

Education Department's Civil Rights Office Reinstates Complainant Protections, Systemic Investigations

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The revised [Case Processing Manual](#) (CPM) issued by the U.S. Department of Education Office for Civil Rights (OCR) outlines the procedures OCR uses “to promptly and effectively investigate and resolve complaints, compliance reviews, and directed investigations to ensure compliance with the civil rights laws OCR enforces.”

OCR last revised the CPM in August 2020. In many instances, the latest changes, effective July 18, 2022, focus on providing complainants with additional opportunity to clarify their complaints or making clear that OCR will not close or dismiss cases when complaints involve systemic issues. Other changes may be viewed by some as providing less protections to respondents or recipients. For example, OCR has removed a section specifically addressing First Amendment issues and a provision noting a copy of a complaint will be provided to the recipient if OCR opens an investigation.

Some key revisions include the following:

- Previously, a case could be dismissed if OCR obtained credible evidence that a matter had been resolved. Now, OCR will only dismiss cases under certain circumstances if there are no systemic issues. The revised CPM provides that OCR also will attempt to ascertain the apparent resolution. Similarly, OCR will close or dismiss a complaint when a complainant withdraws a complaint or passes away *only* when there are no systemic issues.
- Rather than make dismissals automatic or mandatory, OCR will “generally” or “may” close or dismiss complaints when certain circumstances exist. This change suggests that OCR will exercise more discretion, possibly resulting in more investigations.
- Under the previous CPM, OCR could dismiss a complaint up until the point when a final determination (insufficient evidence or a violation) had been approved. Under the revised CPM, where OCR has obtained sufficient evidence to support a finding, it will issue an insufficient-evidence letter or a violation letter with a proposed resolution agreement. OCR will not issue a letter at the recipient’s request expressing OCR’s concerns only and propose an agreement to address the concerns once OCR has obtained sufficient evidence to make a finding (insufficient evidence or a violation). Bottom line, it may be in an institution’s interest to resolve an OCR matter early in the process, rather than risk a possible violation finding and more comprehensive proposed resolution agreement.
- Appeals for certain determinations and dismissals, which the previous permitted for complainants only, are no longer provided for in the revised CPM.

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Other CPM changes include the following:

- Under the previous CPM, a complaint could be dismissed if the consent form was not returned within 20 days. Now, OCR will phone or email the party if a signed consent form is not received within 15 days to advise that the complaint could be dismissed if the consent form is not received within the next five days.
- Complainants now have at least 20 calendar days, rather than 14 calendar days, to provide any supplemental information requested by OCR before OCR dismisses the complaint.
- The previous CPM stated that an allegation may be considered timely where the complainant alleges a continuing violation and/or pattern of discrimination. The revised CPM states that *OCR* will determine whether the allegations constitute a continuing violation and/or pattern of discrimination.
- Previously, complaints involving the same or similar allegations based on the same operative facts filed by the complainant or another party in court or with another agency could be dismissed. Under the revised CPM, the complainant must file the same allegation against the same recipient for OCR to dismiss the complaint.
- Previously, OCR could suspend cases for 30 days during mediation. Now, however, cases that fail under mediation will be closed and may be reopened under a new complaint number. This would allow OCR to emphasize mediation as an option and accommodate longer mediation processes without running into the expectation that cases will be processed within 180 days.
- OCR will issue a Letter of Impending Enforcement Action 10 calendar days after negotiations to enter into a resolution agreement fail. This is consistent with previous versions of the CPM in effect during the Obama Administration.
- The revised CPM provides a new closure or dismissal basis to address complaints that exclusively allege public school recipients failed to comply with requirements of OCR's Civil Rights Data Collection (CRDC). The revised CPM clarifies that such cases will be referred to OCR's Program Legal Group. When cases involve other allegations in addition to concerns about compliance with CRDC requirements, the Regional Office may investigate and take appropriate action.

Although OCR does not typically apply changes retroactively, it can be complicated to determine which version of the CPM applies to pending cases moving through the stages of OCR processing, *i.e.*, evaluation, investigation, and resolution. For example, will OCR apply the revised CPM dismissal provisions to pending matters or only to ones filed after July 18, 2022? Institutions should work closely with counsel to ensure they understand how the revised CPM will affect pending OCR complaints, investigations, and compliance reviews.

The Jackson Lewis Higher Education group will continue to monitor ongoing developments in this area, particularly as they relate to educational institutions' compliance obligations. Please contact a Jackson Lewis attorney with any questions about OCR's CPM and future developments.

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