



U. S. DEPARTMENT OF EDUCATION



**Annual Report to Congress  
Of the Office for Civil Rights  
Fiscal Year 2007–08**

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Of the Office for Civil Rights  
Fiscal Years 2007–08

January 2009

U.S. Department of Education  
Office for Civil Rights

**U.S. Department of Education**

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## OCR's Mission:

*Ensuring equal access to education and  
promoting educational excellence  
throughout the nation through  
vigorous enforcement of civil rights.*



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## FOREWORD

On behalf of the Office for Civil Rights (OCR), I am pleased to present the *Annual Report to Congress* for fiscal years 2007 and 2008. OCR continues to focus on one mission: to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights. The dedicated employees of OCR strive to implement this mission for all students and I am proud to inform you of our achievements.

This report details OCR's accomplishments in enforcing the civil rights laws under which OCR has been granted jurisdiction to address and remedy discrimination. These enforcement efforts include complaint investigation and resolution, compliance reviews and technical assistance, as well as regulatory and policy development. This report also highlights OCR's efforts to further improve enforcement capabilities by promoting management excellence. OCR continues to carry out its mission by seeking to meet the highest performance and quality standards.

*On education, we must trust students to learn if given the chance, and empower parents to demand results from our schools. In neighborhoods across our country, there are boys and girls with dreams—and a decent education is their only hope of achieving them.*

President George W. Bush  
2008 State of the Union Address

On June 23, 2007, OCR celebrated the 35th anniversary of Title IX of the Education Amendments of 1972 (Title IX), one of the nation's landmark civil rights laws. Title IX prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance. Congress passed Title IX amid growing concerns of the disparity in education opportunities available to male and female students. Title IX greatly increased the ability of women and girls to engage fully and actively in opportunities previously denied them. The strides we have made since the enactment of Title IX are significant, and OCR remains fully committed to ensuring nondiscrimination in all education programs and activities so that all students, male or female, have access to education opportunities regardless of their sex.

The right of every child to have equal education opportunity is at the heart of every law OCR enforces. In 2001, Congress passed and President Bush signed into law the *No Child Left Behind Act of 2001 (NCLB)*. *NCLB* symbolizes a national commitment to education by requiring schools to show achievement through measurable results and to take actions where targeted results have not been achieved. As U.S. Secretary of Education Margaret Spellings noted, *NCLB* "is not just an education law, it's a civil rights law, designed to make America's promise a reality for all citizens." The truth of this statement is profound. All children, regardless of race, color, national

origin, disability, or sex, deserve the opportunity to receive a quality education. *NCLB* mandates equal access to a quality education, and OCR is working to further guarantee that opportunity for all students by ensuring they are able to learn in an environment free of discrimination.

*[A]ll children, regardless of what they look like, or where they come from, deserve a quality education.*

Secretary Margaret Spellings  
*Remarks at the National Press Club  
January 10, 2008*

President Bush has said, “In neighborhoods across our country, there are boys and girls with dreams—and a decent education is their only hope of achieving them.” Education is the gateway to success. It is our responsibility to ensure that every child has access to that pathway to success and that no child is ever foreclosed from achieving his or her dreams. In order to achieve this, all students must be able to fully participate in the education system. OCR is committed to providing this opportunity to every child. This report details OCR’s efforts in meeting this mission.

Respectfully submitted,



Stephanie J. Monroe  
Assistant Secretary for Civil Rights

# OVERVIEW OF OCR'S STRUCTURE AND PROGRAM

The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) is responsible for enforcing five federal civil rights laws prohibiting discrimination on the bases of race, color, national origin, sex, disability and age by recipients of federal financial assistance. These laws are:

- Title VI of the *Civil Rights Act of 1964* (prohibiting discrimination based on race, color and national origin);
- Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education programs or activities);
- Section 504 of the *Rehabilitation Act of 1973* (prohibiting disability discrimination);
- The *Age Discrimination Act of 1975* (prohibiting age discrimination); and
- Title II of the *Americans with Disabilities Act of 1990* (prohibiting disability discrimination by public entities, regardless of whether they receive federal financial assistance; OCR has enforcement responsibilities with respect to elementary and secondary education systems and institutions, institutions of higher education and vocational education other than schools of medicine, dentistry, nursing, and other health-related schools, and libraries).

In addition, OCR enforces the *Boy Scouts of America Equal Access Act*. This law, part of the *No Child Left Behind Act of 2001*, provides equal access to meet in school forums for the Boy Scouts of America and other youth groups designated, in Title 36 of the United States Code, as “patriotic societies.” The act applies to any public elementary school, public secondary school or state or local education agency that has a designated open forum or limited public forum and that receives funds from ED.

These civil rights laws represent a national commitment to end discrimination in education programs and activities. Since most education institutions receive some type of federal financial assistance, these laws apply throughout the nation.

These civil rights laws extend to:

- 17,618 public elementary and secondary education agencies;<sup>1</sup>
- 4,276 colleges and universities; and <sup>2</sup>
- thousands of institutions conferring certificates below the associate degree level, such as training schools for truck drivers and cosmetologists, and other entities, such as libraries, museums, and vocational rehabilitation agencies.<sup>3</sup>

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<sup>1</sup> U.S. Department of Education, National Center for Education Statistics (2007). *Digest of Education Statistics 2006*, Table 85, “Number of public elementary and secondary education agencies, by type of agency and state or jurisdiction: 2003-2004 and 2004-2005,” Washington, D.C.: Author.

<sup>2</sup> Ibid, Table 244, “Degree-granting institutions by control and type of institution: Selected years, 1949-1950 through 2005-2006.”

<sup>3</sup> Ibid, Table 361, “Number of non-degree-granting Title IV institutions offering postsecondary education, by control and state or jurisdiction: Selected years 2000-01 through 2005-06.”

Consequently, these civil rights laws protect millions of students attending or seeking to attend our education institutions. In certain situations, the laws also protect persons who are employed or seeking employment at education institutions. Overall, these laws protect:

- more than 49.8 million students attending public elementary and secondary schools;<sup>4</sup> and
- more than 18.2 million students attending degree-granting institutions, such as colleges and universities.<sup>5</sup>

Enforcing these laws is critical to carrying out the mission of ED: to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

In FY 2007, OCR's budget was \$91,205,000 with full-time equivalent (FTE) usage of 614. In FY 2008, OCR's budget was \$89,612,000 and the FTE usage remained unchanged from FY 2007 at 614. Despite the cut in its budget, OCR has continued to carry out a heavy workload. In FY 2008, OCR received 6,194 complaints and resolved 5,943 complaints.<sup>6</sup> OCR initiated 42 compliance reviews in FY 2008, which was a significant increase from FY 2007, and OCR resolved 38 compliance reviews.<sup>7</sup> See Table 1 showing appropriations, FTEs and workload from 1997 to 2008.

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<sup>4</sup>U.S. Department of Education, National Center for Education Statistics (2007). *Projections of Education Statistics to 2015* (NCES-2008-060), Table 1, "Actual and projected numbers for enrollment in grades PK–12, PK–8 and 9–12 in elementary and secondary schools, by control of school: Fall 1990 through fall 2015," Washington, D.C.: Author.

<sup>5</sup>Ibid, Table 10, "Actual and alternative projected numbers for total enrollment in all degree-granting postsecondary institutions, by sex, attendance status, and control of institution: Fall 1990 through fall 2015."

<sup>6</sup> Includes cases carried over from previous years.

<sup>7</sup> Includes cases carried over from previous years.

**Table 1. OCR Budget Requests, Appropriations, FTE Usage and Workload, 1997-2008**

<i>FY</i>	<i>Presidential Request</i>	<i>Congressional Appropriation</i>	<i>FTE (Usage)</i>	<i>Complaints</i>		<i>Compliance Reviews</i>	
				Filed	Resolved <sup>†</sup>	Initiated	Resolved <sup>†</sup>
2008	\$93,771,000	\$89,612,000	614	6,194	5,943	42	38
2007	\$92,866,000	\$91,205,000	614	5,894	5,737	23	26
2006	\$91,526,000	\$90,611,000	630	5,805	5,893	9	72
2005	\$92,801,000	\$89,375,000	640	5,533	5,365	73	66
2004	\$91,275,000	\$88,305,000	655	5,044	4,968	53	29
2003	\$89,710,000	\$85,715,000	672	5,141	5,246	74	14
2002	\$79,934,000	\$79,666,000	698	5,019	4,842	11	18
2001	\$76,000,000	\$75,822,000	696	4,571	4,777	21	43
2000	\$73,262,000	\$71,200,000	712	4,897	6,364	47	71
1999	\$68,000,000	\$66,000,000	727	6,628	5,369	76	93
1998	\$61,500,000	\$61,500,000	685	4,847	4,753	102	100
1997	\$60,000,000	\$54,900,000	681	5,296	4,981	152	140

<sup>†</sup> Includes cases carried over from previous years.

