

**TUETH KEENEY**  
COOPER MOHAN JACKSTADT P.C.

---

**THE OCR TODAY:  
CHANGES IN  
PRIORITIES AND PROCEDURES**

**MASA/MOSPRA  
Spring Conference  
2018**

Presented by:  
Michelle H. Bass  
Mandi D. Houston      Date:  
April 5, 2018      **DIFFERENT  
BY DESIGN**

---

---

---

---

---


---

---


---

**OVERVIEW**

- What is the OCR?
- What laws are enforced by the OCR?
- What are OCR's procedures – and how to use them?
- How to use OCR guidance?



**TUETH KEENEY**  
COOPER MOHAN JACKSTADT P.C.



**DIFFERENT  
BY DESIGN**

---

---

---

---

---


---

---


---

**OCR: THE BASICS**

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



**TUETH KEENEY**  
COOPER MOHAN JACKSTADT P.C.



**DIFFERENT  
BY DESIGN**

---

---

---

---

---

---

---

---

## OCR: THE BASICS

- Functions:
  - Resolving complaints of discrimination
  - Compliance reviews
  - Technical assistance
- Structure:
  - 12 enforcement offices
  - 2 Enforcement Directors
  - Administrative office in Washington, D.C.



---

---

---

---

---

---

---

---

## OCR: THE LAWS

- Title VI of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Section 504 of the Rehabilitation Act of 1973
- Title II of the Americans with Disabilities Act
- Age Discrimination Act of 1975
- Boy Scouts of America Equal Access Act



---

---

---

---

---

---

---

---

## OCR: THE LAWS

- Title VI of the Civil Rights Act of 1964
- Prohibits discrimination on the basis of race, color or national origin
  - Areas of complaint:
    - Availability of resources
    - Discrimination in discipline
    - Opportunities for ELL students
    - Right to attend school regardless of immigration or citizenship status
    - Bullying and harassment



---

---

---

---

---



---

---

---

**OCR: THE LAWS**

- Title IX of the Education Amendments 1972
  - Prohibits discrimination on the basis of sex
  - Areas of complaint:
    - Gender equity in athletics
    - Sexual violence
    - Access to comparable educational opportunities
    - Bullying and harassment

---

---

---

---

---



---

---

---

**OCR: THE LAWS**

- Section 504 and Title II of the ADA
  - Prohibit discrimination on the basis of disability
  - Areas of complaint:
    - FAPE
    - Discrimination in discipline
    - Accessibility of facilities, programs, and resources
    - Bullying and harassment

---

---

---

---

---



---

---

---

**OCR: THE LAWS**

- Age Discrimination Act
  - Prohibits discrimination on the basis of age
  - Areas of complaint: not many
  - What to Know:
    - Applies to any age
    - Does not apply to an age distinction that is part of a federal, state or local statute (i.e., minimum school age)
    - Other age criteria can be okay (i.e., drivers' education)
    - Compliance coordinator
    - Exhaustion of administrative remedies

---

---

---

---

---

---

---

---

## OCR: THE LAWS

- Boy Scouts of America Equal Access Act
  - No school that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 of the U.S. Code as a patriotic society, that wishes to meet at the school



---

---

---

---

---

---

---

---

## OCR: REQUIREMENTS

- Notice of Nondiscrimination
  - Required under each law
  - Can combine into one notice – OCR’s preference
  - Title IX and Section 504 require designation of compliance coordinator
    - If two separate compliance coordinators, identify BOTH in the notice
  - Many include contact information for OCR – make sure the address is current!
  - Publish in handbooks, online, newsletters, etc.



---

---

---

---

---

---

---

---

## OCR: REQUIREMENTS

- Notice of Nondiscrimination (con’t.)
  - Sample:
    - The [NAME OF RECIPIENT] does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person [OR INDIVIDUALS] has [HAVE] been designated to handle inquiries regarding the non-discrimination policies: [NAME AND/OR TITLE, ADDRESS, TELEPHONE]
    - Any person who is unable to resolve a problem or grievance arising under any of the laws and regulations cited above may contact the Office for Civil Rights, Region VII, One Petticoat Lane, 1010 Walnut Street, 3rd floor, Suite 320, Kansas City, MO 64106; telephone (816) 268-0550.



