

HOW TITLE IX IS ENFORCED

Responsibilities of the Office for Civil Rights

What is OCR?

The Office for Civil Rights (OCR) is one of several Offices within the U.S. Department of Education (ED). The Assistant Secretary for Civil Rights heads OCR nationwide and is appointed by the President of the United States. The U.S. Department of Education administers and disperses federal tax dollars to educational institutions for a variety of education programs. OCR is responsible for enforcing laws requiring nondiscrimination by institutions receiving those federal dollars. (Other federal agencies also disperse federal funds and have their own civil rights divisions serving the same purpose as OCR/ED.) ED has several thousand employees nationwide, including less than 800 staff within OCR.

OCR has 12 enforcement offices nationwide (in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, Seattle, and Washington, D.C.). Each enforcement office is responsible for a specific territory (divided by U.S. states and territories) and conducts investigations, compliance reviews, and technical assistance in those territories. There is a separate headquarters office in Washington, D.C., that oversees the activities of the enforcement offices, manages nationwide operations, and drafts policies and procedures as necessary.

What OCR Enforces

OCR has the legal authority to enforce: Title IX of the Education Amendments of 1972; Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color and national origin); Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of handicap); the Age Discrimination Act of 1975 (prohibiting discrimination on the basis of age); and portions of the Americans With Disabilities Act of 1990 (prohibiting discrimination on the basis of disabilities).

How OCR Enforces the Law

OCR enforces Title IX by investigating complaints, conducting compliance reviews, and providing technical assistance. An institution found to violate Title IX (or any of the regulations enforced by OCR) has the opportunity to remedy the violation voluntarily. OCR is required by federal law to seek a voluntary resolution. If an institution refuses to remedy the violation, then OCR may pursue one of two courses of action: initiate administrative procedures to terminate federal funding to the institution; or refer the case to the U.S. Department of Justice to pursue enforcement in federal court. Both actions are rare; routinely, OCR obtains a commitment to comply, and then monitors implementation of the corrective action.

Complaint Investigations. Anyone may file a complaint with OCR, even individuals who are not the victims of discrimination and not associated in any way with the institution. A complaint must be filed within 180 days of the alleged discriminatory action, although OCR may waive this time frame for good cause or if the alleged discrimination is on-going. OCR may request supporting information from the complainant to clarify the nature of the alleged discrimination and ensure that the complaint is not frivolous.

OCR is required by federal regulation to protect the identity of a complainant; this is to limit the potential for retaliation. OCR may reveal a complainant's name if given permission by the complainant. OCR may not investigate a complaint if revealing the complainant's name is necessary to conduct the investigation, but the complainant refuses to be identified. The procedures for investigation are addressed by sections of the regulation implementing Title VI of the Civil Rights Act of 1964, which are incorporated by reference in the Title IX regulation.

OCR's role is neutral; in effect, to determine whether federal funds have been used in a discriminatory manner. OCR does not act as an advocate for either the complainant or institution officials. However, if OCR finds noncompliance, it may pursue a remedy preferred by the complainant, even though other compliance options that may be preferred by the institution are permissible under Title IX. OCR may not dictate how an institution complies, only that it complies; nevertheless, institution officials may need to be persistent in eliciting all of their compliance options from OCR staff.

Compliance Reviews. OCR has the authority to initiate an investigation even though no one has filed a complaint. OCR refers to such investigations as compliance reviews, which from the institution's perspective, differ little from complaint investigations. The information requested and OCR's analyses for compliance are the same. Usually, but not always, OCR targets institutions for compliance reviews based on information suggesting compliance problems.

Technical Assistance. Technical assistance is provided at the request of institution officials by telephone, in writing, and/or during campus visits. Telephone requests are usually referred to the enforcement office staff member most knowledgeable of the specific issue. OCR's written responses are usually confined to generic policy statements to avoid the appearance of issuing findings that accept statements in the request as complete and factual. Due to budget constraints, campus visits for technical assistance are limited. OCR does not permit institutions to pay OCR's travel expenses due to potential conflict of interest concerns. Thus, campus visits for technical assistance are more likely for those institutions near OCR's 12 enforcement offices.

Federal Investigations

When OCR receives a complaint, it must confirm jurisdiction by determining that the institution receives federal funds. OCR acknowledges receipt and advises the complainant whether additional information is needed to complete the complaint. OCR may suggest to the complainant and institution officials that they try to resolve the complaint informally, prior to investigation by OCR. If the complainant and institution reach agreement, OCR may close the case without investigation or additional involvement. Otherwise, OCR investigates the complaint. OCR then requests and analyzes information from the institution. OCR has the legal authority to collect the information necessary, and continued refusal to provide information can lead to administrative proceedings to terminate federal funds.

