increase over the prior administration.

In FYs 2017-18, OCR saw increases in both resolutions, and resolutions with change, over the previous eight years in complaints of discrimination in the categories of school discipline, bullying/harassment, and different treatment under Title VI; complaints of discrimination in the categories of sexual violence and bullying/harassment under Title IX; and complaints involving allegations of different treatment/exclusion/denial of benefits and issues of website accessibility under Section 504 and Title II.

OCR also inherited a number of open compliance reviews from the previous administration. OCR resolved a total of 61 compliance reviews, or 30.5 compliance reviews per year, whereas during the prior eight fiscal years, OCR resolved only 16.25 compliance reviews per year. OCR resolved with change an average of 29.5 compliance reviews per year compared to an average of 14 compliance reviews resolved with change during the eight years prior.

During FYs 2017-18, OCR instituted a number of reforms to its Case Processing Manual to improve case evaluation, investigation, and resolution processes. OCR reimplemented the provision allowing complainants to appeal dismissals, clarified the appropriate use of statistical data in investigations, and now requires an examination of whether complained about conduct implicates the First Amendment.

Consistent with OCR's role as a neutral and impartial law enforcement agency, and to reduce regulatory burden on education stakeholders and return flexibility to local education leaders where possible, OCR reviewed and rescinded a number of sub-regulatory guidance documents that were issued under the previous administration. The rescinded sub-regulatory guidance concerned sexual harassment, the use of race in admissions, school discipline, and transgender issues.

In an effort to provide much needed clarity in the area of sexual harassment in schools and Title IX enforcement, the U.S. Department of Education also participated in the formal rulemaking process. On November 28, 2018, the Department published for public comment a proposed rule that would set forth for the first time a school's responsibilities in responding to complaints of sexual misconduct.

OCR also released the 2015-16 school year CRDC. For the first time, the 2015-16 CRDC report included comprehensive data relating to incidents of criminal offenses in our nation's public schools. The 2015-16 data also included several new categories of data on science, technology, engineering, and mathematics, or STEM, courses.

The Office for Civil Rights: Overview

OCR's Mission

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

The laws OCR enforces protect millions of students attending or seeking to attend our nation's education institutions from unlawful discrimination. OCR's work to eliminate discriminatory barriers to education directly supports the U.S. Department of Education'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 primarily through the investigation of complaints alleging violations of one or more of the federal civil rights laws.¹ In addition to resolving the large volume of complaints, OCR initiates compliance reviews and takes other proactive steps to identify and focus on specific compliance problems that are particularly acute or national in scope. Such proactive measures include collecting data on key education and civil rights issues in our nation's public schools and offering technical assistance to schools and other education institutions receiving federal financial assistance so that they can better understand how OCR interprets and enforces federal civil rights laws.

Jurisdiction

OCR ensures equal access to education for our nation's students by enforcing six federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age. These are:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., implementing regulation at 34 C.F.R. Part 100 (prohibiting race, color, and national origin discrimination);

- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., implementing regulation at 34 C.F.R. Part 106 (prohibiting sex discrimination);
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, implementing regulation at 34 C.F.R. Part 104 (prohibiting disability discrimination);
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq., implementing regulation at 28 C.F.R. Part 35 (prohibiting disability discrimination by public entities, regardless of whether or not they receive federal financial assistance);
- the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and its implementing regulation at 34 C.F.R. Part 100 (prohibiting age discrimination); and
- the Boy Scouts of America Equal Access Act of 2001, 20 U.S.C. § 7905, implementing regulation at 34 C.F.R. Part 108 (prohibiting public elementary and secondary schools, local education agencies, and state education 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 U.S. Code).

These civil rights laws represent a national commitment to end discrimination in education programs and activities receiving federal financial assistance. Since most education institutions receive some type of federal financial assistance, these laws apply throughout the nation and protect millions of students attending or seeking to attend our nation's elementary, secondary, and postsecondary institutions. In certain situations, the laws also protect persons who are employed or seeking employment at education institutions from unlawful discrimination.

Figure 1: OCR Enforcement Jurisdiction Timeline

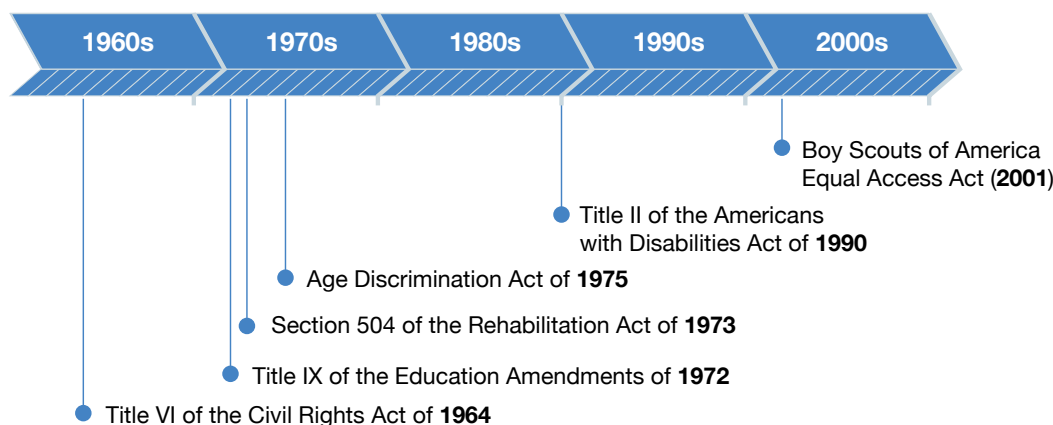


Figure 2: Map of OCR Regional Offices



Structure and Functions

OCR is composed of a headquarters office located in Washington, D.C., and 12 enforcement offices representing 12 regions located in the U.S. and its jurisdictions. The headquarters office provides overall leadership, policy development, and coordination of enforcement activities. The majority of OCR's activities are conducted by the 12 enforcement offices, which are responsible for investigating and resolving complaints of discrimination, conducting compliance reviews, monitoring corrective action agreements, and providing technical assistance. The 12 enforcement offices comprise the majority of OCR's staff and are

located in Washington, D.C., Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, and Seattle (see Figure 2). OCR is led by the Assistant Secretary for Civil Rights, who is nominated and, with the advice and consent of the Senate, appointed by the President of the United States. OCR leadership also includes a Principal Deputy Assistant Secretary, a Deputy Assistant Secretary for Enforcement, a Deputy Assistant Secretary for Policy and Development, and a Deputy Assistant Secretary for Management and Planning.

OCR's Caseload

By law, OCR must “make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply” with the laws protecting students from discrimination. Anyone can file a complaint to alert OCR to potential discrimination, not just the person discriminated against. As a result, processing the large volume of complaints filed with OCR each year comprises the majority of OCR's enforcement activity.

FYs 2017-18 saw a continued increase in the number of complaints received. During these two fiscal years combined, OCR received a total of 25,277 complaints, or an average of 12,638 complaints per year. This number is double the number of complaints received ten years earlier, during FY 2008. The 25,277 complaints received contained 40,513 allegations.² Allegations involving discrimination on the basis of disability comprised 50% (20,105) of total allegations raised in complaints during the two years. Allegations of discrimination based on sex comprised 21% of total allegations raised (8,598), and allegations of discrimination based on race, color, or national origin comprised 19% of total allegations (7,637). Allegations of discrimination based on age comprised only 4% (1,519) of total allegations raised in complaints received during FYs 2017-18.³

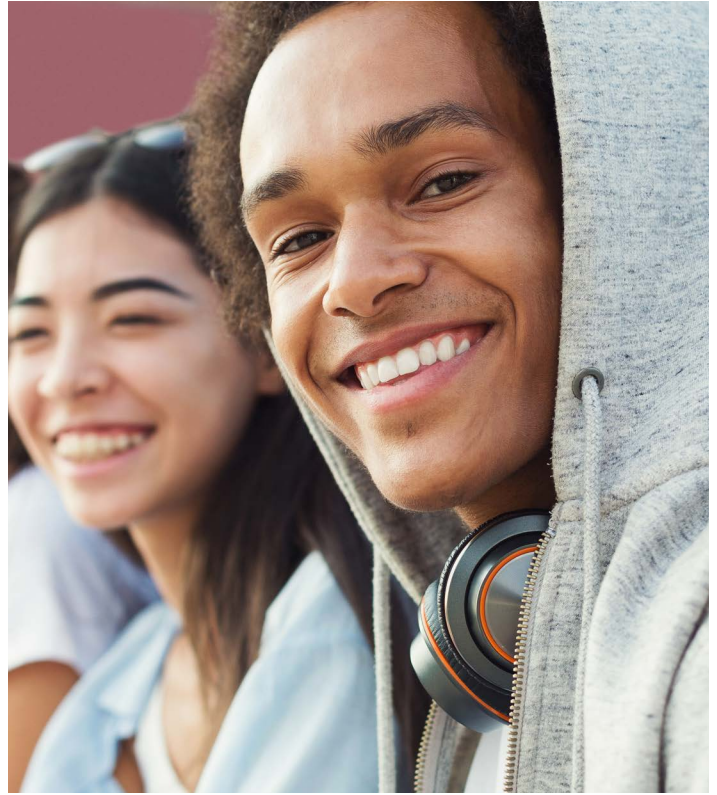
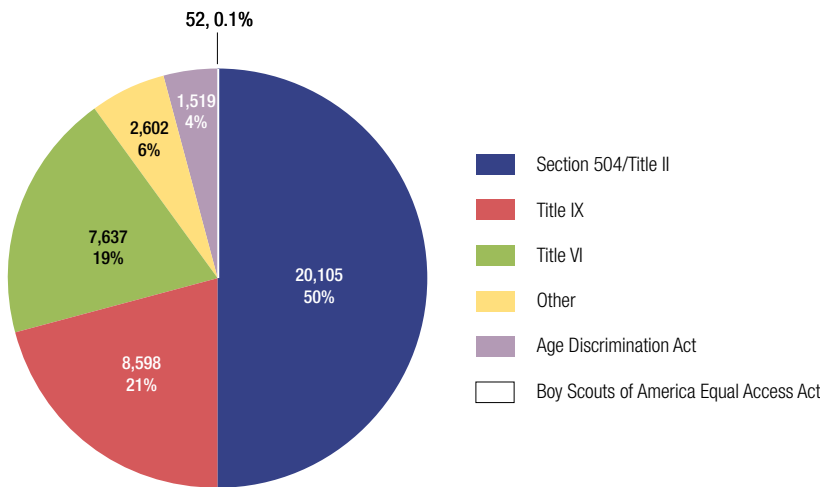


Figure 3: OCR Issues Received by Jurisdictional Statute for FYs 2017-18



OCR's Enforcement Efforts: Better Results for More Students

Overview

OCR primarily carries out its enforcement responsibilities by investigating and resolving individual complaints filed with the Department. Anyone who believes that there has been a violation of the civil rights laws enforced by OCR may file a complaint with one of OCR's 12 regional enforcement offices. In resolving complaints, OCR's primary objective is to promptly and thoroughly investigate the allegations of discrimination, determine whether OCR's civil rights laws have been violated, and, if so, provide timely and effective remedies for the violations.