## I. ORGANIZATIONAL STRUCTURE

OCR is composed of a headquarters office, located in Washington, D.C., and 12 enforcement offices representing 12 regions located in the United States and its jurisdictions. The headquarters office provides overall leadership, policy development and coordination of enforcement activities. The enforcement offices are responsible for investigating and resolving complaints of discrimination, conducting compliance reviews, monitoring corrective action agreements, and providing technical assistance. The majority of OCR's staff is assigned to the enforcement offices, which are located in Boston, New York, Philadelphia, Washington, D.C., Atlanta, Dallas, Cleveland, Chicago, Kansas City, Denver, San Francisco, and Seattle. See Appendix A for a list of the enforcement offices and contact information.

**Figure 1. OCR's Offices**



## **II. COMPLAINT INVESTIGATIONS AND RESOLUTIONS**

One of the most important ways OCR carries out its responsibilities is by investigating and resolving complaints. People who believe there has been a violation of the civil rights laws enforced by OCR may file a complaint with the appropriate enforcement office.

In resolving complaints, OCR's primary objectives are to investigate promptly the allegations of discrimination, to accurately determine whether the civil rights laws have been violated, and to remedy the violation. In FY 2007, OCR received 5,894 complaints and resolved 5,737, some of which had been filed in previous years. In FY 2008, OCR received 6,194 complaints and resolved 5,943. (See Table 1. See also, Appendix B, which shows FY 2008 complaint receipts by OCR enforcement office, and Appendix C, which shows FY 2007 complaint receipts by OCR enforcement office.)

Timeliness is critical to students and parents in the resolution of civil rights issues. OCR has set goals for timeliness, which serves as a useful measure of the efficiency and effectiveness of its complaint resolution process. OCR's goal is to have at least 80 percent of new complaints resolved within 180 days of being filed. In FY 2007, 93 percent of new complaints were resolved in 180 days, significantly exceeding the target of 80 percent. In FY 2008, 91 percent of new complaints were resolved in 180 days. The FY 2008 percentage continues to greatly exceed the target of 80 percent.

OCR continues to meet or exceed its customers' expectations of resolving complaints in a timely and thorough manner as well as its *Government Performance and Results Act (GPRA)* performance indicator, as demonstrated in the chart on page six.

The performance target was modified in FY 2006 to measure whether at least 80 percent of complaints with due dates in the relevant fiscal year were resolved within the 180-day timeframe. The charts below illustrate performance results for FY 2008, FY 2007 and FY 2006 using the new standard as well as prior fiscal-year results using the former standard.

Current performance measure for complaint workload:

Fiscal Year	Number of Complaints With Resolution Due Dates Within the Fiscal Year	Number of Complaints Resolved Within 180 Days of Receipt	Percentage of Complaints Resolved Within 180 Days of Receipt
2008*	5,964	5,412	91%
2007**	5,882	5,497	93%
2006	5,692	5,201	91%

\* Data as of October 15, 2008; Complaints received April 1, 2007 through March 31, 2008, have due dates in FY 2008.

\*\*Data as of October 17, 2007; Complaints received April 1, 2006 through March 31, 2007, have due dates in FY 2007.

Historical performance measure for complaint workload:

Fiscal Year	Number of Complaints Resolved	Number of Complaints Resolved Within 180 Days of Receipt	Percentage of Complaints Resolved Within 180 Days of Receipt
2002	4,842	4,301	89%
2003	5,225	4,737	91%
2004	4,968	4,539	92%
2005	5,365	4,924	92%

In addition, after identifying an increase in the percentage of pending cases that were over 180 days old, OCR added a target to ensure that no more than 25 percent of pending cases would be over 180 days old. In FY 2007, only 18 percent of pending cases were over 180 days old, exceeding the 25 percent *GPR*A target as well as the FY 2006 performance level of 21 percent. In FY 2008, OCR matched its FY 2007 percentage with only 18 percent of pending cases over 180 days old.

Pending complaints over 180 days old, FY 2006-08:

Fiscal Year	Number of Pending Complaints	Number of Pending Complaints Over 180 Days	Percentage of Pending Complaints Over 180 Days
2008	1,876	337	18%
2007	1,617	285	18%
2006	1,458	308	21%

OCR has an additional performance measure –customer satisfaction– which is determined through a customer service survey that is distributed to both complainants and recipients after a case is resolved. The survey measures courteous and considerate



treatment of customers, prompt written and oral communication, clear and responsive oral and written communication, and whether the customer was kept informed about his or her case. Based on responses to the survey in FY 2005, OCR's customer satisfaction performance baseline was established at 3.66, on a scale of 1 through 5, with 5 being the highest score possible. OCR has steadily improved its score on the customer service survey. OCR's FY 2006 score was 3.84; its FY 2007 score was 3.96; and its FY 2008 score was 3.99.

Customer service scores, FY 2005-08:

<b>GPRA 3.66 on Mean Score of responses to OCR's customer service survey</b>	
<b>FY 2008</b>	<b>3.99</b>
<b>FY 2007</b>	<b>3.96</b>
FY 2006	3.84
FY 2005	3.66

During FY 2007, OCR used the *Case Resolution and Investigation Manual (CRIM)* (updated May 2005), which provided procedures for promptly and effectively investigating and resolving complaints. The CRIM explained how OCR would process all phases of complaint resolution, including evaluation, investigation, resolution, monitoring, and enforcement. The CRIM was posted on OCR's Web site and was made available to the public.

During FY 2007, OCR continued using an investigative approach that stressed full investigation of complaints prior to making a determination of compliance. Under the CRIM, if, after a full investigation, OCR determined that there was evidence of a violation, OCR would attempt to negotiate a resolution agreement with the recipient to correct the violation. Pursuant to both statute and regulation, OCR is obligated to resolve civil rights violations by voluntary and informal means, if possible. If negotiation and resolution methods failed, OCR issued a violation letter of findings and again attempted to negotiate a settlement agreement to correct the violations. It is only after OCR advised recipients of their failure to comply with the civil rights laws and determined that compliance could not be secured by voluntary means that, as a last resort, OCR sought compliance through the administrative hearing process or referred cases to the U.S. Department of Justice for judicial enforcement.

In March 2008, OCR issued a new *Case Processing Manual (CPM)* to replace the CRIM. Like the CRIM, the CPM sets forth procedures for all phases of case processing, including evaluation, investigation, resolution, monitoring, and enforcement, with a goal of ensuring that investigations are conducted fairly and are legally sufficient and dispositive of all the allegations raised in complaints. The CPM provides OCR with the procedures to promptly and effectively investigate complaints and compliance reviews, issue findings, and secure resolution agreements that remedy discriminatory policies or

practices identified by OCR. The CPM was revised with the goal of ensuring due process and of providing greater flexibility in resolution. Recognizing that training is always critical to the success of any initiative, training sessions were conducted for each OCR enforcement office as well as staff in headquarters. By March 14, 2008, each enforcement office as well as headquarters received in-person training on the CPM.

Similar to the CRIM, the CPM also provides for the resolution of complaints prior to the conclusion of OCR's investigation through the use of the Early Complaint Resolution (ECR) process. However, the CPM provides more opportunity to resolve complaints through the use of ECR. The ECR process *facilitates* the resolution of complaints by providing an opportunity for the parties involved to voluntarily resolve the allegations that prompted the complaint. If OCR determines that ECR is appropriate and the complainant and the recipient are willing to proceed, OCR will initiate ECR to facilitate an agreement between the recipient and the complainant.

*Instead of a complaint, I would like to file a commendation! Earlier this week, we participated in an early complaint resolution meeting facilitated by an OCR investigator. As you can imagine, a letter from OCR is not something we want to receive, but the OCR investigator's professionalism and experience made this resolution process a pleasure. She gave us the steps we needed to take and we followed those steps. ... Her mediation skills were wonderful. She kept the meeting on task and as a result, the district and complainant reached a resolution in the best interest of the child involved.*

E-mail From an Assistant Superintendent

ECR may take place at any time during the investigative process. OCR does not sign, approve, or endorse any agreement reached between the parties. However, OCR assists both parties in understanding pertinent legal standards and possible remedies. OCR will not monitor the agreement but will inform the parties that if a breach occurs, the complainant has the right to file another complaint. OCR monitors the process of ECR carefully to ensure adequate time for completion of the investigation in the event that ECR is unsuccessful. The investigation must be completed in accordance with normal case processing standards and timelines. In FY 2007, OCR resolved 226 complaint allegations using the ECR process. In FY 2008, OCR resolved 259 complaint allegations using the ECR process.