---

---

---

---

---

---

---

---

**OCR: REQUIREMENTS**

- Nondiscrimination policies
  - Ensure compliance coordinator is designated and identified
  - Identify grievance procedure
  - Identify a separate process for Section 504 complaints regarding FAPE – independent hearing officer
  - Review timelines
  - Publication




---

---

---

---

---

---

---

---

**OCR: REQUIREMENTS**

- Nondiscrimination policies
  - Training!!
    - Does your compliance coordinator know that he/she is the compliance coordinator?
    - Consider training for the compliance coordinator
    - At a minimum, review nondiscrimination policies each year with both staff and students
    - Training should include examples of prohibited conduct & information about what to do if become aware of a complaint




---

---

---

---

---



---

---

---

**OCR:  
RECENT DEVELOPMENTS**

- June 2017 – Internal guidance memorandum
  - Relaxed data collection guidelines
  - Only open “systemic” or “class action” complaint when systemic issue is alleged
  - Emphasis on swiftly addressing complaints & reasonable resolutions
- Withdrawal of “Dear Colleague” Guidance Letters
  - February 2017 – Guidance on Transgender Students
  - September 2017 – Guidance on Sexual Violence (2011 & 2014)
- March 2018 – New Case Processing Manual

---

---

---

---

---



---

---

---

**OCR: PROCESS**

- Complaint Filed
  - Jurisdiction?
    - the complaint must allege, or OCR must be able to infer from the facts given, an allegation of (1) discrimination based on race, color, national origin, sex, disability or age; (2) discrimination in violation of the Boys Scouts of America Equal Access Act of 2001; or (3) retaliation
    - Recipient of federal funds? (except Title II of the ADA)
  - Timely?
    - 180 calendar days or waiver

 TUETH KEENEY  
COOPER MOHAN JACKSTADT P.C.
 DIFFERENT  
BY DESIGN

---

---

---

---

---

---

---



---

---

---

**OCR: PROCESS**

- Complaint Filed
  - Evaluation stage (NEW!) – Dismissal of Allegations:
    - ✓ Allegation fails to state a violation of law enforced by OCR
    - ✓ Allegation lacks sufficient detail
    - ✓ Allegation is so speculative, conclusory, or incoherent that OCR cannot infer discrimination may have occurred
    - ✓ Based upon review of information from complainant, OCR unable to conclude that allegation establishes violation of law

 TUETH KEENEY  
COOPER MOHAN JACKSTADT P.C.
 DIFFERENT  
BY DESIGN

---

---

---

---

---

---

---



---

---

---

**OCR: PROCESS**

- Evaluation stage (NEW!) – Dismissal of Allegations (con't):
  - ✓ Allegation not timely filed
  - ✓ Consent form not signed by complainant
  - ✓ Same or similar allegation filed with another federal, state, or local civil rights enforcement agency, or through a district's internal grievance procedure
  - ✓ Same or similar allegation filed with state or federal court
  - ✓ OCR obtains credible information indicating allegations are currently resolved or no longer appropriate for investigating

 TUETH KEENEY  
COOPER MOHAN JACKSTADT P.C.
 DIFFERENT  
BY DESIGN

---

---

---

---

---

---

---


---


---

---

**OCR: PROCESS**

- Evaluation stage (NEW!) – Dismissal of Allegations (con't):
  - ✓ Complaint filed against the same recipient raises the same or similar allegation(s) based on the same operative facts that was previously dismissed or closed by OCR
  - ✓ OCR has recently investigated or is currently investigating the same or similar allegation(s) based on the same operative facts involving the same recipient
  - ✓ Complainant withdraws the complaint
  - ✓ OCR transfers to another agency for investigation

 TUETH KEENEY  
COOPER MOHAN JACKSTADT P.C.

 DIFFERENT  
BY DESIGN

---

---

---

---

---


---


---

---

**OCR: PROCESS**

- Evaluation stage (NEW!) – Dismissal of Allegations (con't):
  - ✓ Death of the complainant
  - ✓ OCR's ability to investigate is substantially impaired by the complainant's refusal to provide information
  - ✓ Lack of jurisdiction
  - ✓ Complaint is a continuation of a pattern of complaints previously filed with OCR by an individual or group against multiple recipients or a complaint is filed for the first time against multiple recipients that, viewed as a whole, places an unreasonable burden on OCR's resources
  - ✓ Allegation is moot

 TUETH KEENEY  
COOPER MOHAN JACKSTADT P.C.