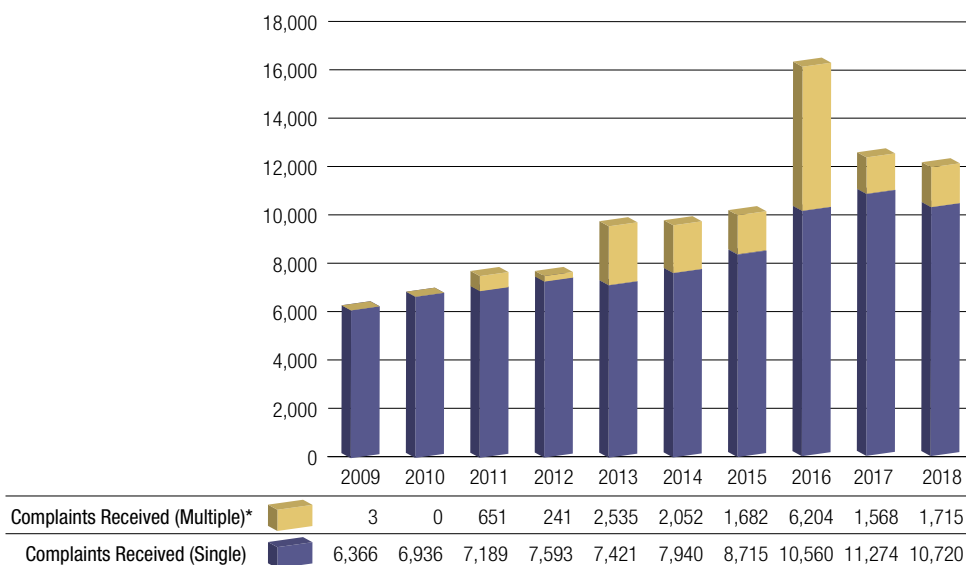
Over the last ten years, the number of complaints OCR receives annually continues to steadily increase. For example, as Figure 4 demonstrates, in fiscal year 2009, OCR received only 6,369 complaints compared to 12,435 complaints in fiscal year 2018. Additionally, as Figure 4 also demonstrates, OCR has seen a dramatic increase in individual complainants filing a very large number of identical or nearly identical complaints against a large number of recipients ("multi-filer" complaints). These increases are reflected in several areas, including complaints related to website accessibility, the inappropriate use of restraint and seclusion, and sexual harassment and sexual violence.

The statistics discussed below demonstrate OCR's ongoing effort to improve both the quality and timeliness of the case resolutions⁴ obtained on behalf of the nation's students and families. The data cannot on its own, however, fully capture the positive impact that OCR's work has on education institutions and students nationwide. As a result of OCR's



enforcement efforts during FYs 2017-18, thousands more students can now attend school with less fear, more fully participate in programs because they are provided with the necessary aids and services, enjoy an equal opportunity to participate in athletic programs, submit allegations of discrimination that will receive prompt and meaningful consideration and, if merited, result in remedies, and be considered for classes, sports, and activities on an equal footing with students who were previously afforded better opportunities merely because of their race, sex, or lack of a disability. Specific examples of OCR's investigations, compliance reviews, and remedies are provided in the case summaries throughout this document.

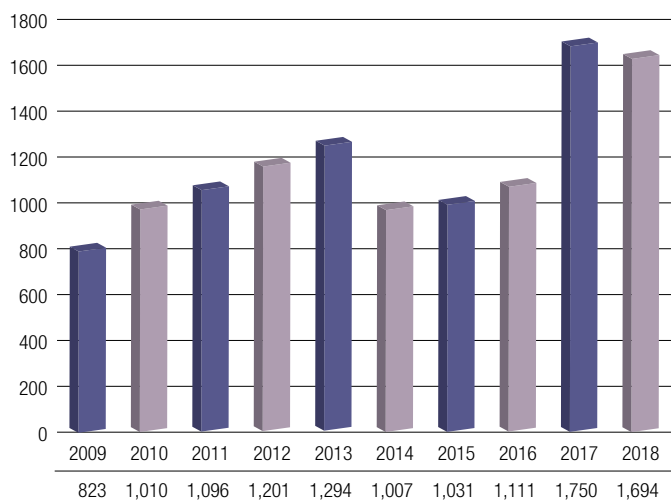
Figure 4: OCR Complaints Received in FYs 2009-18



*Multiple complaints received from single individual

Figure 5:

OCR Complaints Resolved With Change in FYs 2009-18



*Resolutions where schools agree to take corrective action to protect a student's civil rights

Improvements in Complaint Processing: Changes to the Case Processing Manual

OCR continually evaluates its case processing system to ensure that the rights of students and families are fully protected and that the agency is positioned to vigorously enforce federal civil rights laws in a manner that is both timely and impactful.

On March 5, 2018, OCR issued a revised Case Processing Manual (CPM). The CPM describes OCR's procedures relevant to evaluating and investigating complaints as well as the actions OCR takes if it finds that a recipient has violated the civil rights laws or to effect voluntary compliance. The March 2018 CPM replaced the now-archived February 2015 CPM. Among other things, the March 2018 CPM included the following:

- revisions clarifying that investigation and resolution activities will be tailored to the individual allegations stated in the complaint and that systemic investigations will only be used where appropriate,
- expanded timeframes for the negotiation of resolution agreements with recipients,
- additional bases for mandatory dismissal of allegations, and
- a provision requiring that OCR provide a copy of the complaint to the recipient upon request.

Better Results

As a result of these changes to the CPM, a focus on reorienting OCR to the role of a neutral and impartial law enforcement agency, and efforts to clarify recipients' obligations under the federal civil rights laws, OCR has secured better results for the students and families facing discrimination in our nation's schools.⁵ The statistics for the first two fiscal years of the current administration — as compared to those for the preceding eight fiscal years — demonstrate the Trump Administration's heightened commitment to vigorously enforce our nation's civil rights laws.

On January 20, 2017, the current administration inherited over 7,800 unresolved, or "pending," civil rights complaints from the previous administration. During FYs 2017-18, OCR received 25,277 additional complaints. Over 9,000 of the total complaints were filed by a select few complainants who each filed complaints in the thousands. During the first two years of the current administration, OCR has worked hard to not only keep up with the number of cases coming in but to work away at the backlog it inherited. In the first two fiscal years of the current administration, OCR has received an average of 12,638 complaints per year and has resolved an average of 15,935 complaints each year.⁶ During the prior eight fiscal years (FYs 2009-16), OCR received an average of 9,511 complaints per year and resolved even fewer complaints per year — only 8,239 complaints.

In terms of efficiency, during FYs 2017-18, OCR resolved on average 3,297 more complaints per year than it received in FYs 2017-18. In the prior eight fiscal years, OCR resolved, on average, 1,263 *fewer* complaint resolutions than it received. However, OCR also obtained more meaningful complaint resolutions than in the prior eight years. In FYs 2017-18, OCR saw a dramatic increase in complaint resolutions requiring recipients to make a substantive change to protect students' rights (resolutions with change). In FYs 2017-18, OCR averaged 1,722 resolutions with change per year, or 649 more resolutions with change per year compared to the average number during the prior eight years. This is over a 60% increase in resolutions with change over the previous administration.

Compliance Reviews Inherited and Resolved

OCR also inherited a number of open compliance reviews from the previous administration. During FYs 2017-18, OCR resolved a total of 61 compliance reviews — or 30.50 compliance reviews per year — whereas during the prior eight fiscal years, OCR resolved only 16.25 compliance reviews on average each year. Again, significantly, OCR resolved with change an average of 29.5 compliance reviews per year compared to an average of 14 compliance reviews resolved with change during the previous eight years.

Regulatory Reform and Reducing the Regulatory Burden

Overly burdensome regulations adversely affect the ability of the nation's education institutions to prepare students for the opportunities and challenges of the 21st century. Regulations and regulatory guidance — an agency's statement on policy or interpretation of its statutes or regulations through letters, memoranda, bulletins, circulars, or manuals — significantly impact the public and demand the additional time, attention, and response by those required to comply with those laws.

On January 30, 2017, President Donald Trump issued Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," which established a federal strategy "to alleviate unnecessary regulatory burdens" on the American people. Pursuant to this regulatory reform agenda, the Department engaged in substantial efforts in FYs 2017-18 to simplify its own agency regulations and rescind burdensome sub-regulatory guidance.⁷ By the end of FY 2018, OCR had identified and rescinded 16 sub-regulatory guidance documents.

Among these were a series of so-called "Dear Colleague" letters previously issued by OCR. These letters told stakeholders how OCR would interpret and enforce its statutes and implementing regulations and directed stakeholders on how to comply with federal civil rights laws in education, including those in the areas of sexual harassment and sexual violence under Title IX and student disciplinary practices under Title VI. These letters often expanded upon or subtracted from the express requirements under the Title IX and Title VI statutes, rather than merely providing clarity. In this way, these informal guidance documents not only imposed significant and unfounded regulatory burdens on education entities but also raised significant legal issues. In response to public input, the Department lifted the regulatory burden caused by many of these "Dear Colleague" letters. These letters and accompanying documents were withdrawn because they advanced policy preferences and positions not required or contemplated by federal law or the Constitution, prematurely decided the legality of particular actions, and directed schools to take action beyond plain legal requirements.

For those times that this administration seeks to make or reform legal policy, this administration is committed to using the formal notice-and-comment rulemaking procedures mandated by Congress in the Administrative Procedures Act. This formal process provides full ventilation of the issues, maximizes input from education stakeholders and the general public, and results in binding legal authority. Toward this end, in



2018 the Department determined that the issue of sexual harassment and violence in schools needed to be addressed. OCR's prior guidance on sexual harassment and violence was inconsistent with case law under Title IX and failed to account for predictability and reliability in administrative enforcement. As a result, the Department published a Notice of Proposed Rulemaking in the Federal Register to clarify a school's obligations under Title IX in addressing sexual misconduct in schools. The proposed rule seeks to define sexual harassment, set forth reporting obligations, and establish procedures schools must employ to guarantee safety, provide support, and ensure fundamental fairness for all students at the education institution. For more information, see the section following on Title IX.

Enhancing Transparency

During this reporting period, OCR has elevated its commitment to transparency by improving the way it disseminates information to the public, supports the recipient education institutions subject to OCR's enforcement authority, and responds to Freedom of Information Act (FOIA) requests.



Open Investigations on the OCR Website

To keep students, teachers, and communities informed, OCR, for the first time, published on the OCR website a list of elementary, secondary, and postsecondary institutions where OCR is investigating allegations of discrimination. The database, "Pending Cases Currently Under Investigation at Elementary-Secondary and Postsecondary Schools," went live in January 2018.⁸ This repository provides a snapshot of OCR's enforcement activity as of the last Friday of each month.

The inclusion of an institution in this database does not mean that the institution violated a federal anti-discrimination statute; rather, it means that a complaint was filed with OCR and the agency determined that the allegations in the complaint should be investigated or that OCR itself has opened a compliance review. Cases included in the database are therefore cases OCR is investigating or working to resolve through a negotiated agreement. A number of cases are ultimately resolved with a finding that there is insufficient evidence that an institution violated a statute enforced by OCR.