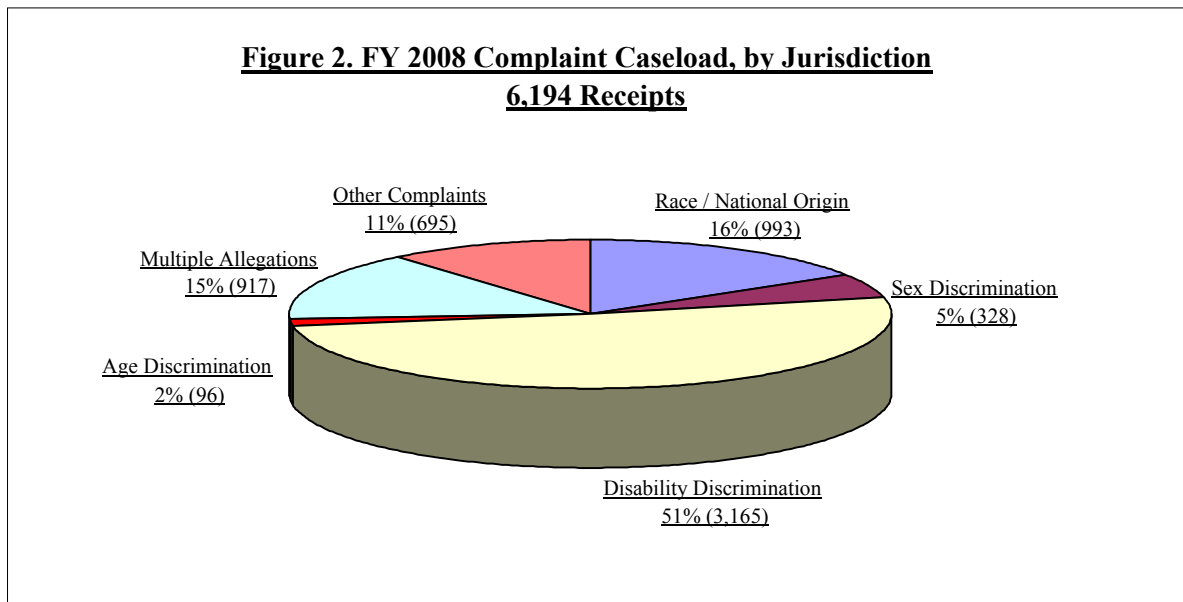
OCR's process continues to provide that if the complainant disagrees with a decision not to proceed with a complaint or a determination that the investigation did not establish a violation of law, the complainant may ask OCR to reconsider the decision. A complainant, however, may not request reconsideration after OCR has investigated, found a compliance concern, and entered into an agreement with a recipient. Reconsiderations focus on factual or legal concerns that could change the disposition of the case. There is a two-tiered process for requesting reconsideration, in which a complainant may first make a request of the enforcement office director and then of headquarters. In FY 2007, 465 first-level requests for reconsideration were received in the enforcement offices and approximately 108 second-level requests were received in headquarters. In FY 2008, 417 first-level requests for reconsideration were received in

the enforcement offices and approximately 112 second-level requests were received in headquarters.

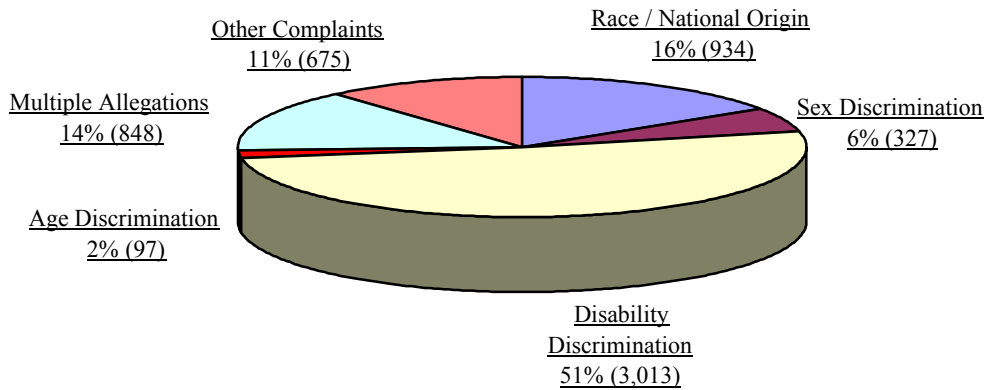
### III. COMPLAINT JURISDICTIONS

As in most years, the majority of complaints OCR received in FY 2007 alleged discrimination on the basis of disability (51 percent). Again in FY 2008, 51 percent of the complaints filed alleged discrimination on the basis of disability. Overall, the focus of complaints filed over the last several years has remained fairly consistent, with similar percentages of complaint receipts in each of the subject-matter jurisdictional areas.

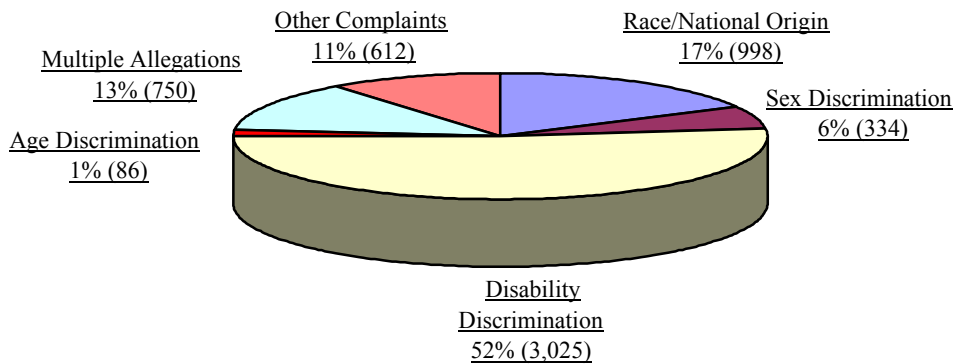
Figures 2, 3, and 4 below show the number and percentage of complaint receipts by jurisdiction in FY 2008, FY 2007 and FY 2006. Appendix B provides a breakout of complaint receipts by jurisdiction and OCR enforcement office for FY 2008. Appendix C provides a breakout of complaint receipts by jurisdiction and OCR enforcement office for FY 2007.



**Figure 3. FY 2007 Complaint Caseload, by Jurisdiction**  
**5,894 Receipts**



**Figure 4. FY 2006 Complaint Caseload, by Jurisdiction**  
**5,805 Receipts**



The number of complaints indicated on the figures as received in each of the jurisdictions represents those complaints that were “purely” within that jurisdiction. “Other” includes mostly complaints over which OCR had no jurisdiction or that were referred to another agency. Those complaints that contained, for example, allegations of both sex and race discrimination, are counted in the “Multiple” section. With this in mind, the following represents the total number of complaints received in FY 2007 that contained allegations in each of the jurisdictions, including in those complaints that contained allegations in the “Multiple” jurisdiction category:

**Title VI:** 1,583 complaints received containing race discrimination allegations (including 934 complaints containing only Title VI issues);

**Title IX:** 682 complaints received containing sex discrimination allegations (including 327 complaints containing only Title IX issues);

**Section 504/Title II:** 3,560 complaints received containing disability discrimination allegations (including 3,013 complaints containing only Section 504/Title II issues); and

***Age Discrimination Act:*** 402 complaints received containing age discrimination allegations (including 97 complaints containing only *Age Discrimination Act* issues).

The total number of complaints received in FY 2008 that contained allegations in each of the jurisdictions, including in those complaints that contained allegations in the “Multiple” jurisdiction category, are as follows:

**Title VI:** 1,724 complaints received containing race discrimination allegations (including 993 complaints containing only Title VI issues);

**Title IX:** 770 complaints received containing sex discrimination allegations (including 328 complaints containing only Title IX issues);

**Section 504/Title II:** 3,760 complaints received containing disability discrimination allegations (including 3,165 complaints containing only Section 504/Title II issues); and

***Age Discrimination Act:*** 410 complaints received containing age discrimination allegations (including 96 complaints containing only *Age Discrimination Act* issues).

