



“The School Discriminated Against My Child”: How to Effectively Respond to an OCR Investigation

Presented by

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Basics on OCR

- Office of U.S. Department of Education
- Enforcement authority:
 1. §504 of the Rehabilitation Act of 1973
 2. Title VI of the Civil Rights Act of 1964
 3. Title IX of the Education Amendments of 1972
 4. Title II of the Americans with Disabilities Act
 5. Age Discrimination Act of 1975
 6. Boy Scouts of America Equal Access Act of 2001



Complaint Resolution and Enforcement Mechanisms

- See OCR Case Processing Manual (CPM), July 2022

<https://www2.ed.gov/about/offices/list/docs/ocrcpm.pdf>

- Most cases resolved in **Early Complaint Resolution**, or by means of a negotiated **Resolution Agreements**
- If not, matter proceeds to investigation and a formal **Letter of Findings (LOF)**



Complaint Resolution and Enforcement Mechanisms

- **Complaint evaluation stage (internal)**

Does complaint meet criteria?

180-day limitation period

Waiver of limitation period?

Other criteria barring complaint?

Issue pending in due process or internal grievance?



Complaint Resolution and Enforcement Mechanisms

- **Early Complaint Resolution (ECR)**

- Agreement with complainant

- OCR serves as go-between/mediator

- Parties reach agreement

- OCR not party to agreement

- Resolves case at earliest stage

- No monitoring by OCR



Complaint Resolution and Enforcement Mechanisms

- **Voluntary Resolution Agreement (RA)**

- Best if District initiates draft (if possible)

- Must address all complaint issues

- Can include disclaimers of liability

- Can include items already in place

- Must include monitoring schedule

- Should include citations to regulations



Complaint Resolution and Enforcement Mechanisms

- **Voluntary Resolution Agreement**

If District agrees to RA early on, the investigation will cease, in order to draft the RA.

Thus, it's best to decide on RA early on (get advice at the onset of the complaint, to assess your legal risk of a violation finding).



Complaint Resolution and Enforcement Mechanisms

- **On-Site Investigation**

May happen if previous methods don't work

Series of interviews (sometimes by phone or Zoom)

Sometimes, issues can expand during visit

Viable option for districts that believe there is no violation and can show it



Complaint Resolution and Enforcement Mechanisms

- **Letters of Findings**

Violation LOF

No-violation LOF

Mixed LOFs

More resolution attempts if violation found

If no agreement, enforcement may proceed
(can lead to suspension of federal funding)



Office for Civil Rights (OCR) Complaint Notes

- Parents of §504 **or** IDEA students can file a complaint with OCR alleging a violation of §504 (since IDEA students are §504-eligible residually, they can file OCR complaints).
- If the complaint letter alleges a §504 violation, OCR *will* investigate, unless the alleged violation is more than 180 days old (unless some exception applies).
- Most frequent type of complaint is a denial-of-FAPE complaint (usually for failure to implement plan accommodations in IEP or 504 Plan).



OCR Enforcement and Analytical Approaches

- **OCR's Process orientation**

Generally, OCR does not question educational decision-making, but rather scrutinizes whether the proper process was followed in accordance with §504 regulations.

Thus, in a complaint, it is most important to focus on showing procedural compliance



OCR Enforcement and Analytical Approaches

- **Process orientation**

In *extraordinary cases*, OCR will look at the appropriateness of 504 plans or 504 committee decision-making...



Tips and Strategies for Dealing with Complaint Investigations

- Identify the student who is the subject of complaint
- Research the complaint quickly to determine merits and make decisions
- Retain counsel to assist in case evaluation
- Review CPM to understand process and options
- Provide all requested records (and then some)
- Ask investigator if there is written guidance on the complaint issues



Tips and Strategies for Dealing with Complaint Investigations

- Contact investigator quickly to explain District's choice on resolution options
- If interested in resolution, avoid legal and factual arguments with investigator
- If you think the school is right, diplomatically explain that you want the case to proceed to a letter of findings
- Indicate willingness to enter into a Resolution Agmt as early in process as possible, if there is some exposure to a violation finding



Tips and Strategies for Dealing with Complaint Investigations

- If investigator becomes difficult, ask for another
- Try to keep the issues intact (harder if case proceeds to on-site visits)
- Maintain atmosphere of cooperation (no defensiveness)
- If interested in resolution, offer to draft a proposed resolution agreement for the investigator to review



Tips and Strategies for Dealing with Complaint Investigations

- Look for past resolution agreements with other districts on similar issues in OCR website
- If investigator indicates, after on-site visit, that violations will be found, reconsider opening negotiation on a resolution agmt (terms may not be so great at this point)
- If you're adamant, await enforcement actions, consider renegotiating at that time



Tips and Strategies for Dealing with Complaint Investigations

- Assert 180-day limitation period (make OCR state waiver reasons, if any)
- Refrain from contacting parent (may be seen as retaliation), unless early complaint resolution is taking place
- Focus on showing procedural compliance (be knowledgeable of all §504 procedural requirements)



OCR Changes Over Time

- Trump-era Secretary of Education moved to try to curb some OCR practices (large records requests, burdensome resolution agmts, expansion of complaints to systemic issues).