The search results are organized by the types of discrimination issues under investigation and not the number of open investigations at an institution. For example, an institution may appear in the search results multiple times if OCR is investigating the institution for more than one type of alleged discrimination, even if the allegations stem from a single complaint. Similarly, an institution may appear only once in the search results if OCR is investigating it for only one type of alleged discrimination, even if there are multiple open cases.

By adding this searchable and interactive feature to the website, OCR for the first time provided public access to the full range of OCR's pending investigations. This information was often requested by the general public. Making it readily available reflects this administration's greater commitment to transparency.

Providing Notice to Recipients

OCR has also endeavored to conduct its investigations of alleged civil rights violations with an eye towards increasing transparency between OCR and the parties involved. In 2018, OCR revised its CPM to include a provision requiring OCR staff to provide the recipient with a copy of the complaint filed against them. Before these changes to the CPM, OCR only provided the recipient with a copy of OCR's CPM and a notification letter providing the following:

- OCR's jurisdiction over the matter,
- the allegations to be investigated,
- a statement that OCR is a neutral factfinder,
- information about OCR-sponsored mediation, known as Facilitated Resolution Between the Parties Process and
- the OCR staff person who would serve as the complaint's and recipients primary contact during the investigation and resolution of the complaint.

By providing a copy of the original complaint to the recipient at the outset of an investigation, OCR ensures that they will have full notice of the nature and scope of OCR's inquiry, thereby providing the recipient the ability to fully know the nature of the allegations against them and an opportunity to adequately respond.

Freedom of Information Act

The volume of FOIA requests that OCR received has increased 42% since FY 2015 from 1,116 requests in that year to 1,583 requests in FY 2018. In FYs 2017-18 combined, OCR received 3,086 FOIA requests, issued 2,970 responses, and expended over \$3 million per year on average in personnel costs to process these requests, up from \$1.7 million in personnel costs in FY 15. The increase in requests and processing has been met by current OCR staff. Many of the FOIA requests that OCR receives are complex in nature, and it is not unusual for OCR to receive FOIA requests for entire enforcement case files, which may contain thousands of records to be reviewed, processed, and released under applicable FOIA standards. OCR anticipates that this heavy volume of FOIA requests will continue through the coming fiscal years and will be adding a dedicated FOIA team in FY 2020 to meet this statutory mandate for transparency in government.

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

Overview

Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination based on race, color, or national origin in programs and activities operated by recipients of federal funds. 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.”

Title VI protections apply to all public and secondary schools as well as all colleges and universities — both public and private — that receive federal financial assistance. Its protections extend to all the education institution’s programs and activities. OCR works to ensure equal access to all of an institution’s education services and benefits and to prevent acts of retaliation against those who report Title VI violations. Cases that OCR staff investigate and resolve under Title VI include those involving different treatment in dispensing of school discipline, discriminatory assignment to special education services, bullying and harassment based on race or national origin, and discriminatory access to resources, curricula, and opportunities that foster college and career readiness.

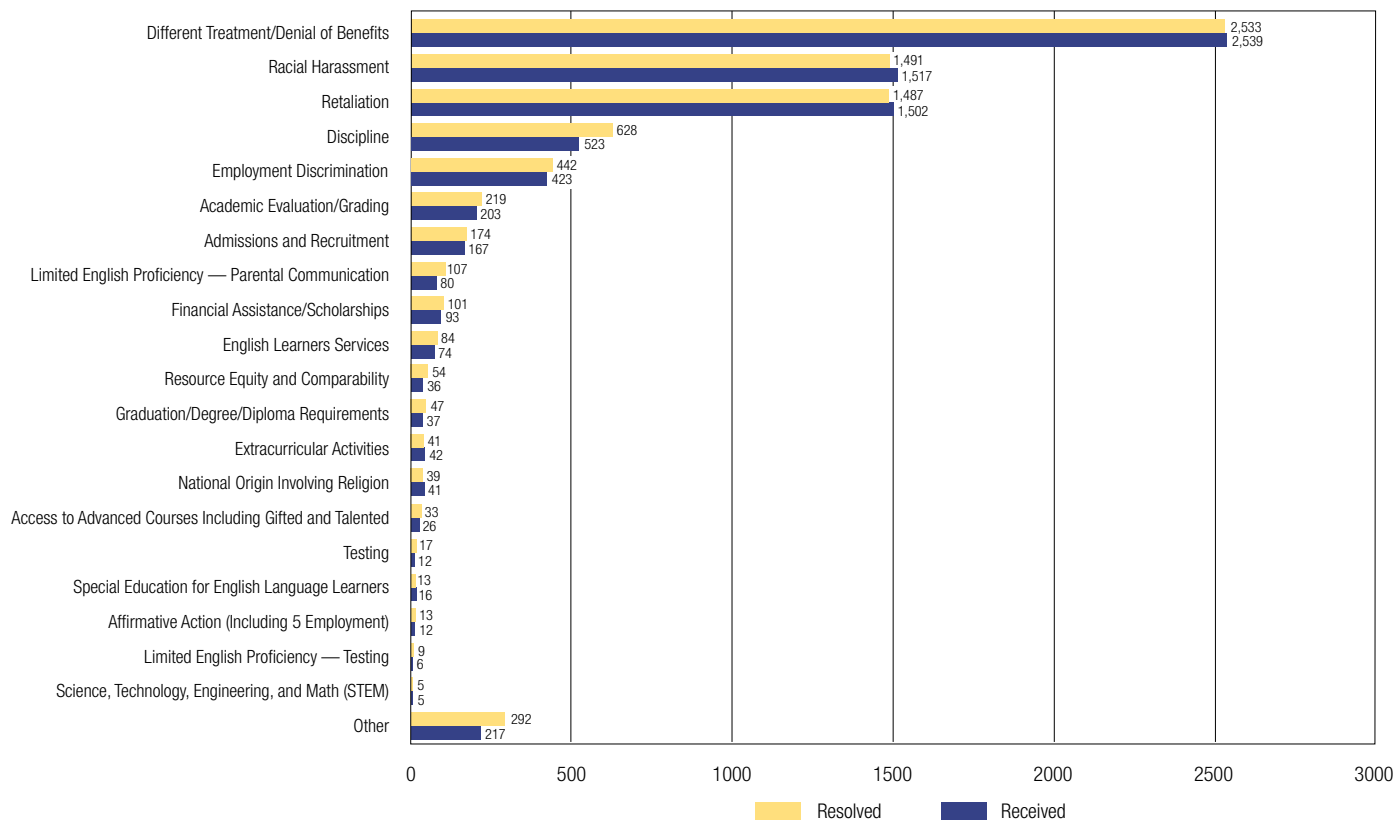
Key Facts

In FYs 2017-18, OCR received 5,583 complaints alleging a total of 7,637 violations of Title VI. A total of 7,830 allegations of violations of Title VI were resolved in 5,714 complaints. Of these, 369 Title VI allegations were resolved with change. The largest numbers of these allegations involved claims of different treatment based on race, racial harassment, or retaliation against individuals who asserted their Title VI rights or those of others. See Figure 6 for more specific information on the variety of Title VI allegations received and resolved by OCR during FYs 2017-18. OCR also resolved 32 compliance reviews involving a total of 64 Title VI issues, 60 of which were resolved with change. Many of these compliance reviews resulted in remedies that provided minority students with greater access to advanced courses and provided students who are English learners (EL) with improved services.

Regulatory Reform

Pursuant to President Trump’s regulatory reform agenda, OCR reviewed several of the previously issued guidance documents related to Title VI issues. After a careful review, OCR rescinded six guidance documents related to school discipline and seven guidance documents related to the voluntary use of race in admissions. OCR then issued the “Questions and Answers on Racial Discrimination and School Discipline” (December 21, 2018) and reinstated five guidance documents that were issued between 2003 and 2008 on the use of race in admissions to clarify education institutions’ obligations under Title VI as written in statute and interpreted by the Supreme Court.

Figure 6: Title VI Issues Received and Resolved in FYs 2017-18



Increases in Resolutions with Change in Key Title VI Issue Categories

In FYs 2017-18, OCR saw significant increases in both resolutions, and resolutions with change, over the previous eight years in several Title VI issue areas, including school discipline, bullying/harassment, and different treatment.

Resolutions of complaints involving allegations of discrimination in school discipline were up 12% in FYs 2017-18. During these years, OCR averaged 293 resolutions of discipline-related complaints per year compared to an average of 261 per year during the prior eight years. There was also an increase in resolutions with change in the category of school discipline. In FY 2018, OCR resolved 30 discipline complaints with change – the most in any year since 2011. In the first two fiscal years under the current administration, OCR averaged 18 resolutions with change per year in school discipline cases compared to a yearly average of 18 resolutions with change during the prior eight years.

Bullying/harassment complaint resolutions were up 48% on average during the past two years compared to the previous eight, from 475 complaints to 704, and resolutions with change increased 25%, from 49 complaints to 61.5 complaints on average per year.

Finally, complaint resolutions based on different treatment nearly doubled on average from 857 complaints on average to 1,209, and resolutions with change of these complaints increased 32%, an average of 28 complaints resolved with change per year during the last eight years to 37.

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

Figure 7: Title VI Discipline Complaints Resolved With Change in FYs 2009-18

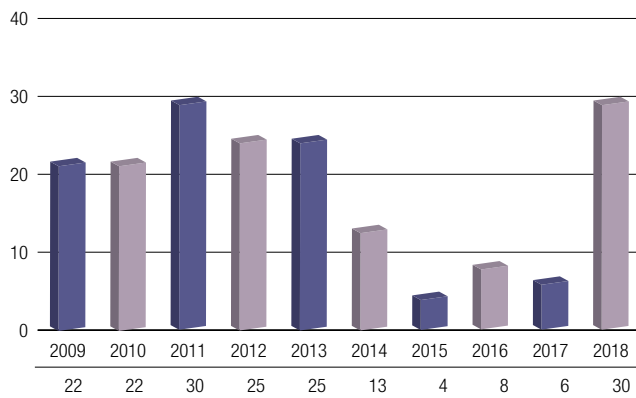


Figure 8: Title VI Bullying/Harassment Complaints Resolved With Change in FYs 2009-18

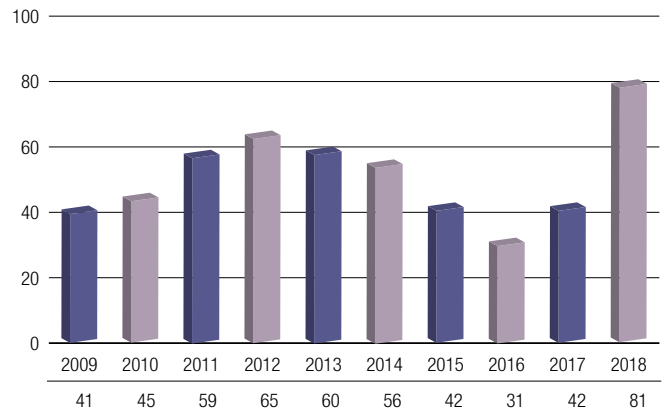
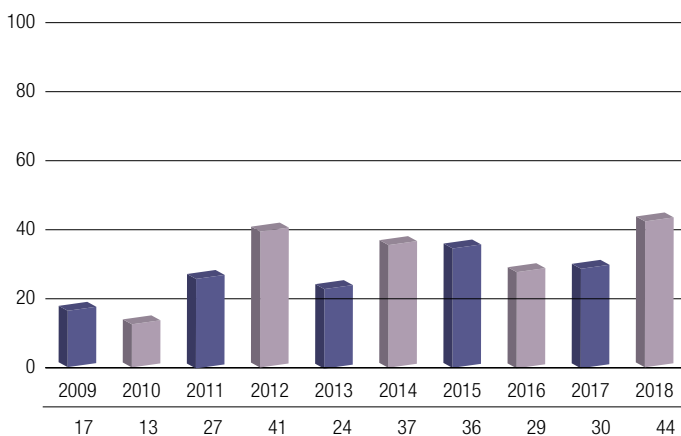


Figure 9: Title VI Different Treatment Complaints Resolved With Change in FYs 2009-18



Policy Review: Nondiscrimination and School Safety

Following the tragic school shooting in Parkland, Florida, President Trump established the Federal Commission on School Safety (Commission) to review school climate and safety issues and to make meaningful and actionable recommendations regarding best practices to keep students safe. After months of research, school visits around the nation, and receiving testimony from experts and concerned citizens, on December 18, 2018, the Commission released a 177-page report that detailed 93 best practices and policy recommendations for improving safety at schools across the country. As part of those policy recommendations, the Commission recommended that the U.S. Departments of Justice and Education rescind the joint January 8, 2014, “Dear Colleague Letter on Nondiscriminatory Administration of School Discipline” and related statements of sub-regulatory guidance and policy. They did so on December 21, 2018.