#### **IV. COMPLIANCE REVIEWS AND OTHER PROACTIVE INITIATIVES**

In addition to resolving complaints, OCR initiates compliance reviews and takes other proactive steps to focus on specific compliance issues that are particularly acute or national in scope. It has been OCR’s experience that targeted compliance reviews and proactive initiatives increase the impact of OCR’s resources, complement the complaint resolution process, and can benefit larger numbers of students than sole reliance on complaint resolutions, which may involve only one student. Compliance review sites are selected based on various sources of information, including information provided by parents, education groups, media, community organizations, and the public, and, in certain circumstances, on statistical data, to the extent they are supported by other sources of information.

In FY 2007, OCR initiated 23 compliance reviews that focused on several important areas, including accessible facilities for individuals with disabilities (accessibility), Title IX athletics, services for students with limited English proficiency and inappropriate inclusion or exclusion of students with limited English proficiency in special education, inappropriate inclusion or exclusion of minorities in special education, procedural requirements, and testing. In FY 2007, OCR resolved 26 compliance reviews. The

resolved compliance reviews focused on accessibility, services for students with limited English proficiency and inappropriate inclusion or exclusion of students with limited English proficiency in special education services, inappropriate inclusion or exclusion of minorities in special education, and procedural requirements. More specific information about the compliance reviews resolved during FY 2007 is included later in this report. See Table 2 showing the number of reviews initiated and resolved by compliance issue in FY 2007.

<b>Table 2. OCR Compliance Reviews, by Issue: FY 2007</b>		
<b>Compliance Issue(s)</b>	<b>Initiated</b>	<b>Resolved*</b>
Accessibility (Section 504, ADA Title II)	2	9
Athletics (Title IX)	1	0
Limited-English Proficient Students and Special Education / Services for Students with Limited-English Proficiency (Title VI, Section 504, ADA Title II)	6	6
Minorities and Special Education (Title VI, Section 504, ADA Title II)	1	7
Procedural Requirements (Title IX)	7	3
Procedural Requirements (Section 504)	2	0
Procedural Requirements (Multiple Jurisdiction)	3	1
Testing (Section 504, ADA Title II)	1	0
<b>TOTAL</b>	<b>23</b>	<b>26</b>
* Includes reviews carried over from previous years.		

In FY 2008, OCR initiated 42 compliance reviews. In addition to many of the issues covered in FY 2007 compliance reviews, the compliance reviews initiated by OCR in FY 2008 covered the high-priority issue of access to Advanced Placement (AP) classes and other high-level learning opportunities. Specifically, OCR initiated five compliance reviews on minority access to AP and similar courses, two compliance reviews on access to AP and similar courses by students with disabilities, and one compliance review concerning access by LEP students and students with disabilities to AP and similar courses. In FY 2008, OCR also focused on Title IX Athletics, initiating 16 compliance reviews on this issue. In FY 2008, OCR resolved 38 compliance reviews. See Table 3 showing the number of reviews initiated and resolved by compliance issues in FY 2008.

**Table 3. OCR Compliance Reviews, by Issue: FY 2008**

<b>Compliance Issue(s)</b>	<b>Initiated</b>	<b>Resolved*</b>
Accessibility (Section 504, ADA Title II)	1	3
Admission (Title VI)	2	0
AP and Other High-Level Learning Opportunities (Title VI)	5	0
AP and Other High-Level Learning Opportunities (Section 504, ADA Title II)	2	2
AP and Other High-Level Learning Opportunities (Multiple Jurisdiction)	1	0
Assignment of Student (Section 504, ADA Title II)	0	1
Athletics (Title IX)	16	6
Discipline (Title VI)	0	1
Free Appropriate Public Education (FAPE) (Section 504, ADA Title II)	2	1
Limited-English Proficient Students and Special Education / Services for Students with Limited-English Proficiency (Title VI, Section 504, ADA Title II)	8	7
Minorities and Special Education (Title VI, Section 504, ADA Title II)	0	2
Procedural Requirements (Title IX)	3	10
Procedural Requirements (Section 504, ADA Title II)	0	3
Procedural Requirements (Multiple Jurisdictions)	2	2
<b>TOTAL</b>	<b>42</b>	<b>38</b>

\* Includes reviews carried over from previous years.

## V. MONITORING

To ensure accountability and effectiveness in enforcing the civil rights laws, OCR monitors complaint and compliance review resolution agreements to ensure the commitments made by school districts, colleges, universities and other appropriate entities in those agreements are carried out. During FY 2007, OCR completed the monitoring of a number of resolution agreements and, after ensuring that all commitments had been fully implemented, closed 347 cases—306 complaints and 41 compliance reviews. The 306 complaints closed after monitoring involved diverse jurisdictions and issues, including: 24 complaints concerning Title VI race and-or national origin discrimination, 42 complaints concerning Title IX sex discrimination, 213 complaints concerning Section 504-Title II disability discrimination, 27 complaints concerning multiple jurisdictions. The 41 compliance reviews closed after monitoring involved jurisdictions and issues such as: 7 compliance reviews concerning Title VI race and-or national origin discrimination, 16 compliance reviews concerning Title IX sex discrimination, 4 compliance reviews concerning Section 504-Title II disability



discrimination, and 14 compliance reviews involving multiple jurisdictions, including 2 Title VI and Title IX cases and 12 Title VI and disability cases.

In FY 2008, OCR completed the monitoring of and closed 285 cases. Of these 285 cases, 272 were complaints and 13 were compliance reviews. Among the 272 complaints closed after monitoring, issues included: 47 complaints concerning Title VI race and-or national origin discrimination, 36 complaints concerning Title IX sex discrimination, 153 complaints concerning Section 504-Title II disability discrimination, 2 complaints concerning age discrimination, 32 complaints concerning multiple jurisdictions, and 2 complaints classified as “other.” The 13 compliance reviews closed after monitoring involved jurisdictions and issues such as: 5 compliance reviews concerning Title VI race and-or national origin discrimination, 3 compliance reviews concerning Title IX sex discrimination, 1 compliance review concerning Section 504-Title II disability discrimination, and 4 compliance reviews regarding both Title VI and disability.

## VI. TECHNICAL ASSISTANCE

To meet its mission, OCR assists education institutions in complying with federal civil rights requirements by providing to them technical assistance. OCR also provides technical assistance to parents, students and others to inform them of their rights under the law. OCR provides information and other support services through a variety of methods, including on-site consultations, conferences, training, community meetings, and publication and dissemination of materials—including extensive materials publicly posted on the Internet—to interested parties, including students, parents, teachers, administrators, schools, colleges, universities and community groups. Appendix D lists a sample of the technical assistance publications available on OCR’s Web site.

*I am writing to thank you for speaking with me by phone yesterday about the educational options that we can consider for my 17-year-old daughter ... who has bipolar disorder. As we discussed, we had a 504 meeting today to discuss distance learning and other options ... to make up for credits missed because of excessive absenteeism this academic year. Going to the meeting armed with the knowledge of our rights as parents of a student with a qualifying disability under Section 504 certainly maximized efficiency and led to the team both accepting online credits and proposing other viable options.... Without your guidance, I suspect things would not have gone so well today.*

Letter From Parent

In FY 2007, OCR provided approximately 165 technical assistance presentations at approximately 130 events. For FY 2008, OCR increased its number of technical assistance presentations, with more than 185 presentations at approximately 150 events. Entities hosting these presentations in both FY 2007 and 2008 included state departments of education, colleges and universities, school districts and associations. OCR participated in national and regional conferences. OCR also presented to small classes of college students preparing to become teachers as well as to groups of parents of children with disabilities. Audiences for OCR presentations included school administrators,

educators, parents, students, guidance counselors, psychologists, school attorneys, disability support service providers, Section 504 coordinators, and English as a Second Language teachers.

Disability is by far the most requested subject matter for technical assistance. In FY 2007, OCR provided 115 presentations that focused entirely or partially on disability issues. Similarly, in FY 2008, OCR provided approximately 130 presentations that focused entirely or partially on disability issues. In both FY 2007 and FY 2008, the most commonly presented presentation on disability issues concerned students with disabilities transitioning from the high school setting to the postsecondary setting. The second most popular presentation explained the requirements under Section 504 of the *Rehabilitation Act of 1973* for public elementary and secondary schools.

Also, during FY 2007 and 2008, OCR provided technical assistance presentations on such topics as appropriate services for students with limited English proficiency (LEP), the athletic provisions of Title IX, the Title IX single-sex regulations, and sexual harassment. Other presentations included student discipline as it relates to Title VI, racial harassment, whether food allergies can be a disability under Section 504, Web accessibility for individuals with disabilities, and an overview of all the laws enforced by OCR.