 DIFFERENT  
BY DESIGN

---

---

---

---

---


---


---

---

**OCR: PROCESS**

- Rapid Resolution Process
  - Where recipient has already taken action that will resolve the complaint → Dismissal
  - Recipient has indicated willingness to take action to resolve the complaint → Resolution Agreement
  - OCR obtains sufficient information to make compliance determination → Letter of Finding or Letter of Finding + Resolution Agreement

 TUETH KEENEY  
COOPER MOHAN JACKSTADT P.C.

 DIFFERENT  
BY DESIGN

---

---

---

---

---



---

---

---

**OCR: PROCESS**

- Investigation
  - Notice of complainant's identity
  - Timeline for response
  - Requests for information & documents
    - Records of student
    - Records of other students
    - Data
    - Written response
  - Interviews
    - On-site
    - Telephone

---

---

---

---

---



---

---

---

**OCR: PROCESS**

- Letters of Finding
  - Insufficient evidence to support a conclusion of noncompliance (Appeal eliminated)
  - Sufficient evidence to support a conclusion of noncompliance & resolution agreement reached
    - Resolution letter

---

---

---

---

---



---

---

---

**OCR: PROCESS**

- Letters of Finding
  - Sufficient evidence to support a conclusion of noncompliance
    - Resolution agreement – “when fully implemented, the resolution agreement will address all of OCR’s compliance concerns”
    - Must respond to proposed resolution within 30 days
    - 90 days to negotiate a resolution
    - Impasse Letter
    - Letter of Finding issued – 30 days to reach agreement

---

---

---

---

---

---



---

---



**OCR: PROCESS**

- Enforcement Action
  - Letter of Impending Enforcement Action
  - Possible deferral of funds
  - Initiation of Enforcement Action
    - Notice of Hearing when deferral of federal funds imposed
    - Possible referral to Department of Justice

---

---

---

---

---



---

---

---

**OCR: PROCESS**

- Resolution Agreement
  - Signed by person with authority
  - Include:
    - Specific steps by district to resolve compliance issues
    - Dates for implementing each step & submission of reports
    - Timeframes for implementation
    - Agreement to provide additional information as necessary for OCR to determine whether terms of agreement have been met
  - Notice of Breach – 60 days to cure

---

---

---

---

---



---

---

---

**OCR: PROCESS**

- Other Options
  - Facilitated Resolution Between the Parties (FRBP)
    - OCR facilitator
    - Written agreement
    - If breach, complainant can file another complaint
  - Section 302 Resolution Agreement
    - Any time before the conclusion of an investigation, when the recipient express interest in resolving the complaint
    - May still have to provide some information
    - Resolution letter

---

---

---

---

---

---

---

---

## OCR: PROCESS

- Compliance Reviews
  - Title VI regulations require OCR to initiate "periodic compliance reviews" to assess practices of recipients
  - Incorporated by reference for other statutes
  - Broad discretion for OCR
- Directed Investigations
  - Matter warrants immediate attention
  - Not otherwise being addressed through the complaint, compliance review, or technical assistance process

---

---

---

---

---

---

---

---

## OCR: CAUTION

- When during the course of an investigation, OCR identifies new compliance concerns involving unrelated issues that were not raised in the complaint or issues under investigation, OCR can address the compliance concerns in the resolution letter, provide technical assistance, or open a compliance review
- Denial of Access → Enforcement Action
  - Access during normal business hours to information maintained by the school district that is necessary to determine the compliance status of the allegations or compliance with resolution agreement
  - Access to employees during regular business hours
  - Completion of applicable OMB-approved compliance and survey forms related to an investigation

---

---

---

---

---

---

---

---

## OCR: SUMMARY OF CHANGES

- Easier to get complaints dismissed
- More flexibility on timelines
- Narrower scope of interviews
- More focus on technical assistance

---

---

---

---

---

---

---

---

OCR: HELPFUL HINTS

- Review policies and procedures
- Be proactive in training – and document it
- Remember Technical Assistance option – but seek guidance first
  - Possibility for training
  - Consultation before implementing policy/practice
- When issues arise in schools, consider whether any of these laws are implicated
- Follow your procedures!



---

---

---

---

---

---

---

---

Michelle H. Basi  
Mandi D. Moutray

Tueth Keeney Cooper Mohan & Jackstadt, P.C.  
Main: 314.880.3600  
Fax: 314.880.3601  
email: mbasi@tuethkeeney.com  
mmoutray@tuethkeeney.com



---

---

---

---

---

---

---

---