These documents were withdrawn because they advanced policy preferences and positions not required or contemplated by Titles IV or VI of the Civil Rights Act of 1964. The robust protections against race, color, and national origin discrimination guaranteed by the Constitution, Title IV, and Title VI remain unchanged, however, and continue to be vital for students and education institutions. Thus, on December 21, 2018, OCR issued “Questions and Answers on Racial Discrimination and School Discipline” to ensure that the public continues to have information about how OCR assesses a school’s compliance with Title VI with respect to the administration of school discipline and how a school may self-evaluate its compliance with Title VI with or without OCR’s involvement.

The six specific documents that were withdrawn were as follows:

- “Dear Colleague Letter on Nondiscriminatory Administration of School Discipline;”
- “Overview of the Supportive School Discipline Initiative;”
- “Guiding Principles: A Resource Guide for Improving School Climate and Discipline;”
- “Appendix 1: U.S. Department of Education Directory of Federal School Climate and Discipline Resources;”
- “Appendix 2: Compendium of School Discipline Laws and Regulations for the 50 States, Washington D.C., and Puerto Rico;” and
- “School Discipline Guidance Package FAQs.”

The two documents that were issued on December 21, 2018, were as follows:

- “Dear Colleague Letter with Updates to U.S. Departments of Education and Justice Guidance on Title VI” (withdrawing six 2014 school discipline guidance package documents) ([pdf](#)); and
- “OCR Questions and Answers on Racial Discrimination and School Discipline” ([pdf](#)).

Case Summaries

Addressing Double Standards in Discipline

A complaint alleged an elementary school had a practice of disciplining Native American students more harshly than similarly situated white students. The same complaint also alleged that the school subjected Native American students to a racially hostile environment when a former principal hit several Native American students with a clipboard, grabbed at least one Native American student’s arm, and used derogatory statements when referring to such students. In the course of its investigation, OCR discovered evidence indicating that Native American students were more frequently and harshly treated than similarly situated white students and that former and current staff did engage in unwelcome physical behaviors and make derogatory statements to Native American students. The school district entered into a resolution agreement with OCR under which it committed to revise its discipline policies, provide appropriate interventions and supports for at-risk students, establish a procedure for an independent consultant to address complaints of harassment made against any superintendent or principal, and train staff on preventing and responding to racial harassment, among other provisions.

Combatting Harassment on the Basis of National Origin

OCR resolved a compliance review of a school district related to harassment of students based on their actual or perceived ancestry or ethnic characteristics. OCR’s compliance review was prompted by reports of the district’s inconsistent, inadequate, and untimely responses to 24 reported incidents of harassment of Sikh or Middle Eastern students and the administrative staff and faculty’s apparent lack of knowledge with respect to the district’s harassment complaint procedures. Prior to completing the investigation, OCR informed the district of its compliance concerns, and the district agreed to a resolution agreement under which it would issue and widely publicize a statement that the district does not tolerate acts of harassment based on race, color, or national origin; provide information on reporting; and arrange for the provision of appropriate harassment training for administrative staff, faculty, and students. Under the agreement, the district would also provide a forum for conversations with district students to improve cultural awareness and discuss potential concerns related to harassment; establish a working group of district personnel, community representatives, parents, and students to make recommendations regarding the effectiveness of the district’s harassment-prevention efforts; and conduct a climate survey to assess the education environment for district students.

Protecting the Right to Report

A complaint alleged that a district’s termination of the complainant’s employment constituted retaliation for the complainant raising concerns that students were being subjected to discrimination and harassment on the basis of race and national origin. OCR opened an investigation into the complainant’s allegation of retaliation, and OCR and the school district subsequently signed a resolution agreement. Pursuant to this agreement, the district agreed to appoint a neutral third party to evaluate the underlying racial discrimination concerns reported to the school by the complainant, direct school staff to take certain corrective actions to remedy its treatment of the complainant, and provide training to school administrators and staff on the Title VI prohibition on retaliation.

Ensuring Equal Educational Opportunity for English Learner Students

OCR resolved its compliance review examining whether a school district was providing equal educational opportunities to minority students who are ELs. The same compliance review also examined whether the district's communications with limited English proficient (LEP) parents provided them with meaningful access to information the district generally provides to parents. As a result of the compliance review, OCR discovered evidence indicating that the district failed to consistently provide translation or interpretation of vital documents and other information to LEP parents and failed to have an adequate process for evaluating its Alternative Language Program (ALP), among other deficiencies in the district's identification and assessment of EL students, staffing, and/or staff development; monitoring of students in the ALP; and ensuring access to special programs and activities for EL students. The district signed a resolution agreement under which it would be required to identify and assess every EL student within the district, including students from small language groups; provide EL services and instruction to all EL students in all education settings, including special education and extracurricular activities; ensure that each EL student received alternative language services until the student no longer requires those services; provide LEP parents with adequate notice, in their own language, of the placements of each of their EL students and all other notices that it generally provides to other parents; and ensure that all EL students have an equal opportunity to participate in gifted and talented, advanced placement, and other specialized programs.



Policy Review: Voluntary Use of Race in Admissions

On July 3, 2018, the U.S. Departments of Education and Justice withdrew certain joint guidance documents regarding the use of race by elementary, secondary, and postsecondary schools. As stated in the withdrawal letter, those documents were withdrawn because they advocated policy preferences beyond the requirements of the Constitution and federal law, prematurely decided the legality of particular actions, and suggested that schools take action beyond plain legal requirements. OCR also reinstated its earlier guidance on the use of race and stated that it will continue to investigate complaints regarding the use of race, consistent with the criteria established by the U.S. Supreme Court.

The seven specific documents that were withdrawn were as follows:

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

In addition to the 2018 withdrawal letter listed below, OCR also reinstated five documents on the use of race that were issued between 2003 and 2008, which are listed below:

- July 3, 2018, "Updates to U.S. Departments of Education and Justice Guidance on Title VI" (withdrawing seven use-of-race guidance documents) ([pdf](#));
- August 28, 2008, "Dear Colleague Letter on the Use of Race in Assigning Students to Elementary and Secondary Schools" ([pdf](#));
- August 28, 2008, "Dear Colleague Letter on the Use of Race in Postsecondary Student Admissions" ([pdf](#));
- February 2004 "OCR Letter: Race-Neutral Approaches to Diversity" ([html](#));
- February 2004 "OCR Report: Achieving Diversity: Race-Neutral Alternatives in American Education" ([html](#)); and
- March 2003 "OCR Report: Race-Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity" ([html](#)).

Title IX: Discrimination Based on Sex

Overview

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

Title IX applies to recipients of federal financial assistance, including colleges, universities, and public school districts. OCR enforces Title IX to ensure that all students have equal access to educational opportunities and can go to school without fear of sex discrimination. Cases that OCR staff investigate and resolve under Title IX include those involving sexual harassment, different treatment in athletic opportunities, bullying and harassment based on sex, and retaliation for filing a complaint.

Key Facts

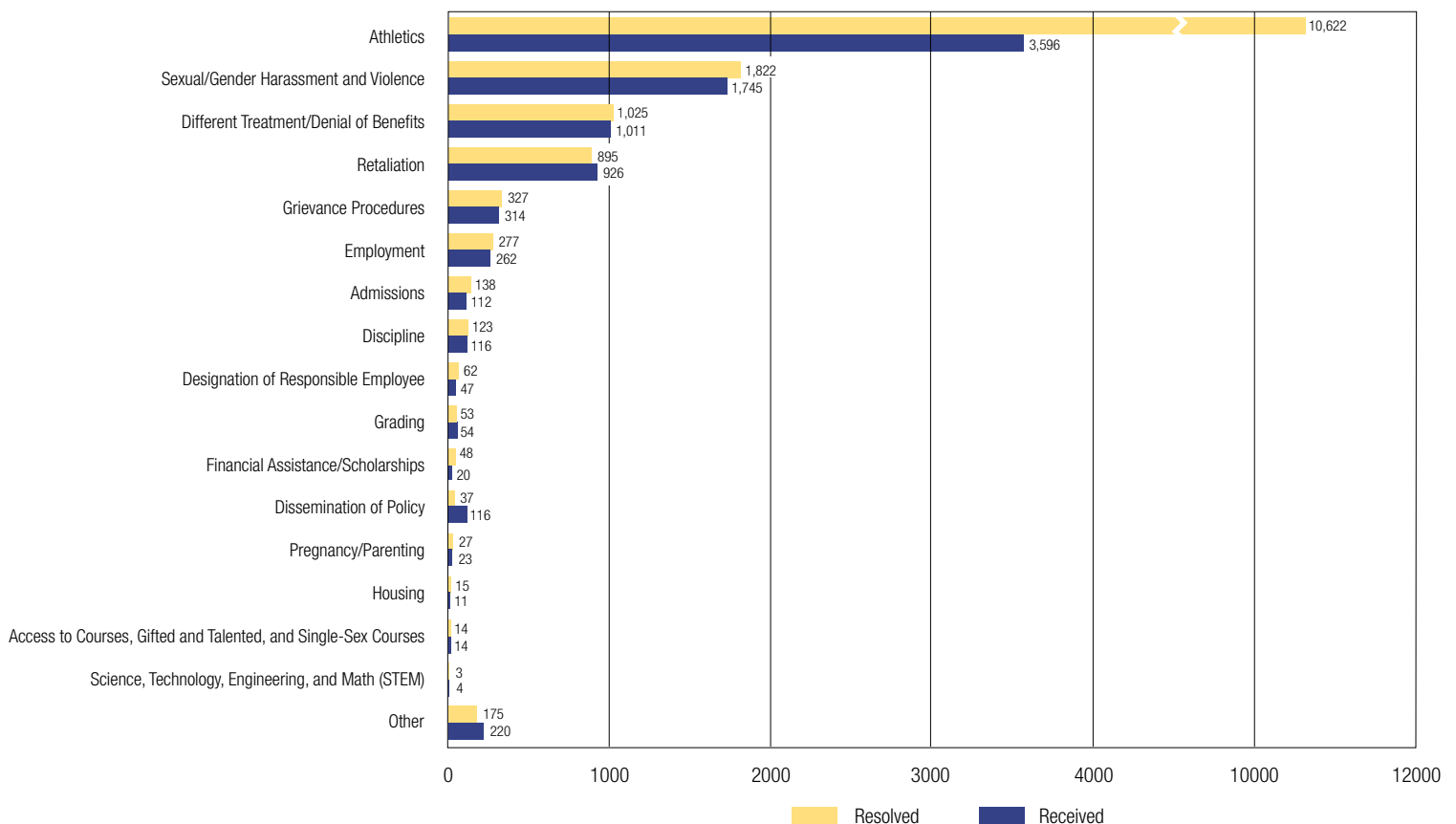
In FYs 2017-18, OCR received 7,138 complaints alleging a total of 8,598 violations of Title IX. A total of 15,662 allegations of violations of Title IX