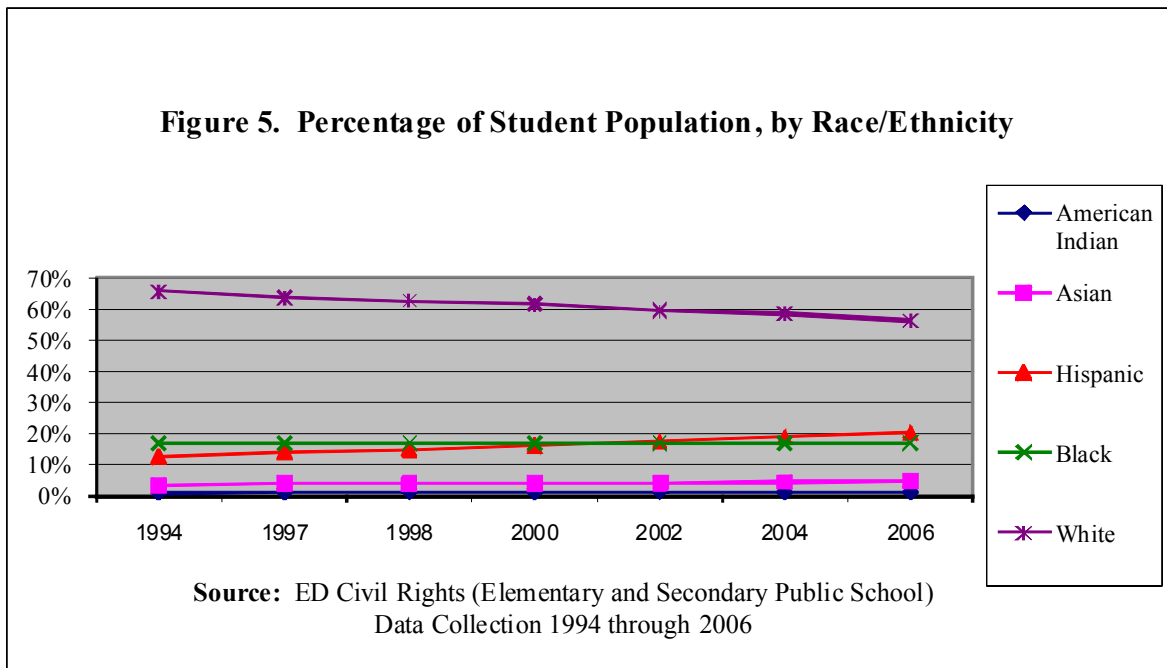
# ENSURING EQUAL ACCESS TO EDUCATION: GETTING RESULTS

Each year, OCR investigates thousands of cases that result in resolution agreements impacting hundreds of thousands of students. OCR understands its critical mission—*ensuring equal access to education and promoting educational excellence throughout the nation through vigorous enforcement of civil rights*—and is constantly striving to improve the effectiveness and efficiency of its case resolution process. Following are case-related examples of OCR’s work in FY 2007 and 2008. These important resolutions have a positive impact on students, parents and teachers, and ultimately, on the success of our nation’s education system.

*I would like to thank you again for being so helpful and diligent. I have found people like you rare in bureaucratic agencies and am overcome with gratitude when I find them. Although rare, I am so grateful that people like you are in place in government.*

Letter From Complainant

## I. TITLE VI OF THE *CIVIL RIGHTS ACT OF 1964*



Title VI of the *Civil Rights Act of 1964* prohibits discrimination on the basis of race, color or national origin by recipients of federal financial assistance. OCR staff have investigated and resolved numerous cases since Title VI’s inception, including desegregation, overrepresentation of minority students in special education classes, underrepresentation of minority students in gifted and talented classes, racial harassment,

and limited English proficient (LEP)-related issues. Figure 5 shows the racial/ethnic distribution of K-12 U.S. students from 1994 to 2006.

## A. Complaint Resolutions

### *Resolved Through Early Complaint Resolution (ECR)*

- A complaint was filed with OCR alleging that an African-American eighth-grade student was subjected to racial harassment by other students and that the district failed to respond. The complaint alleged that other students called the student “ape” and “monkey” while at school and that the daily harassment had caused the student to lose interest in and to not want to attend school. The student’s parent said that she complained to local school officials, but the harassment did not stop. With the help of OCR, the complainant and district entered into an agreement in which the district agreed to provide a written response that would include a description of the district’s handling of the allegations and notice of the district’s formal complaint procedure prohibiting race discrimination. Under the agreement, local school staff were obligated to comply with the procedure to address any future discrimination complaints from the complainant, to receive training on the district’s policies and procedures prohibiting racial harassment, and to publish in the school’s parent-student handbook the district’s nondiscrimination notice and reference to the procedure for reporting discrimination and harassment.

*I want to say thanks so much once again for your assistance. My daughter and I are truly grateful for the hard work that you put into ... our case, and we want to say that we truly appreciate it .... I'm also thankful that there is an organization such as OCR that can help people who are or have been in a situation like I was in.*

Letter From Complainant

### *Racial Harassment*

- OCR investigated a complaint alleging that three middle school students—specifically, two African-American students and a bi-racial student—were racially harassed as they walked to a district-sponsored basketball event. Three white high school students followed the middle school students in a truck, and at least one of the high school students directed racial slurs towards the middle school students and threatened to lynch African-Americans. In the school parking lot, one of the white students punched one of the African-American students in the face, breaking his glasses and lacerating his face. Another white student prevented a friend of the injured student from helping him. OCR found that district officials became aware of the incident almost immediately but failed to conduct any reasonable investigation into the racial aspects of the incident, even though local law enforcement had charged one of the white students under the state’s ethnic intimidation law. District officials initially denied to OCR that the incident was racial in nature or that the district had any duty to address it as such. As a result of OCR’s investigation, the district agreed to revise its procedures for handling racial harassment incidents, to take steps to

address the racially hostile environment, and to offer counseling to the students involved in this incident.

- OCR investigated a complaint alleging that an African-American student was repeatedly subjected to racial harassment by other students and that a district failed to respond appropriately. The allegations included the charge that the student was subjected to racial slurs and threatened with being dragged through town tied behind a truck. OCR's investigation established that, in fact, the district did not take appropriate action when it became aware of the alleged harassment of the student and a second African-American student. To resolve the case, the district agreed to adopt and distribute a policy prohibiting racial harassment, present an anti-harassment program to all students and provide in-service training to district employees on the policy prohibiting racial harassment. The district also agreed to train investigators and then conduct a full and impartial investigation into all allegations of racial harassment pertaining to the two students.
- OCR investigated a complaint alleging that a school failed to take appropriate action when a parent reported to the school that a fellow student was subjecting her son, a fifth-grader, to repeated racial harassment. OCR's investigation revealed that a teacher who had witnessed the harassment and to whom the student had complained about the harassment failed to refer the matter to an administrator. To resolve the complaint, the school district developed a districtwide policy prohibiting racial harassment and procedures for addressing complaints of racial harassment. The district provided notice of the policy and procedures to all district staff and to students and their parents and provided training to all staff on the obligation to report allegations of racial harassment and on the complaint procedures. The district also offered to provide the student who was the victim of racial harassment with counseling through the school counselor as needed.
- OCR investigated a complaint alleging that a district allowed a racially hostile environment to exist for Hispanic students at a middle school. OCR's investigation determined that white and African-American students called Hispanic students racially derogatory names and told Hispanic students to "go back to their own country." Some of the Hispanic students reported the harassment to a teacher who failed to take appropriate action. OCR determined that a racially hostile environment existed and the district entered into an agreement to resolve the complaint. The district provided training on racial and national origin harassment to the middle school staff and students, posted notices in English and Spanish explaining the district's prohibition on harassment and how and to whom to report harassment, and improved its response to complaints of harassment and harassment witnessed by staff.

#### *Excluding or Limiting Students From a Program*

- OCR investigated a complaint alleging that a university discriminated on the basis of race and national origin by excluding students of certain ethnic groups from consideration for one of its scholarship programs. OCR confirmed that the university considered an individual's race and national origin in determining the individual's

eligibility for a scholarship that the university established for students who are members of certain minority groups. OCR determined that the university's practice of awarding points towards eligibility for the scholarship based solely on a student's race or national origin did not comply with the law. To resolve the complaint, the university agreed not to award points to an individual based solely on race or national origin, and to fully consider an individual's entire application for the scholarship. The university agreed that any consideration of race in determining eligibility for the scholarship would be as one factor among other pertinent elements of diversity and not the sole factor.