During that time, lots of cases resulted in “no violation” findings due to “conflict in evidence” (i.e., parent statements conflicted with staff statements, so no violation).

Process has changed since....



OCR Implementation Analysis

- **Implementation Claims (Example of Traditional Analysis)**

Littleton Pub. Schs. (Massachusetts SEA 2016)

After a 3-day §504 DP hearing, the HO found school failed to consistently implement §504 plan for a high school student with ADHD

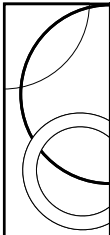
Parent sought compensatory services



Littleton Pub. Schs., 116 LRP 24170 (Massachusetts SEA 2016)

HO found that despite lapses in implementation, the student “successfully participated and accessed the curriculum in Honors classes.”

Student passed her classes and the State assessment, and accessed accelerated curriculum courses

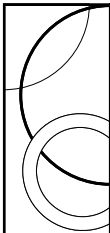


**Littleton Pub. Schs., 116 LRP 24170
(Massachusetts SEA 2016)**

Thus, there was equal opportunity to access educational programs

HO noted that imperfect implementation of a §504 Plan does not automatically result in a denial of FAPE or a compensatory services award

HO thus denied relief



OCR Implementation Analysis

Federal courts' analysis of IEP implementation failures under IDEA

Rule—Only a material failure to implement IEP, or a failure to implement a significant or essential component of the IEP, will amount to an actual denial of FAPE (see, e.g., *Houston ISD v. Bobby R.*, 31 IDELR 185 (5th Cir. 2000), and similarly-decided cases from 2nd, 4th, 8th, and 9th Circuits).



OCR Implementation Analysis

Analysis should focus on the non-discrimination obligations of §504 (i.e., whether student was able to meaningfully access the educational program overall)

OCR, however, has not analyzed implementation complaints in this manner consistently over time...



• **Bush-Era Implementation Analysis**

See, e.g., *White Deer Ind. Sch. Dist.* (OCR 2002); *Archer City Ind. Sch. Dist.* (OCR 2003); *Jim Ned Cons. Ind. Sch. District* (OCR 2003); *Framingham (MA) Pub. Schs.*, 108 LRP 21725 (OCR 2007)

In these cases, there were implementation lapses, but OCR did not find denials of FAPE, since students nevertheless did well in their classes.

Akin to the “traditional” analysis of federal courts...



- **Obama-Era OCR Implementation Analysis**

Leon County (FL) Sch. Dist., 68 IDELR 111 (OCR 2015)

8th-grader was reluctant to go to guidance department for test administration or have teachers sign his agenda book, and teachers did not push the issue.

OCR's position was that the District had to implement the student's §504 Plan **as written**, so there was a violation.



- **Obama-Era OCR Implementation Analysis**

Leon County (FL) Sch. Dist. , 68 IDELR 111 (OCR 2015)

OCR did not state whether the student passed his classes or statewide tests in making its findings (what do we think?..).

What about the fact that it was the student that was unwilling to access the help in the §504 plan?... How should that issue be addressed?



- **Obama-Era OCR Implementation Analysis**

Note—During this timeframe, OCR appears to have applied a “strict liability” approach to §504 plan implementation lapses



- **Trump-era OCR Implementation Analysis (Post-2018)**

“When evaluating whether a district has failed to provide the related aids and services deemed necessary to provide the student a FAPE, OCR determines:...

whether the placements, aids, and services identified by the district through this process as necessary to meet the student's individual needs were or are being provided. ***If they have not been provided, OCR will determine the district's reason for failing to do so and the impact of the failure.***”



- **Trump-era OCR Implementation Analysis (Post-2018)**

Note—At this time, OCR assessed the “**impact**” of any failure to implement the §504 Plan

Meaning, if OCR determines that a failure to implement accommodations did not result in a denial of FAPE (overall equal opportunity to access regular curriculum and programs), it will not find a violation of §504



- **Trump-era OCR Implementation Analysis (Post-2018)**

What if parents and teachers differ on whether accommodations were provided?

“Where there is a **significant conflict in the evidence** and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.” (See, e.g., *Klein ISD*, 119 LRP 20779 (OCR 2018))



- **Trump-era OCR Implementation Analysis (Post-2018)**

In sum, it appears that in very complaints (from late 2018 to 2021), OCR reverted to a more relaxed analysis that examines “impact” of failure to implement

Thus, not every failure to implement means a finding of violation of §504—the failure must negatively impact the student’s performance and overall equal opportunity to receive education

Plus, if there is a conflict in evidence, OCR will generally find insufficient evidence of violation



- **Trump-era OCR Implementation Analysis (Post-2018)**

Really, a standard that better comports with the analyses of federal courts on implementation lapses in §504 or IDEA....