were resolved in 13,234 complaints. Of these, 673 Title IX allegations were resolved with change. The largest numbers of these allegations involved discrimination in athletic programs. See Figure 10 for more specific information on the variety of Title IX allegations received and resolved by OCR during FYs 2017-18. OCR also resolved 23 compliance reviews involving a total of 73 Title IX issues, 51 of which were resolved with change. Many of these compliance reviews resulted in remedies that required institutions to respond to reports of sexual harassment more promptly and effectively or to provide more equity for females in athletics programs, for example, by building or substantially upgrading a softball field.

Regulatory Reform

Pursuant to President Trump’s regulatory reform agenda, OCR reviewed several of the previously issued guidance documents related to Title IX issues. After a careful review, OCR rescinded two guidance documents related to sexual violence, and the Department announced its intent to engage in formal rulemaking to clarify a recipient’s obligations under Title IX with respect to claims of sexual misconduct. The Department issued a Notice of Proposed Rulemaking to initiate the notice-and-comment process soon after. OCR also, together with the Department of Justice, rescinded one joint guidance document related to transgender students.

Figure 10: Title IX Issues Received and Resolved in FYs 2017-18



Increases in Resolutions with Change in Key Title IX Issue Categories

During FYs 2017-18, OCR saw significant increases from the previous eight years in both resolutions and resolutions with change in the Title IX—complaint issue categories of sexual violence and bullying/harassment. Resolutions of allegations of sexual violence increased over 500% from 47 per year on average during the prior eight years to 264 per year for FYs 2017-18. Resolutions with change for sexual violence complaints also increased 500% from the previous eight years, from 10 to 50 per year on average. Resolutions of complaints alleging bullying/harassment based on sex doubled during the past two years compared to the previous eight, from 294 to 598.5 per year on average, and resolutions with change for these complaints increased 80% from 46 complaints to 83 per year on average.

Figure 11: Title IX Sexual Violence Complaints Resolved With Change in FYs 2009-18

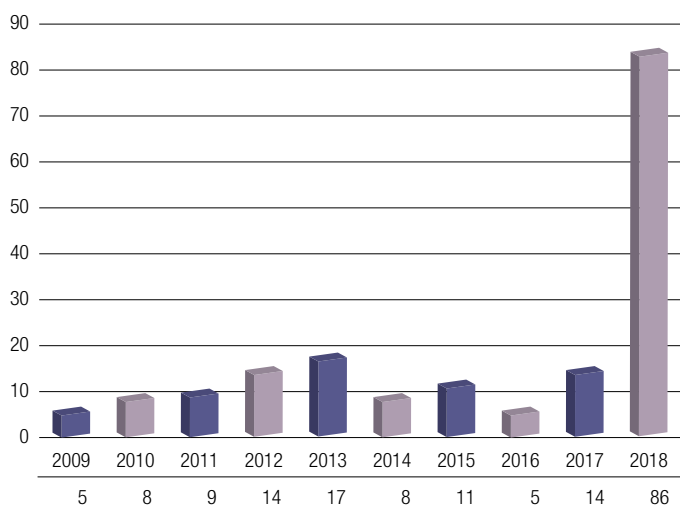
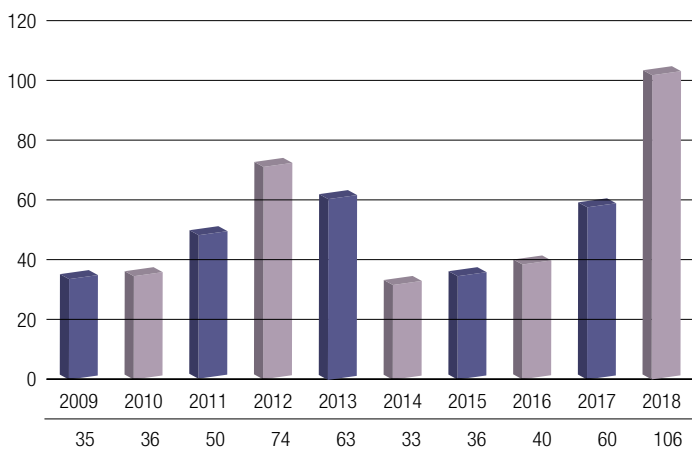


Figure 12: Title IX Bullying/Harassment Complaints Resolved With Change in FYs 2009-18



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

Case Summaries

Ensuring Equal Facilities for Female Athletes

A complaint alleged that a county school system discriminated against female athletes by failing to provide female athletes with locker rooms and softball facilities equivalent to those provided to male athletes. After the conclusion of the investigation, the county school system agreed to remedy the violation by providing equivalent facilities to the women's softball teams. In addition, the county school system agreed to provide equivalent scoreboards, press boxes and public address systems, outfield depth, backstops, bullpens, field maintenance and preparation, and concessions.

Securing Equal Access to STEM Courses for Male Students

A complaint alleged that a college discriminated against male students on the basis of sex when it offered a single-sex section of science, engineering, and math courses to female students only, resulting in fewer seats available for male students overall. OCR's investigation revealed that a male student was waitlisted to a co-educational section while there were remained open seats in the female-only sections of the same course in violation of Title IX. To remedy the violation, the college agreed to an agreement with OCR under which it would discontinue single-sex sections of science, technology, engineering, and mathematics (STEM) courses, publicize the availability of the courses to all students, and distribute a notice that its Women in STEM program and all related activities are open to students of both sexes.

Remedying Different Treatment for Female Students

A complaint alleged that a high school had discriminated against female students on the basis of sex by denying them equal access to educational programs at the school. In the course of its investigation, OCR discovered evidence that the school placed attendance restrictions on females for certain classes but not male students, provided female students with less access to computers, removed female students from education settings during disruptions and delays but not male students, and transported female students, but not male students, by groups rather than by grade level. Pursuant to a resolution agreement, the school district agreed to provide compensatory services to female students enrolled during the relevant time period, make changes in practices to ensure that male and female students were not treated differently based on sex, and provide training to all staff members and administrators at the school regarding the district's obligations to prevent and address sex-based discrimination.

Responding to Allegations of Sexual Harassment and Violence

A complaint alleged that a school failed to promptly and equitably respond to allegations of sexual harassment of female high school athletes by their coach, despite having received prior notice of other allegations of harassment against the same individual. OCR's investigation found that the school's only response was to speak to only one student and

the coach, although several instances of sexual harassment had been reported. Additionally, the investigation revealed that the school failed to satisfy various procedural requirements under Title IX, such as failing to have a designated Title IX coordinator, failing to adequately disseminate a policy against sex discrimination, and failing to publish its Title IX grievance procedures. As part of its resolution agreement, the school agreed to develop and publicize Title IX grievance procedures and a policy of nondiscrimination, train staff on topics related to sex discrimination and sexual harassment, and offer counseling to all students who played for the coach in question, among other provisions.

Another complaint alleged a school failed to take appropriate action after receiving notice that a male student had sexually assaulted the female complainant at the school and, without her consent, recorded the assault and disseminated the recording to other students. OCR found that the school had not conducted the investigation according to appropriate Title IX procedures, failed to notify the parties of the outcome of the investigation, did not determine whether dissemination of the video created a hostile environment, and failed to provide adequate notice of and contact information for the Title IX coordinator. As part of its resolution agreement, the district agreed to revise its grievance procedures and policy of nondiscrimination, develop and provide training for its Title IX coordinator and other appropriate staff, and, to the extent needed, provide the complainant with counseling, academic, and therapy services, among other provisions.

Policy Review: Transgender Guidance Withdrawn

On February 22, 2017, the Departments of Education and Justice withdrew their joint “Dear Colleague Letter on Transgender Students,” stating that the previous guidance gave rise to several legal questions and that there must be due regard for the primary role of the states and local school districts in establishing education policy. OCR continues to investigate complaints of discrimination against all students, including transgender and gender-nonconforming students, consistent with OCR’s jurisdiction under Title IX of the Education Amendments of 1972 and the other civil rights laws that it enforces.

- February 22, 2017, “Dear Colleague Letter Withdrawing Previous Guidance on Transgender Students” (withdrawing May 13, 2016, “Dear Colleague Letter on Transgender Students”) ([pdf](#))

Policy Review: Seeking to Protect Students and Restore Fundamental Fairness



On September 7, 2017, U.S. Secretary of Education Betsy DeVos announced the Department’s intention of engaging in notice-and-comment rulemaking and to “seek public feedback and combine institutional knowledge, professional expertise, and the experiences of students to replace the current approach with a workable, effective, and fair system.”⁹ On September 22, 2017, OCR withdrew its “Dear Colleague Letter on Sexual Violence” (2011) and “Questions and Answers on Title IX and Sexual Violence” (2014). OCR also announced its intent to engage in rulemaking on Title IX responsibilities arising from complaints of sexual misconduct and, in the interim, released a “Questions and Answers on Campus Sexual Misconduct,” set forth below:

- September 22, 2017 “Questions and Answers on Campus Sexual Misconduct” (withdrawing the April 4, 2011, “Dear Colleague Letter on Sexual Violence” and April 29, 2014, “Questions and Answers on Title IX and Sexual Violence”) ([pdf](#))

The Department issued a Notice of Proposed Rulemaking on Title IX on November 29, 2018. Among other things, the proposed rule seeks to protect students and restore fundamental fairness by defining sexual harassment under Title IX and what it means for a student to report it, requiring schools to respond meaningfully to every report of sexual harassment and ensuring that due process protections are in place for all students. In addition, the proposed rule seeks to ensure that all schools clearly understand their legal obligations under Title IX and that all students clearly understand their options and rights. OCR has received over 100,000 comments in response to the Notice of Proposed Rulemaking. The final Rule will include an effective date of implementation.