### *Discipline*

- OCR investigated a complaint alleging that a district discriminated against a student on the basis of race when a special education teacher subjected the student to harsher discipline than other students in the class and the district failed to adequately respond to the parents' complaints about the treatment of the student. OCR found that the teacher subjected the student to different treatment in discipline. OCR determined, based on the totality of circumstances, which included the teacher stating that she specifically pulls aside black students to discuss how they should talk and behave, that the teacher's reasons for subjecting the student to different treatment were pretexts for discrimination. OCR also found that the district failed to appropriately respond to the parents' complaints of racial discrimination. Under the agreement reached between the district and OCR, the district committed to developing a racial discrimination prevention training program for all staff at the school; creating a record-keeping system for responding to complaints of racial discrimination; and providing written ongoing notice to students, parents, staff and administrators that the district does not tolerate racial discrimination.

### *Limited English Proficient (LEP) Students*

- OCR investigated a complaint alleging that the district discriminated against LEP students on the basis of national origin at one of its middle schools by failing to provide 10 intermediate-level LEP students with any social sciences or science instruction for a school year and by segregating all LEP students into the same groupings for all subject-area classes and nonacademic activities. The complaint also alleged that the district failed to provide adequate storage and classroom facilities for the LEP program. The district expressed a desire to resolve the complaint prior to the conclusion of the OCR investigation and, as a result, entered into a voluntary resolution agreement with OCR in which it agreed, among other things, to change the practices that resulted in the alleged disparities and segregation and to provide compensatory instruction to the students who were denied instruction in science and social sciences.
- OCR investigated whether a large suburban school district discriminated against national-origin minority students by operating the Newcomer Academy that segregated immigrant and refugee LEP students. OCR also investigated whether the Newcomer Academy provided equal educational opportunities to LEP students.

OCR's investigation found that the district failed to demonstrate that its newcomer program was carried out in the least segregative manner consistent with achieving its goals. As a result of OCR's investigation, the district is revising its policies and procedures to ensure that it does not inappropriately segregate students.

- OCR investigated a complaint alleging that a district inappropriately exited LEP students from its English Language Development (ELD) program. OCR found that the district's high school did not follow its procedures for exiting over 40 LEP students from the ELD program and relied on inadequate information as well as faulty documentation in exiting the students. The district also failed to monitor the LEP students in the regular education program, as required by its own procedures, to ensure they were afforded equal educational opportunity. The district agreed to ensure that all ELD program-exiting decisions are made appropriately and documented by trained staff. It also agreed to provide training to all relevant staff on the transitioning and exiting procedures, and to provide compensatory services, if necessary, to students who were inappropriately exited from the ELD program or inadequately monitored after exiting.
- OCR investigated a complaint alleging that a district was not providing adequate English language and academic support to three students who had been adopted from Russia. OCR's investigation revealed that the students' teachers had no training or instruction on how to meet the students' needs and had no method for evaluating whether the strategies outlined for the students were effective. The district entered into an agreement to resolve the complaint. The district developed a specific instruction plan for each student based on the results of English language assessments, provided training to the teachers regarding strategies and techniques that are appropriate to the education of the students, and monitored the progress of the students to make instructional adjustments, as necessary, to ensure their continued success.

#### *Limited English Proficient (LEP) Parents*

- OCR investigated a complaint alleging that a district discriminated against a parent on the basis of national origin (Chinese) by failing to communicate with her in a language she could understand during the special education process for her son. OCR found that the district failed to provide access to information about the son's proposed educational program, his progress in school, and a variety of school events for which other parents had notice. Although the district had documents, such as a home language survey, already translated into Mandarin—the parent's primary language—the district did not use these documents when communicating with her. Because of the lack of a tutor or interpreter for two months of the school year, the classroom teacher attempted to communicate information about school events using hand gestures and pictures. The district committed to develop a procedure to ensure meaningful communication with national-origin minority parents, including translation or communication of written materials, the availability and qualification of interpreters, and notice to parents of this procedure.

### *Retaliation*

- OCR investigated a case alleging that a district's non-renewal of a teacher's contract was in retaliation for the teacher advocating on behalf of language minority students and for participating in a previous OCR investigation that found Title VI compliance concerns with the district's program for LEP students. OCR's investigation, which included testimony from the district's outgoing superintendent corroborating the teacher's assertion, established that the reasons offered by the district for its non-renewal were pretext for retaliation. Under the agreement reached between the district and OCR, the district was required to rehire the teacher or pay her front pay; pay the teacher compensatory damages; remove negative statements from her personnel file; provide her a letter of recommendation; develop policies that prohibit retaliation under Title VI and provide training to staff on such policies; and issue a letter to other witnesses interviewed by OCR with assurances that the district would not retaliate against them for participating in OCR's investigation.

### *Monitoring*

- A large urban district entered into an agreement to ensure that it communicates with national-origin minority LEP parents about school-related matters in a language they understand. In FY 2007, the district demonstrated to OCR that it met all the terms of its agreement and developed and implemented a written plan with procedures to ensure meaningful communication with parents, including self-monitoring procedures. The district reports that its efforts have resulted in dramatically improved communication services to, and meaningful access for over 9,000 LEP parents. The district trained 596 interpreters so that it would ensure meaningful access was available in all district service areas. The district reported, and parents confirmed, effective delivery of interpreter and translator services.
- OCR found that a large urban school district did not effectively communicate with national-origin minority LEP parents about school-related matters in a language they could understand. The district entered into an agreement to resolve the complaint. The district identified more than 4,400 district parents who needed alternative language communications and saw a six-fold increase in requests for translators. To meet this increased demand, the district trained 12 staff members, who became certified translators, trained hundreds of teachers on its policies and procedures for effectively communicating with parents, and saw increased attendance by LEP parents at school events. Parent surveys showed that 95 percent of the parents were satisfied with the quality of communications they received from the district. Because the district demonstrated that it met all the terms of the agreement, OCR closed the monitoring of this resolution agreement.

*Our model of school-based delivery of interpreter/translator services has proven to be good for both our LEP students and families, and our employees, as all share in its success.*

Letter From a School District



## **B. Proactive Enforcement**

### *Compliance Reviews*

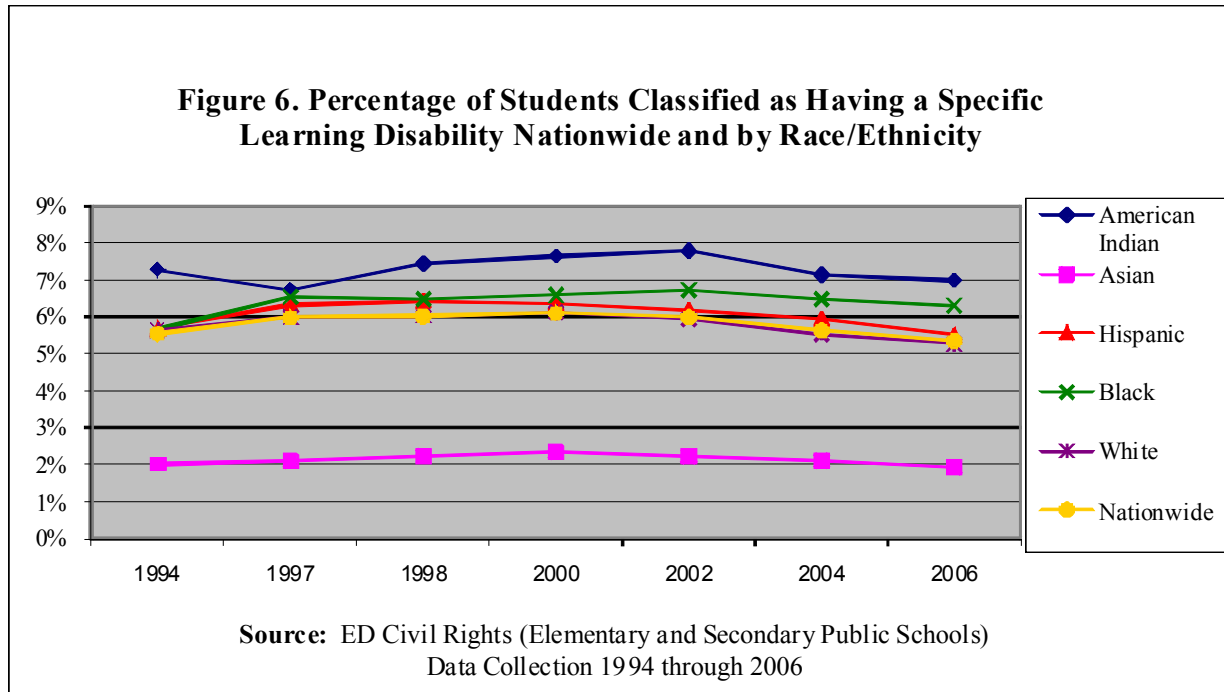
In FY 2007, OCR initiated seven compliance reviews concerning issues related, at least in part, to its Title VI enforcement. OCR resolved 13 compliance reviews concerning, in part, Title VI issues in FY 2007. These compliance reviews involved issues pertaining to providing appropriate language services for LEP students, whether LEP students were being discriminated against by inappropriate inclusion in or exclusion from special education, as well as whether minority students were being denied education benefits because of discriminatory inclusion in or exclusion from special education.