But, the counterpoint is that it is well-established enforcement agencies are able to take compliance action even in situations where courts might not award a remedy.

Has the present administration’s OCR reverted to a stricter analysis for claims of failure to implement accommodations? It appears so....



- **Current OCR Implementation Analysis (Post-2020)**

A cursory review of OCR decisions appears to show much fewer no-violation findings.

No more “conflict of evidence” analysis.

Many more complaints resolved by voluntary resolution agreements.

Common terms in agreements—504/ARD meetings to consider compensatory services, staff training (materials pre-approved by OCR), policy review and/or changes, OCR monitoring schedule.



- **Current and Revised OCR Implementation Analysis**

Practical Guidance—Best for §504

Committees to set forth accommodations and services in most specific terms possible on the written Plans

Enables teachers to better understand their day-to-day obligations

Parents better understand the district’s commitment to resources to the student

Helps minimize potential for disputes



- **Current and Revised OCR Implementation Analysis**

Practical Guidance—Best for schools to train instructional staff to implement all §504 Plan accommodations **consistently as written**

And, if student starts to struggle, teachers may want to “double-down” on documenting implementation of plan accommodations

Also, only include in 504 plans accommodations that are necessary every day, not those that are needed occasionally.



- **Legal “Danger Areas”**

Service dogs (many misconceptions, easy to run afoul of regs and guidance).

Aftercare programs (must provide reasonable accommodations, including 1:1 aides, extra staff, behavior plans, toileting assistance, etc...).

Interdistrict and intradistrict transfers (danger if denied or revoked due to disability-related factors, such as absences, behavior).



- **ADA Effective Communication CART Cases**

USDOE takes the position that even if a school complies with FAPE under IDEA or §504, ADA may require more, as in the area of “equally effective” communication

Ladue (MO) Pub. Sch. Dist. (OCR 2016)

Student with AU and AI was being provided an FM system in the classroom, but eventually got CART for a trial period when teachers grew concerned about his ability to participate in classroom discussions.



- **ADA Effective Communication CART Cases**

Ladue (MO) Pub. Sch. Dist. (OCR 2016)

After 9 wks, CART was discontinued because the student wasn't using it (but school did not reinstitute the FM system).

OCR found that staff could not disregard the IEP, even if he did not appear to use the service (instead of convening the IEP team, staff simply stopped using CART or the FM system).



- **ADA Effective Communication CART Cases**

Ladue (MO) Pub. Sch. Dist. (OCR 2016)

OCR instructed the District to give primary consideration to the student's preferred communication method.

Note—Does not his lack of use of CART indicate that is not his preference? OCR may simply want this decision to be made with correct procedure...



- **ADA Effective Communication CART Cases**

Ventura (CA) USD (OCR 2016)

When CART was implemented, teachers would begin verbalizing instructions before microphone was turned on, and at times, the microphone would not pick up other student's comments, unless they sat near the teacher

OCR found student did not receive equally effective communication



- **ADA Effective Communication CART Cases**

Ventura (CA) USD (OCR 2016)

(If you're going to expend the large resources on CART, you want to do it right)



- **OCR Website Accessibility Complaints**

A modern priority compliance area for OCR

Usually, schools enter into Resolution Agmts to address the complaints, that include:

- (1) school **policies** to ensure accessibility of website content (current and future)
- (2) independent **audit** by a company approved by OCR with expertise in assessing website accessibility, and
- (3) a **plan** to make websites accessible within a certain timeframe based on the audit



- **OCR Website Accessibility Complaint Investigations**

504 Coordinators may want to check with website creators in their districts to ascertain whether websites have been audited and updated for accessibility for persons with disabilities (WCAG 2.0 standards, at AA Intermediate Level)

If not, the district is in danger of OCR complaint investigations



- **OCR Website Accessibility Complaints**

Notes—The school policies do not have to be in-depth (mainly a commitment to website content accessibility)

Timelines for development of policies and plan for accessibility are negotiable with the OCR Investigators

Look at other schools' recent Resolution Agmts to make sure yours looks similar, in terms of requirements...



- **OCR Website Accessibility Complaints**

Notes—On April 8, 2024, DOJ issued regulations on website accessibility under the ADA for state and local government entities (see 28 C.F.R. Part 35).

See Fact Sheet: New Rule on the Accessibility of Web Content and Mobile Apps Provided by State and Local Governments, on ADA.gov

These will govern new OCR website accessibility complaints.



- **OCR Website Accessibility Complaints**

See the following link for past OCR Resolution Agreements

<https://www2.ed.gov/about/offices/list/OCR/docs/investigations>