- November 29, 2018, “Notice of Proposed Rulemaking” ([html](#))

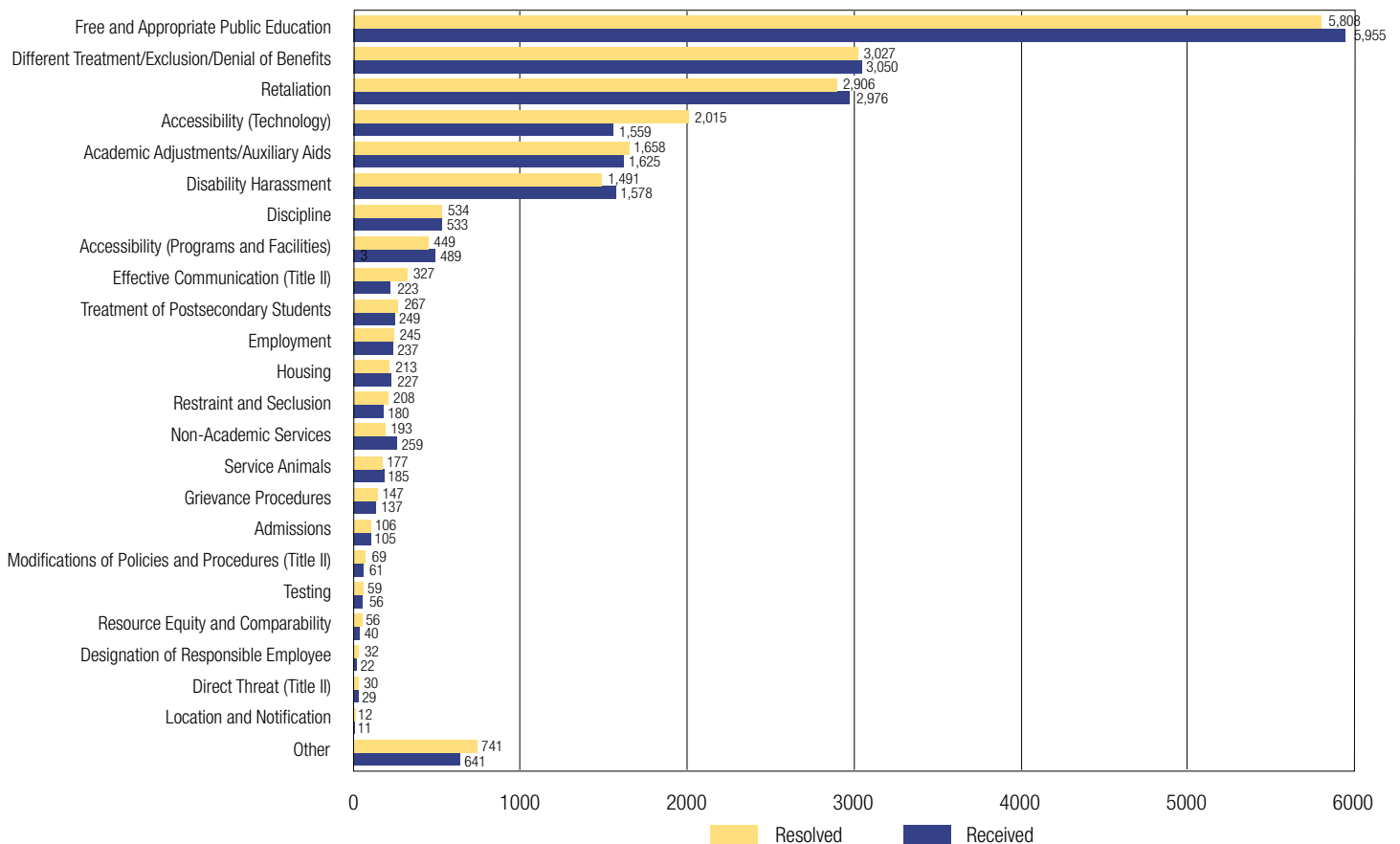
Section 504 and Title II: Discrimination Based on Disability

Overview

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



Figure 13: Section 504/Title II Issues Received and Resolved in FYs 2017-18



OCR handles cases of disability discrimination involving a range of issues, including the failure to provide a free and appropriate public education (FAPE), inaccessible facilities or technology, the denial of academic adjustments or auxiliary aids and services for postsecondary students, different treatment based on an individual's disability, and disability harassment.

Key Facts

In FYs 2017-18, OCR received 13,343 complaints alleging a total of 20,105 violations of Section 504/Title II. A total of 20,779 allegations of violations of Section 504/Title II were resolved in 13,866 complaints. Of these, 4,051 Section 504/Title II allegations were resolved with change. The largest numbers of these allegations concerned whether a school or other education entity failed to provide a student with a disability with a FAPE, treated students with disabilities differently from other students, retaliated against individuals who asserted their Section 504/Title II rights or those of others, or failed to timely provide academic adjustments for students with disabilities, for example, a reduction of course load requirements or assistive technology. See Figure 13 for more specific information on the variety of Section 504/Title II allegations received and resolved by OCR during FYs 2017-18. OCR also resolved 16 compliance reviews involving a total of 33 Section 504/Title II issues, 29 of which were resolved with change. Many of these compliance reviews resulted in remedies that required institutions to provide improved and timely services to students with disabilities and to modify policies and practices on the restraint or seclusion of students with disabilities.

Increases in Resolutions with Change in Key Disability Issue Categories

During FYs 2017-18, OCR saw remarkable increases from the previous eight years in both resolutions, and resolutions with change, in certain categories of disability-related discrimination complaints.

Resolutions for complaints alleging different treatment/exclusion/denial of benefits each year increased over 76% from the prior eight years, from 815 complaint resolutions per year on average in FYs 2009-16 to

1,440.5 each year on average for FYs 2017-18. Resolutions with change for this discrimination complaint filing also increased over 92% from the previous eight years on average, from 110 to 212 resolutions with change in this category.

Complaints identifying issues of accessibility related to recipients' use of technology, insignificant ten years ago, became one of the top four categories of disability complaints that OCR received. This category grew primarily due to complaints filed by or for individuals with disabilities concerning their access to websites of education institutions. In FYs 2017-18, there were nearly 19 times more complaint resolutions related to technological or website accessibility on average compared to the previous eight years, from 52 resolutions in FYs 2009-16 to 986 in FYs 2017-18. More remarkable is that there were 21 times more resolutions with change per year in this category comparing the two periods, from 23 resolutions with change on average each year during the prior eight years to an average of 489 per year during FYs 2017-18.

Figure 14: Section 504/Title II Different Treatment/Exclusion/Denial of Benefits Complaints Resolved with Change in FYs 2009-18

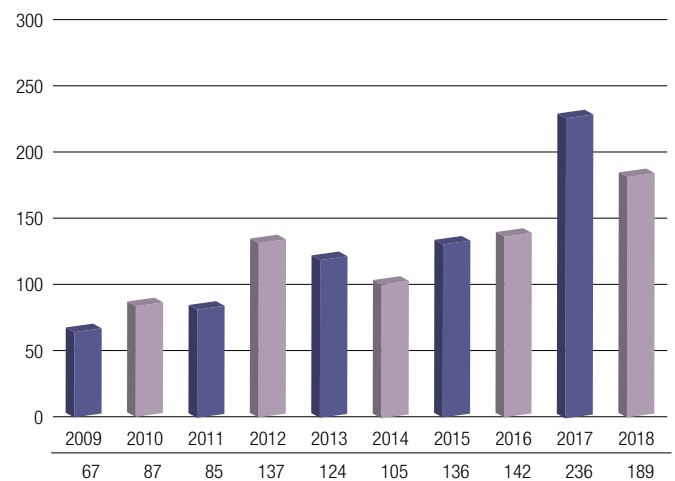


Figure 15: Section 504/Title II Tech Accessibility Complaints Resolved with Change in FYs 2009-18

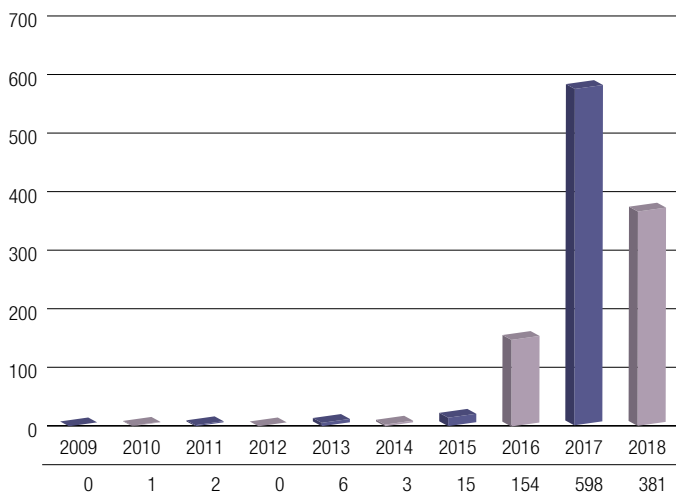
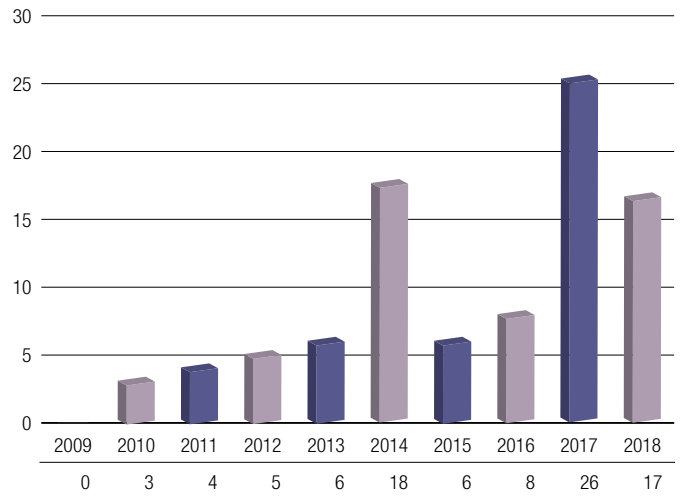


Figure 16: Section 504/Title II Restraint and Seclusion Complaints Resolved With Change in FYs 2009-18



OCR also achieved a significant number of resolutions with change in complaints alleging an inappropriate use of restraint and seclusion. During FYs 2009-16 OCR resolved an average of only six complaints per year with change in this category. During FYs 2017-18, OCR more than tripled that yearly average – resolving an average of 21 complaints per year with change.

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

Case Summaries

Ensuring Students Get the Accommodations and Academic Adjustments They Need

A complaint alleged that a college denied academic adjustments made necessary by a student's disability. OCR's investigation found that the college failed to provide the student with a 72-hour waiting period to reschedule tests because of his disability-related treatments, refused to grant his request for a disability-related reduction in course load, and had neither appointed an individual to handle disability-related complaints nor published grievance procedures for such complaints. To resolve the matter, the college agreed to revise its policies and procedures relating to academic adjustments and auxiliary aids and services and to provide specific remedies to the individual student.

A complaint alleged that a university denied a student a necessary auxiliary aid. OCR's investigation found that the college had denied the complainant's request for a braille version of a textbook for a core high-level mathematics class because the college deemed it too expensive. To resolve this matter, the college agreed to develop and implement a procedure for the timely production of alternate media for students with disabilities and to ensure the individual student's particular needs would be met should the student re-enroll in the class.