In FY 2008, OCR initiated 17 compliance reviews concerning issues related, at least in part, to its Title VI enforcement in FY 2008. In addition to initiating eight compliance reviews on LEP issues, OCR initiated compliance reviews regarding minority access to AP classes and other high-level learning opportunities as well as the use of race in admissions. OCR also initiated a compliance review that considered, among other things, whether a recipient's non-discrimination notice complied with the Title VI regulations and other regulations enforced by OCR. In FY 2008, OCR resolved 10 compliance reviews concerning, at least in part, Title VI issues.

- After a compliance review by OCR, a state department of education entered into an agreement to develop guidance to assist all of its local education agencies (LEAs) to develop plans for providing alternative language services to LEP students. The state department of education agreed to provide technical assistance to the LEAs and to implement a monitoring program of all LEAs to ensure that LEP students are receiving an equal educational opportunity in academic instruction. Satisfied that the state department of education met the terms of its agreement, OCR closed its monitoring of the agreement in FY 2007. The monitoring initiatives undertaken by the state department of education impacted approximately 15,000 LEP students statewide.
- In a compliance review of a large district with about 3,500 LEP students, OCR identified hundreds of LEP students, including students receiving special education services, who were not receiving instruction that would enable them to acquire and become proficient in English or instruction designed to allow them to access the core academic content. The district had no procedures in place for evaluating the success of its LEP program or determining whether the program modifications were appropriate. OCR found that when LEP students were evaluated for special education, most were evaluated in English only. The district entered into an agreement to resolve the compliance issues. It agreed, among other things, to revise its master plan for LEP students; to develop a process to evaluate its LEP program; and to create policies and procedures to ensure that when LEP students need special education, they are properly referred for assessment, evaluated, and placed into special education.

- In conducting a compliance review of a district's programs for LEP students who qualified for both special education and English language acquisition services, OCR found the district did not provide these students with needed English language acquisition services due to scheduling conflicts with other classes and individual teacher preferences. OCR also found that the district did not consistently draw upon or carefully consider information regarding a LEP student's English language proficiency and linguistic and cultural background during the special education pre-referral or referral, evaluation and placement processes. The district failed to ensure LEP parents had meaningful access to their children's educational program and failed to identify kindergarten students who were LEP and provide them with needed English language acquisition services. The district agreed to provide English language acquisition services to all LEP students enrolled in kindergarten programs, to ensure that LEP students are not inappropriately placed in special education programs based on their LEP status, to ensure that LEP students enrolled in special education programs receive both English language acquisition services and special education services, and to provide notice and training to all teaching and administrative staff at the elementary school level.

Figure 6 shows the racial/ethnic distribution of K-12 U.S. students with disabilities from 1994 to 2006.



### *Technical Assistance*

In FY 2007 and 2008, OCR presented technical assistance on Title VI-related topics, including harassment, OCR’s policies concerning LEP students, providing language assistance to LEP parents, and allegations of race-based treatment in student discipline. OCR presented technical assistance on the use of race by colleges and universities in areas such as admissions and financial aid to representatives from over 100 colleges and universities at a symposium hosted by the U.S. Department of Labor as well as to a state university system.

OCR conducted a presentation on racial and other forms of harassment to groups such as administrators and staff at back-to-school in-service training sessions; lawyers, educators, and students at an education law conference; and members of a tribal council. OCR’s Dallas enforcement office held a conference regarding unlawful harassment of students based on race, color, national origin, sex, and disability. One hundred seventy-five district administrators and teachers attended the conference.

### **C. Regulatory and Policy Development**

#### *Title VI and Access to Advanced Placement (AP) Courses*

On May 22, 2008, OCR issued a “Dear Colleague” letter to local education agencies on Title VI and access to AP courses. The letter reminded schools that if AP courses are offered to students, Title VI requires that the courses be made available on a nondiscriminatory basis, without regard to a student’s race, color, or national origin. The letter emphasized that the determination of which high schools in a district will offer AP courses must be made in a nondiscriminatory manner; that the admissions process for AP courses must not treat students differently based on race, color, or national origin; that students must not be discriminated against based on race, color, or national origin in any aspect of AP course administration, such as the allocation of books, laboratory equipment, the qualifications or credentials of teachers, or grade determination; and if fee subsidies are provided, they must be provided in a nondiscriminatory manner.

#### *Use of Race in Postsecondary Student Admissions*

On Aug. 28, 2008, OCR issued a “Dear Colleague” letter clarifying how OCR evaluates whether the use of race in admissions by a postsecondary institution is consistent with Title VI. The letter discussed the Supreme Court’s 2003 decisions in *Gratz v. Bollinger*, 539 U.S. 244 (2003), and *Grutter v. Bollinger*, 539 U.S. 306 (2003). OCR reiterated that, consistent with these decisions, OCR’s policy continues to be that racial classifications in admissions policies are subject to strict scrutiny, which means they are impermissible unless they are “narrowly tailored” to meet a “compelling governmental interest,” such as the remediation of past discrimination or, in the context of higher education, to achieve appropriate student body diversity. The letter reminded postsecondary institutions that if they seek to use racial classifications in admissions, they will bear the burden of providing sufficient detail about their processes to enable OCR to determine whether the institution is complying with Title VI. OCR also identified parameters it would continue to use in assessing whether a particular use of race in admissions by a postsecondary institution receiving federal financial assistance was permissible.

#### *Use of Race in Assigning Students to Elementary and Secondary Schools*

On Aug. 28, 2008, OCR issued a “Dear Colleague” letter explaining how the Supreme Court’s decision in *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 127 S.Ct. 2738 (2007) (*Parents Involved*), will guide OCR’s assessment of whether a district’s use of race is consistent with Title VI. The letter explained that in *Parents Involved*, the Court considered policies that denied a student’s request to attend a school if that student’s enrollment would cause the school’s racial enrollment to exceed a predetermined percentage that was based on districtwide racial averages. The Court invalidated the plans and reiterated that the use of such measures simply to achieve racial balance is “patently unconstitutional.” The Court also explained that to be constitutional a program must “focus[] on each applicant as an individual, and not simply as a member of a particular racial group.” OCR reminded school districts that the Court’s response in *Parents Involved* provides parameters to guide schools when race is used in admissions. The letter reiterated that the Department of Education strongly encourages the use of race-neutral methods for assigning students to elementary and secondary schools.

#### **D. Higher Education Desegregation Agreements**

In the 1992 U.S. Supreme Court decision, *United States v. Fordice*, 505 U.S. 717 (*Fordice*), the Court set forth standards for determining whether states that previously operated racially segregated higher education systems had met their affirmative duty to dismantle those systems and their vestiges under the Fourteenth Amendment to the U.S. Constitution and Title VI. After the *Fordice* decision, OCR negotiated and entered into agreements to address and resolve higher education desegregation compliance issues in Florida, Texas, Kentucky, Ohio, Pennsylvania, Maryland and Virginia.

During FY 2007, OCR continued to monitor implementation of its higher education agreements with the seven states. For FY 2008, Assistant Secretary Stephanie Monroe highlighted this as a high-priority issue for OCR. Assistant Secretary Monroe assigned a team of expert OCR staff from various OCR offices to review and assess the progress made by each of the states in fulfilling their commitments. Assistant Secretary Monroe established a goal for issuing final or interim reports for these states by January 2009.

## II. TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities that receive federal funds. The Title IX regulations cover admissions and recruitment policies, participation in education programs and activities (such as athletics), financial assistance, and employment in education programs and activities.

