
OCR Guidance Could Alter Scope of Pending and Future Civil Rights Investigations

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A [memorandum](#) obtained by ProPublica, if authentic, sets forth substantially revised guidance for civil rights investigations conducted by the U.S. Department of Education's Office for Civil Rights (OCR). The memorandum, addressed to Regional Directors from Candice Jackson, OCR Acting Assistant Secretary for Civil Rights, explains that, going forward, "there is no longer a 'one size fits all' approach to investigation of any category of complaints."

The outlined changes have the potential to reduce the duration and scope of OCR's investigations, as well as increase regional control over them. Jackson instructed that OCR will undertake a systemic or class-action review only where individual complaints raise systemic issues or the investigative team determines a systemic approach is warranted. Each investigative team is responsible for determining on a case-by-case basis the type and scope of evidence necessary to investigate and resolve individual complaints. As a result, OCR will no longer require investigators to obtain three years of past complaint data or files to assess a recipient's compliance. Instead, investigators should determine what comparative data are necessary to investigate a particular complaint.

The memorandum also emphasizes OCR's goal of "swiftly" addressing compliance issues raised by individual complaint allegations and notes that "[t]hese instructions in particular are designed to empower our investigative staff to clear case backlogs and resolve complaints within a reasonable time-frame, thus providing effective resolution and justice to complainants and recipients."

The memorandum further states that OCR seeks to reach "reasonable resolution agreements with defined, enforceable obligations . . . directly responsive to addressing the concerns raised in the individual complaint being resolved." It also states that OCR seeks to "encourage voluntary settlements whenever possible."

The guidance is effective immediately and applies to complaints currently being investigated, as well as newly filed complaints.

Implications for Colleges and Universities

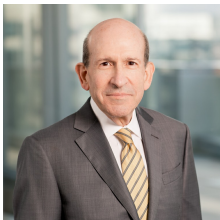
The new guidance could have the effect of shifting the focus of many current and future OCR

investigations from systemic reviews of a school's compliance to the evaluation of specific incidents. The guidance raises a host of practical considerations. Schools that receive a new complaint should consider focusing their efforts on resolving the specific concern that gave rise to the complaint. Schools with pending OCR investigations should reassess the status of their cases: OCR's new posture may create opportunities to narrow requests for information, pursue voluntary settlements, and negotiate more tailored resolution agreements. Given the instruction to "clear case backlogs," it may not even be necessary to initiate discussions with OCR on these issues.

However, this development should not be interpreted as a signal that colleges and universities can lessen their commitment to maintaining up-to-date policies and procedures and vigorously pursuing civil rights cases. Maintaining best practices in this area is important for its own sake, and students and other stakeholders will likely remain highly engaged. OCR retains the authority to investigate pattern and practice violations, private lawsuits may increase, media attention will continue, and other actors may step into the space vacated by OCR. Even if OCR retools its approach to enforcement, civil rights issues on college campuses—from discrimination on the basis of sex and race to academic freedom and freedom of speech—will not fade from the spotlight.

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