Ensuring Equal Access to Education Facilities

A complaint alleged that a public school district failed to make a key facility accessible to individuals with mobility impairments. OCR's investigation found the district to be in violation of Section 504 and Title II because the facility was not accessible to individuals with disabilities, including its entrances, classrooms, offices, gym, and restrooms. It was also determined that the district lacked an emergency evacuation plan for the facility. The district entered into a resolution agreement under which it agreed to, among other things, bring the physical facilities into compliance with Section 504 and Title II, conduct a self-evaluation of the facility to identify other potential accessibility issues, and develop an individualized emergency response plan for each student with a disability.

Ensuring Equal Access to Technology and Online Resources

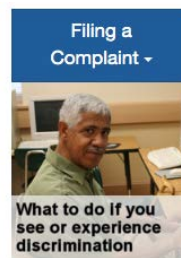
A complaint alleged that a website for a school for the blind was not accessible to individuals with disabilities. In the course of their investigation, OCR staff noted missing document language, PDF file inaccessibility, missing HTML tags, and empty or redundant links and

headers. All of these conditions potentially hinder accessibility for individuals with disabilities. To resolve these allegations, the school signed a resolution agreement under which, among other things, the school agreed to conduct a thorough audit of the website, adopt policies and procedures to ensure that new content added to the website will be accessible, post notices on its website to help rectify problems with inaccessible content, and provide website accessibility training to appropriate personnel.

Eliminating Preadmission Inquiries into Prospective Students' Disability Status

A complaint alleged that a school had rescinded an offer of acceptance issued to a student from the state's school choice program because the student had disability-related needs. OCR's investigation revealed sufficient evidence that the district had not only rescinded the one student's acceptance based on that student's disability status but also refused admission to students with disability-related needs in two other instances. To resolve the matter, the district signed a resolution agreement under which it was required to, among other things, revise its school choice program application to remove any questions related to an applicant's disability status and provide training to the district's admissions staff concerning the revised procedures and the district's obligations relating to evaluation and placement under Section 504 and Title II.

Policy Review: Website Accessibility



In FY 2018, OCR launched a new technical assistance initiative to assist recipients in making their websites and online programs accessible to individuals with disabilities, as required by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. Through webinars, OCR provided information technology professionals with vital information on website accessibility, including guidance for making online programs accessible. These webinars reached over 3,000 individuals from over 100 different locations. In all, OCR organized and led 19 webinars on website accessibility, a 58% increase over the 12 such webinars OCR conducted in FY 2017. In addition, OCR has increased enforcement activities related to website accessibility. In recent years, a single individual has filed hundreds of OCR complaints related to the accessibility of education institutions' websites to individuals with disabilities. OCR has resolved many of these complaints with resolution agreements and continues to investigate others through the vehicle of directed investigations.

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

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

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

Of the 31,871 complaints that OCR resolved in FYs 2017-18, 1,382 (4.3%) included at least one alleged violation of the Age Discrimination Act. OCR resolved 31 (2%) age discrimination allegations with change, including allegations that a school system or institution discriminated based on age with respect to admissions, grievance procedures, financial aid, or access to programs or activities or that it retaliated against individuals who asserted their rights or those of others under the Age Discrimination Act.

In FYs 2017-18, OCR received 51 (0.1%) complaints that alleged at least one violation of the Boy Scouts Act. None of those allegations were resolved with change.



The Civil Rights Data Collection

OCR collects and publishes Civil Rights Data Collection (CRDC) data on a biennial basis. In April 2018, OCR released the 2015-16 CRDC data. The data, which is self-reported, included information on over 96,400 public schools, 17,300 public school districts, and 50.6 million students across the nation.

Strengthening Data Quality

In 2018, OCR took action to improve data quality by conducting data quality reviews of CRDC information submitted by school districts that had reported zero values, or no incidents, in their restraint and seclusion data for the 2015-16 CRDC. OCR contacted 50 school districts — four districts from each of OCR's 12 enforcement regions and the two districts with large identical restraint and seclusion values — and asked the school districts to review their data and respond to OCR in writing to explain whether the data were complete and accurate or needed to be amended. The data quality aspect of the initiative is the first major effort of its kind; never before has OCR focused on data quality as a part of a major compliance initiative.

In addition, to assist school districts improve the quality of their CRDC data collected and submitted, OCR provides numerous resources, including a CRDC Resource Center website and a Partner Support Center (PSC) or help desk. The CRDC Resource Center website (<https://crdc.grads360.org>) contains an extensive collection of technical assistance documents. The PSC provides technical assistance directly to school districts, including first-time data submitters.

New Data on School Safety and STEM

For the first time, the 2015-16 CRDC included comprehensive data on the incidents of criminal offenses in our nation's public schools and several new categories of data on STEM course taking. Using the 2015-16 CRDC data, OCR released two topic-specific issue briefs that provided certain data highlights: "School Climate and Safety"¹⁰ and "STEM Course Taking."¹¹

School climate generally refers to interrelated aspects of the quality and character of school life. The CRDC School Climate and Safety issue brief focused on one element of school climate: safety. To evaluate how safe students are at school, the CRDC collected data on serious offenses, law enforcement referrals and school-related arrests, harassment and bullying, restraint and seclusion, and school discipline.

The issue brief entitled "STEM Course Taking" includes information collected through the CRDC concerning information concerning the STEM courses available to students in the nation's schools. The data include course enrollment and course availability for some middle school and high school courses. Middle school courses include Algebra I and Geometry. High school courses include Algebra I and Geometry as well as Algebra II, advanced mathematics, Calculus, Biology, Chemistry, and Physics. The CRDC also collected student passing data on Algebra I in middle school and high school.



Highlighting the Use of Restraint and Seclusion

The 2015-16 CRDC also collected noteworthy information on the use of restraint and seclusion. Mechanical restraint is the use of any device or equipment to restrict a student's freedom of movement. Physical restraint is a personal restriction that immobilizes or reduces the ability of a student to move their torso, arms, legs, or head freely. Seclusion is the involuntary confinement of a student alone in a room or area that the student is physically prevented from leaving. During the 2015-16 school year, 124,500 students (approximately 0.2% of all students enrolled) across the nation were physically restrained, mechanically restrained, or secluded. Nearly 87,000 of those students were subjected to physical or mechanical restraint, and over 37,500 were subjected to seclusion.

Reporting on Bullying and Harassment

The 2015-16 CRDC also expanded the type of data it collected related to incidents of bullying and harassment in K-12 schools. For the first time ever, the CRDC reported on the number of incidents of bullying and harassment based on religion. Overall, approximately 135,200 individual allegations of harassment or bullying based on sex, race, sexual orientation, disability, or religion were reported during the 2015-16 school year. Almost 10,000 allegations, or 8%, of all the reported incidents were in this new religion category.

Preparing the 2017-18 CRDC

Beginning in FY 2016, OCR began preparing for the 2017-18 CRDC. As with previous collections, the 2017-18 CRDC went through the Office of Management and Budget (OMB) information collection packet clearance process. OCR received a record 1,470 public comments during 60-day and 30-day public comment periods. OMB approved the 2017-18 CRDC under the Paperwork Reduction Act on October 16, 2017. For the 2017-18 CRDC, new data elements include computer science classes and school internet access. Additionally, in an effort to reduce the reporting burden on schools, districts, and local education agencies, OCR elected to drop the collection of data on high school equivalency course exam results, Advanced Placement course exam results, and student chronic absenteeism from the CRDC.

Looking Ahead

Reforming Title IX Through Formal Rulemaking

In November 2018, the Department released its proposal on improving schools' responses to sexual harassment and assault. The proposed regulation under Title IX was developed after more than a year of research, deliberation, and gathering input from students, advocates, school administrators, Title IX coordinators, and other stakeholders.

The Department's proposed rule takes the important and historic step of defining sexual harassment under Title IX and what it means for a student to report it. It requires schools to respond meaningfully to every report of sexual harassment and ensures that due process protections are in place for all students. The Department's proposed rule seeks to ensure that all schools clearly understand their legal obligations under Title IX and that all students clearly understand their options and rights.

The Department's proposed rule was published in the Federal Register and was open for public comment from early November 2018 to late January 2019. To date, over 124,000 comments to the rule have been submitted to the Department, the substance of each of which the Department is reviewing. The Department anticipates issuing the rule as final in FY 2020.¹²

Active Enforcement of Title IX

Sexual Violence on College Campuses

OCR continues to vigorously enforce the provisions of Title IX. In September 2019, the Department announced it would fine Michigan State University (MSU) a record \$4.5 million and require the university to make major changes to its Title IX procedures following its systemic failure to protect students from sexual abuse. The fine and required corrective action come after two separate investigations, one by the office of Federal Student Aid and the other by OCR, as directed by Secretary DeVos.

In February 2018, Secretary DeVos had directed OCR to launch a systemic investigation into MSU's handling of reports of sexual violence against former employee and adjunct professor Dr. Larry Nassar. Concurrently, Federal Student Aid continued its investigation into the university's compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). As part of its investigation, OCR reviewed hundreds of sexual assault reports; interviewed 47 witnesses, including survivors; and reviewed tens of thousands of documents. OCR's investigation revealed that MSU failed to adequately respond to reports of sexual misconduct by Nassar and William Strampel (the former dean of MSU's College of Osteopathic Medicine and Nassar's supervisor), failed to take appropriate interim measures to protect its students while complaints against Nassar and Strampel were pending, and failed to take prompt and effective steps to end any harassment, eliminate the hostile environment, and prevent any further harassment from recurring. As a result of the investigation, MSU signed a resolution agreement to address the Title IX violations.

Sexual Violence in K-12

Also in September 2019, OCR announced it had signed a resolution agreement with Chicago Public Schools (CPS) that will require the district to make significant internal structural and procedural changes to protect students from sexual assault and abuse. The resolution agreement comes after OCR opened investigations into two separate complaints alleging that the district failed to respond to sexual harassment and sexual assault of students by both teachers and peers and after OCR initiated a third systemic, district-wide investigation. As a result of its investigations, OCR concluded that, for years, CPS's management, handling, and oversight of complaints of student-on-student and adult-on-student sexual harassment has violated Title IX. Specifically, OCR's investigation revealed that the district's Title IX investigations were inadequate, unreliable, and often conducted by untrained staff. In addition, there was no coordination of the district's Title IX responsibilities. Based on the deficiencies in CPS's Title IX procedures and in the district's handling of complaints of sexual misconduct, OCR is requiring the district to take specific affirmative corrective actions to rectify the many procedural and structural deficiencies in the district's Title IX policies.

Restraint and Seclusion Initiative

On January 17, 2019, Secretary DeVos announced the Department's initiative to address the inappropriate use of restraint and seclusion in our nation's K-12 schools.¹³ OCR together with the Office of Special Education and Rehabilitative Services (OSERS) will oversee the initiative, which includes three components that draw upon the work and expertise of OCR and OSERS staff: compliance reviews conducted by OCR on various recipients' use of restraint and seclusion, data quality reviews by OCR to improve the quality of restraint and seclusion data submitted as part of the CRDC, and technical assistance provided by OCR and OSERS to schools, districts, and local education agencies. In addition to helping schools and districts understand how federal law applies to the use of restraint and seclusion, the Department is supporting schools seeking resources and information on the appropriate use of interventions and supports to address the behavioral needs of students with disabilities. In these ways, the initiative focuses on providing support to schools, districts, and local education agencies while also strengthening enforcement activities in order to better protect students with disabilities and their families.

