



Change Coming In The Scope of OCR Investigations



If it seemed in recent years that every U.S. Department of Education Office for Civil Rights (OCR) investigation resulted in a sweeping, entity-wide, multiyear investigation that dragged out for sometimes long periods of time, that is because an internal OCR procedural requirement required that approach for certain types of complaints. According to a new internal OCR memorandum (the "Memorandum"), that approach is a thing of the past. The scope of every investigation is now discretionary rather than mandatory and should be keyed to the complaint. This discretionary approach presents new opportunities for education institutions to achieve more efficient and effective resolutions of OCR investigations.

During the Obama administration, when OCR received certain sexual violence and Title VI discipline complaints, OCR automatically expanded the investigation beyond the particular allegations of the complaint to the wider institutional context. Requirements ranged from multi-year reviews of similar claims aimed at detecting patterns of discrimination to increased oversight of field office investigations by OCR headquarters in Washington, D.C.

That has now changed according to the Memorandum penned by Acting Assistant Secretary for Civil Rights, Candice Jackson and released last week. Now, all decisions about the scope and course of OCR investigations will be left to the discretion of investigation teams and their superiors rather than determined by the category of the complaint.

Under the new directive:

- Expansions to investigations will be instituted on a case-by-case basis and only when the complaint or OCR's findings suggest a broader investigation is necessary. The scope of investigations are to be determined by the allegations of each particular complaint.
- Systemic or class-action investigations will no longer be automatically triggered by certain types of complaints. There now must be a complaint that specifically raises systemic issues or a determination by the investigative team to broaden their inquiry.
- Ties between headquarters and the field offices will be loosened by replacing mandatory reporting of certain complaints to headquarters with periodic check-ins between the offices during which case-by-case investigation decisions can be made.

The Memorandum emphasizes the importance of efficiency and the elimination of a "one-size-fits-all" approach to responding to complaints. In her statement on the new policy, Elizabeth Hill, press secretary of the Department, explained that the categorical requirements had made OCR backlogged and slow to respond to complaints: "Justice delayed is justice denied," she said, "These internal enforcement instructions seek to clear out the backlog while giving every complaint the individualized and thorough consideration it deserves." Critics of these changes worry that the new approach will sacrifice thoroughness for speed.

Some see this streamlining of OCR procedures as one of multiple steps that the new administration has taken in recent weeks to shrink the Department's role. At the beginning of June, Secretary of Education DeVos stated that the Department would defer to Congress and the Courts to determine civil rights law and that the Department would not augment federal law through promulgating civil rights regulations. The proposed budget for OCR for the upcoming fiscal year would require cutting approximately 40 staff positions.

For education institutions, the change may mean narrower, more focused investigations and less chance that resolution of a matter will get bogged down at OCR headquarters. It will mean more opportunity to work with the line investigators to define the issues for investigation and to achieve an efficient and effective resolution.

For more information about the new memorandum or its implications, contact the authors of this alert or the Hogan Lovells lawyer with whom you work.

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