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OCR Scales Back Scope of Civil Rights Investigations

BY TIMOTHY H. POWELL • JUNE 28, 2017

On June 8, 2017, the Department of Education (DOE) Acting Assistant Secretary for Civil Rights, Candice Jackson, issued an [internal memorandum](#) to staff with new guidance aimed at reducing the scope of the Office of Civil Rights (OCR) investigation of complaints. Under the Obama administration, OCR applied an expansive approach to its investigations, where inquiry into individual complaints involving certain hot-button issues like student discipline, sexual assault, equal access to educational resources, and racial equality could lead to broader investigations of systemic discrimination or harassment at educational institutions. Under the new administration, OCR aims to limit investigations to the individual allegations, and to seek rapid resolution without broadening the scope of particular types of cases.

The memo instructs staff that “effective immediately, there is no mandate that any one type of complaint is automatically treated differently than any other type of complaint.” Instead, the investigative team must determine “on a case-by-case basis the type and scope of evidence that is necessary to support a legally sound investigation and determination, with the understanding that all OCR investigations are to be framed by in their scope by the allegations of each particular complaint.” In particular, OCR will be abandoning its prior practice of requiring investigators to obtain three years of past complaint data and files to assess an institution’s compliance; past data will instead only be requested at the discretion of the investigators. In addition, the memo clarifies that OCR will only apply a “systemic” or “class-action” approach to the investigation where the individual complaint specifically alleges such concerns and the investigative team determines such an approach is warranted.

A stated goal of the OCR is to “empower our investigative staff to clear case backlogs and resolve complaints within a reasonable time-frame.” DOE Secretary Betsy DeVos has also [proposed](#) cutting over forty positions from OCR, and has stated in the DOE [2018 Budget Request](#) that with reduced staff the Office will have to “make difficult choices, including cutting back on initiating proactive investigations.”

Client Tip: *Institutions can expect OCR investigations to be less onerous in terms of the broader information required during investigation, with a focus on resolving complaints quickly with respect to individual allegations, rather than expanded investigation into potential systemic issues. Despite this scaling back of OCR investigative proactivity, however, complainants maintain their right to appeal and bring their allegations before the courts, and we may see an increase in civil rights actions at the court level as a result of this shift in administrative priorities.*