Compliance Reviews

Compliance reviews focused on recipients' use of restraint and seclusion on children with disabilities will be conducted by OCR's 12 regional enforcement offices. These compliance reviews concentrate on the possible inappropriate use of restraint or seclusion and the effect of such practices on the school's obligation to provide FAPE for all children with disabilities. OCR's regional offices identify recipients for review based on various sources of information, including reported data, news reports, and information from students, parents, advocacy groups, and community organizations. Opening a compliance review does not indicate that OCR has reached a conclusion as to whether a violation of any federal law exists.

Data Quality Reviews

After the conclusion of the 2017-18 CRDC, OCR began a two-week-long data quality review period during which it conducted outreach to schools focused on improving the accuracy of data reported on the use of restraint and seclusion and helping schools correct any misreported data. Outside of the data quality review period, OCR has also initiated a number of data quality reviews and is actively working with school districts to review and improve restraint and seclusion data as reported to the CRDC. OCR will continue to work directly with school districts to review and improve not only the previously mentioned restraint and seclusion data submitted as a part of the CRDC but also on other categories of CRDC data. To ensure the integrity of CRDC information, OCR expects to conduct data quality reviews of other categories with zero or low values reported in school districts' CRDC submissions. As part of these reviews, OCR will provide technical assistance to schools on data quality to ensure that they are collecting and reporting accurate data relating to the use of restraint and seclusion.

Between the CRDC data quality reviews conducted by the headquarters office and compliance reviews conducted by regional offices, OCR will interact directly with over 70 recipients and will work with them to correct any noncompliance that is found.

Technical Assistance

Technical assistance to public schools will be provided by OCR on the legal requirements of Section 504 of the Rehabilitation Act relating to the use of restraint and seclusion on children with disabilities. OCR will partner with OSERS to provide joint technical assistance to support recipients in understanding how Section 504, Title II, and the Individuals with Disabilities Education Act, or IDEA, informs the development and implementation of policies governing the use of restraint and seclusion. OSERS will support recipients identified by OCR through compliance reviews or through the complaint resolution process to ensure they have access to appropriate technical assistance and support. Additionally, OSERS will support schools to ensure they have access to available resources as they establish or enhance environments where the implementation of interventions and supports reduces the needs for reliance on less effective and potentially dangerous practices. OSERS will also consider how current investments may be utilized to provide support and training to schools, districts, and states. Lastly, OCR and OSERS will jointly plan and conduct webinars for interested parties related to the use of appropriate interventions and supports for all students.

Web Accessibility Technical Assistance Initiative

In addition to the restraint and seclusion initiative, OCR continues to assist schools, districts, and local education agencies through its web accessibility initiative, which was first announced in May 2018.¹⁴ Similar to the restraint and seclusion initiative, the web accessibility initiative will combine strengthened enforcement efforts with a focus on supporting schools, districts, and local education agencies through technical support. Beginning in May and June 2018, OCR has hosted a series of webinars to assist schools, districts, state education agencies, libraries, colleges,



and universities in making their websites and online programs accessible to individuals with disabilities. These initial webinars reached over 3,000 individuals from over 100 different locations. In FY 2019, OCR introduced the enforcement component of this initiative when it initiated over 600 directed investigations related to web accessibility. OCR also created a dedicated team of 13 OCR staff working exclusively on web accessibility complaints and directed investigations, under central oversight by headquarters to ensure consistency in the investigator approach to such cases. Even during the course of these investigations, OCR is committed to supporting schools, districts, and local education agencies and working with the schools to inform the schools of any compliance concerns and address the concerns as needed.

Hiring Initiative

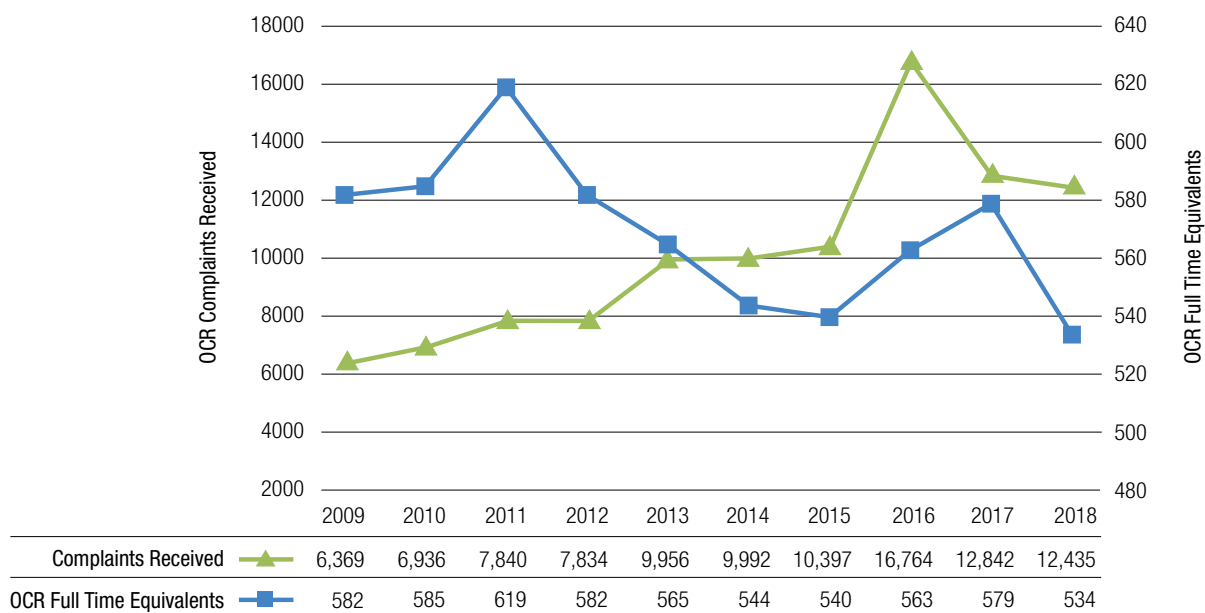
As noted earlier in this report, the number of complaints received by OCR has doubled from FY 2008 to FY 2018. This has occurred while OCR's staff has decreased from 614 persons in FY 2008 to 534 persons in FY 2018. Yet, as seen in this report, the number of case resolutions by OCR staff has kept pace with rising caseload levels over the past several years. This achievement is a testimony to the efforts of the dedicated career professionals of OCR who work diligently to evaluate, investigate, and resolve any and all meritorious discrimination complaints from the nation's students and their families.

In FYs 2018-19, OCR received \$8.5 million in additional funding from Congress to hire over 100 additional staff for OCR's 12 regional enforcement offices and headquarters as needed by the end of FY 2019. To meet this ambitious timeframe, OCR acquired the personnel staff support through detailed employees to start the hiring initiative and worked with the Department's Office of Finance and Operations to ensure hiring actions were progressing at an aggressive pace. OCR created internal hiring panels to expediate the interview schedule of the numerous candidates across all 12 regions and held weekly hiring meetings to ensure hiring efforts were prioritized. With an increase in additional funding and necessary resources, OCR will be even more equipped to handle its rising caseload and even better positioned to continue ensuring more effective and more timely law enforcement. OCR remains committed to meeting the ambitious hiring goals that were put in place and will continue to dedicate resources to ensure OCR is appropriately staffed and well equipped to protect our nation's students. By the end of FY 2019, OCR substantially completed the hiring of these additional staff.

Opening of the 2017-18 CRDC

In January 2019, OCR announced the opening of the 2017-18 CRDC. The data submission system opened to 14 state education agencies (SEAs) that support their school districts. The SEAs pre-populate the CRDC survey forms with data collected and submitted for other state-level federal reporting to reduce the reporting burden on their school districts. OCR implemented a pilot program during the 2013-14 CRDC to support SEA engagement to improve the quality of CRDC data collected. The collaboration efforts expanded for the 2015-16 and the 2017-18 CRDCs. Past efforts resulted in SEAs providing between 40 and 100% of the required data elements that otherwise would have to be completed by the school districts. School districts gained access to the 2017-18 CRDC data submission system beginning on February 4, 2019. Each school district is given a minimum of 75 calendar days to submit and certify their data. The submission system closed on June 21, 2019.

Figure 17: OCR Staffing Levels and Complaints Received in FYs 2009-18



Endnotes

- 1 A single complaint filed with OCR may allege more than one civil rights violation. Moreover, an individual complaint may allege more than one type of violation under a single civil rights statute or may allege several violations under more than one statute.
- 2 Often a single complaint contains more than one allegation of discrimination. Please note that this report includes data on both the total number of allegations and the total number of complaints.
- 3 Throughout this report, data on the number of allegations in discrete issue areas received and resolved by OCR in prior fiscal years may vary slightly when compared to the data reported in previous publications. This is because case information continues to be updated in OCR's database as cases are processed, investigated, and resolved, resulting in changes to the categorization of some cases.
- 4 As used in this report, case resolutions include cases that result in dismissal, administrative closure, a finding of no violation, an early complaint resolution, a resolution requiring action by institutions without a resolution agreement, or a negotiated resolution agreement.
- 5 In this report, unless otherwise specified, *schools* means elementary and secondary schools or school districts, postsecondary colleges or universities, and any other type of education institution receiving federal financial assistance.
- 6 The number of complaint resolutions per year is greater than the number of complaints received per year for FYs 2017-18 because some of the resolved complaints were filed with OCR in previous fiscal years.
- 7 For the full text of Executive Order 13771, see <https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs>.
- 8 See "Pending Cases Currently Under Investigation at Elementary-Secondary and Postsecondary Schools" database, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/index.html>.
- 9 See Press Release, Department of Education Issues New Interim Guidance on Campus Sexual Misconduct, <https://www.ed.gov/news/press-releases/department-education-issues-new-interim-guidance-campus-sexual-misconduct>.
- 10 For the full text of "School Climate and Safety," see <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.
- 11 For the full text of "STEM Course Taking," see <https://www2.ed.gov/about/offices/list/ocr/docs/stem-course-taking.pdf>.
- 12 See Press Release, Secretary DeVos: Proposed Title IX Rule Provides Clarity for Schools, Support for Survivors, and Due Process Rights for All, <https://www.ed.gov/news/press-releases/secretary-devos-proposed-title-ix-rule-provides-clarity-schools-support-survivors-and-due-process-rights-all>.
- 13 See Press Release, U.S. Department of Education Announces Initiative to Address the Inappropriate Use of Restraint and Seclusion to Protect Children with Disabilities, Ensure Compliance with Federal Laws, <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>.
- 14 See Press Release, U.S. Department of Education Launches New Website Accessibility Technical Assistance Initiative, <https://www.ed.gov/news/press-releases/us-department-education-launches-new-website-accessibility-technical-assistance-initiative>.

Availability of Alternate Formats:

Requests for documents in alternate formats such as braille or large print should be submitted to the Alternate Format Center by calling 1.202.260.0852 or by contacting the Section 508 Coordinator via email at om_eeos@ed.gov.

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