OCR schedules a campus visit when necessary to interview staff and inspect facilities, although many OCR investigations do not require campus visits. Institution officials may request a different schedule if OCR proposes to visit campus at an inconvenient time. When a violation is found, OCR requests that institution officials commit in writing to remedy the violation. OCR may then issue a short closure letter to which a voluntary resolution agreement is attached. If institution officials refuse to commit to a resolution, OCR may draft a formal letter of findings, as preliminary to initiating procedures to terminate federal funds.

The issuance of a closure letter or letter of findings closes the investigative phase, and OCR monitors the institution's implementation of the corrective action. The voluntary resolution agreement usually stipulates dates by which the institution is to submit documentation demonstrating progress toward compliance or completion of the corrective action. When monitoring is complete and all corrective action implemented, OCR may issue a closure letter ending its involvement.

Letters of Findings. For much of its history, OCR issued "letters of findings" (LOFs) describing the allegations, findings of fact, and compliance conclusions. During the 1980s, at the request of institution officials, OCR began negotiations for a remedy prior to issuing LOFs, so the letters could acknowledge the institution's willingness to resolve the compliance concerns.

In December 1993, OCR changed its procedures, granting discretion to the enforcement offices whether to write a formal letter of findings. OCR has issued virtually no Title IX athletics LOFs since 1996. As a result, institution officials might not have a complete written explanation to substantiate OCR's finding of noncompliance, or to clarify the Title IX requirements. OCR may encourage institution officials to sign a voluntary resolution agreement even though OCR's findings have only been explained orally; however, institution officials may prefer that no extensive document be available to the public explaining the institution's noncompliance. The resolution agreements are often accompanied by a brief letter closing the investigative phase of the case. LOFs, closure, and resolution letters are available to the public under the Freedom of Information Act.

Title IX Athletics Investigations. Although the general procedures outlined above also apply, Title IX athletics investigations are unique, primarily because of the extensive detail that must be collected and analyzed to determine compliance. Depending on the allegations, OCR may limit an investigation to the accommodation of interests and abilities, or athletic scholarships, or the 11 program components under Other Athletic Benefits and Opportunities. At the secondary level, OCR may conduct a modified investigation of a specific program component to assess the merits of the complaint and determine if further investigation is warranted. If OCR reviews only the accommodation of interests and abilities, only athletic scholarships, or both, the investigation might not require a campus visit; information may be forwarded by mail or e-mail and interviews conducted by telephone. If most or all 13 Title IX athletics program components are investigated, OCR requests extensive data and visits the campus to interview staff and students and inspect facilities. OCR often requests that data be submitted in two to four weeks, and institutions may request extensions for submitting information.

OCR's campus visit may last several days and include inspection of practice and competitive facilities, locker rooms, training rooms, weight rooms, equipment rooms, and coaches' offices. Depending on staff availability, OCR may assign from one to four investigators to conduct the investigation, one of whom is usually the lead investigator. The investigators' work may be reviewed by management and legal staff in the enforcement office. If information suggests compliance problems, OCR staff should request an explanation from institution personnel. If OCR finds compliance problems, it will attempt to negotiate a resolution prior to any formal written notification. OCR routinely takes several months to two years to complete an investigation involving all 13 Title IX athletics program components.

Enforcement Proceedings. OCR may pursue enforcement proceedings if an institution found in violation refuses to take corrective action despite repeated efforts by OCR to obtain a voluntary resolution. The culmination of these proceedings may be termination of federal funds to the institution; however, this occurs only after a prolonged process. In OCR's history, federal funds have been terminated only rarely. Routinely, OCR obtains compliance commitments before formal procedures are initiated.

Under statutory and regulatory procedures, no order to suspend or terminate funds may be implemented until: 1) the responsible ED official has advised institution officials of the failure to comply and determined that voluntary compliance cannot be secured; 2) after an opportunity for hearing, there has been an express finding on the record of failure to comply; and 3) 30 days have expired after the Secretary of Education has filed a full written report of the discriminatory actions and the grounds for terminating funds with the appropriate committees of the U.S. House of Representatives and U.S. Senate with legislative jurisdiction over the program involved.

OCR's other alternative when an institution refuses to comply is to refer the case to the Department of Justice to pursue enforcement in federal court.

Lawsuits

A lawsuit is a distinctly different action than filing an OCR complaint. OCR is not involved in lawsuits. OCR may, depending on the timing of a lawsuit in relation to the same allegations filed with OCR, suspend investigation of the complaint pending the outcome of the lawsuit.

An individual who files a lawsuit alleging Title IX violations may do so regardless of filing a complaint with OCR. There is no requirement that a complainant exhaust attempts at an administrative remedy through OCR before filing a lawsuit. An individual filing a lawsuit must have "standing," that is, be the alleged victim of discrimination. (In contrast, anyone may file a complaint with OCR.) Depending on the plaintiff's allegations, the courts may order specific remedies. The courts may also award monetary damages under Title IX to victims of sex discrimination.