### A. Complaint Resolutions

#### *Resolved Through Early Complaint Resolution (ECR)*

- A complaint alleged that a school district discriminated against a student by failing to accommodate the student's absences, which were caused by her disability and pregnancy. The complaint alleged that the district assigned the student failing grades in all courses, despite the student's satisfactory completion of all of the course work at home. OCR facilitated an agreement between the parties, in which the district agreed to provide the student with the accommodations required by her Section 504 plan and adjusted her grades to remove penalties for absences caused by her pregnancy.
- A complaint alleged that a district discriminated against members of a newly established girls' ice hockey team on the basis of sex by failing to provide them with equipment and supplies comparable in quality and amount to the equipment and supplies provided to the boys' ice hockey teams. With the help of OCR, the complainant and district entered into an agreement in which the district agreed to modify the 2007–08 operating budget for the girls' ice hockey team to include additional funds specifically earmarked for the purchase of team equipment and supplies and to ensure that the additional funds would be sufficient to equip athletes with new helmets and gloves for use during 2007–08 competitions. The district also agreed to include in the 2008–09 operating budget for the girls' hockey team sufficient funds to equip athletes with new sport-specific apparel to be used during the 2008–09 competitions. The district estimated the value of the new equipment at \$4,000.
- A complaint alleged that a school had not adopted and published grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging discrimination based on sex. The complaint also alleged that the school failed to designate a Title IX coordinator and to notify students, parents and employees of the name or title, office address and telephone number of the individual designated as the Title IX coordinator. In April 2004, through a "Dear Colleague" letter issued nationally, OCR reminded all education institutions to designate and adequately train a Title IX coordinator, adopt and disseminate a nondiscrimination

*It means a lot to me to know that there are still good people out there.*

Letter From a Complainant  
on OCR's Service

policy and put grievance procedures in place to address complaints of discrimination on the basis of sex as required by Title IX. With the help of OCR, the complainant and school entered into an agreement in which the school agreed to designate and train an employee to serve as the Title IX coordinator and to revise its non-discrimination policy to include the name and contact information for the Title IX coordinator consistent with the Title IX regulations.

### *Sexual Harassment*

- OCR investigated a complaint alleging that a female college student was sexually harassed by other students during the pledging period for a literary society. The student alleged that she was required to sing vulgar songs, recite sexually explicit poems, view pornography and dance provocatively for male students. The complainant alleged that the college failed to appropriately respond to her allegations. During the course of OCR's investigation, the college asked to resolve the complaint. OCR's resolution of the complaint ensured that the college would take action calculated to end any hostile environment for the student and prevent any recurrence of established sexual harassment of the student. The college then took appropriate and effective corrective actions to address the sexual harassment of the student, including requiring all pledges and existing members of the society to undergo annual sexual harassment training at the beginning of pledging season and a warning that additional incidents of sexual harassment would result in severe sanctions.
- OCR investigated a complaint alleging that a college rejected a student's application for readmission in retaliation for her having filed a sexual harassment complaint against a college professor. After an investigation, OCR determined that the college's stated reason for denying the student's application for readmission was a pretext to hide its retaliatory motivation. To resolve the complaint, the college agreed to reconsider the application for readmission.
- OCR investigated a complaint alleging that a district failed to take prompt and remedial action to prevent a female student from being subjected to a sexually hostile environment at her school after the sexual harassment allegations were reported to district officials. OCR resolved this complaint with an agreement during the course of its investigation. The district agreed to designate a compliance coordinator for Title IX, Section 504, Title II, and the *Age Discrimination Act*; revise and publish its combined notice of nondiscrimination in hard-copy and online publications; revise and publish its policies and grievance procedures in hard-copy and online publications to ensure prompt and equitable resolution of sex discrimination complaints, including sexual harassment; maintain complaints and allegations of sex discrimination in a centralized file in each school and in the administrative office; provide training on the subject of sexual harassment to students, officials and staff at the school as well as periodic training to new employees; provide training regarding the investigation of sexual harassment to officials and staff at the school responsible for conducting investigations; and pay for the cost of professional outside counseling for the female student.

## *Athletics*

- OCR investigated a complaint alleging that a district failed to provide practice and competitive facilities used by a girls' fast-pitch softball program that were equal or equal in effect to the practice and competitive facilities used by the boys' teams. Specifically, the complaint alleged that the girls' team practiced and competed on a field with deteriorating and unsafely mounted light poles, nonworking lights, an uneven playing surface, holes in the infield and outfield, and poor drainage. Prior to OCR's involvement, the team could not practice or compete during inclement weather and was forced to either forfeit or reschedule games. The female athletes had limited practice opportunities because of the poor lighting and field drainage problems. The female athletes were also subjected to unnecessary injuries due to the poor condition on the field's playing surface. OCR was able to negotiate an agreement with district officials to upgrade the fast-pitch softball facility. The upgrade included 12 new utility poles with new wiring and light fixtures and a new and improved playing surface.

## *Monitoring*

- OCR closed the monitoring of an agreement to resolve a complaint alleging that a school failed to take appropriate action when a student and her parent complained to school staff of sexual harassment by other students. The school revised its procedures for addressing complaints of sexual harassment and trained all teachers, staff and administrators concerning their obligations in receiving, reporting and investigating sexual harassment complaints. The school also designated a counselor for the student on whose behalf the complaint was filed to report any instances of harassment and to ensure that any such claims would be properly reported pursuant to the district's revised procedures.
- OCR closed the monitoring of an agreement regarding the effective accommodation of athletic interests and abilities of females after OCR confirmed the university took the necessary action to comply with the agreement. To resolve the complaint, the university agreed to assess the athletic interests and abilities of university students and, based on the results of the assessment, develop a plan of action to ensure that the university was effectively accommodating the athletic interests and abilities of women to the extent necessary to provide equal opportunity to both sexes. Due to the assessment, the university added an intercollegiate women's bowling team and expanded the size of several of its other women's intercollegiate athletics teams. This resulted in an increase of approximately 25 percent in the number of women participating in the university's intercollegiate athletics program. As a result of these changes, the university is now offering intercollegiate athletic participation opportunities to men and women in numbers substantially proportionate to their overall enrollments. This was accomplished without reducing the number of intercollegiate athletic participation opportunities available to men at the university. Also in compliance with the agreement, the university made several improvements to its locker rooms, practice and competitive facilities, including a new designated



practice and competitive facility with adjacent locker rooms for exclusive use by the women's volleyball team and new locker rooms for the women's softball team.

- OCR closed the monitoring of an agreement regarding effectively accommodating the athletic interest and abilities of female students to the extent necessary to provide equal athletic opportunity. To bring itself into compliance with Title IX the district entered into a settlement agreement in which it agreed to provide participation opportunities in interscholastic athletics for female and male students at the district's high school and to develop a plan for achieving compliance with Title IX. The district also agreed to periodically gather information to determine the interests and abilities of students in interscholastic athletics, to review the participation of girls and boys in its interscholastic athletics program, and to promptly and effectively respond to the collected information to ensure compliance with Title IX. During OCR's monitoring of the agreement, the district reported that competitive bowling was added and that the district joined a bowling league, permitting female students to compete against nine other schools. The district also instituted a process for administering an interest and ability survey each fall, and developed a form for students to submit to the athletics department throughout the school year of their interests in adding an intramural or interscholastic sport.

## **B. Proactive Enforcement**

### *Compliance Review*

In FY 2007, OCR initiated 11 compliance reviews that concerned, at least in part, Title IX issues, including Title IX athletics and the procedural requirements of Title IX. OCR resolved 4 compliance reviews regarding, at least in part, Title IX procedural requirements.

In FY 2008, OCR initiated 21 compliance reviews that concerned, at least in part, Title IX issues. OCR initiated 16 compliance reviews on Title IX athletics, 3 compliance reviews on the procedural requirements of Title IX, and 2 compliance reviews on the procedural requirements of the Title IX regulations and other regulations enforced by OCR. In FY 2008, OCR resolved 18 compliance reviews regarding, at least in part, Title IX issues.

- OCR initiated a review to determine whether a college designated an employee to coordinate its efforts to comply with Title IX and Section 504.

OCR also reviewed whether the college had adopted and published grievance

*I would like to take this time to say thank you for all of the help you have given me and the School Division the past year working through this Title IX grievance procedure. I can truly say we had an adventure in making sure our revisions met the Federal guidelines and regulations. You were always friendly, helpful, and patient throughout the entire process and willing to listen to my concerns, no matter how trivial. If I ever need to work with the Title IX department in the future, you can be sure I will call your name. Again, thanks for all your help.*

E-mail From the Chief Human Resources Officer of a School District

procedures providing for the prompt and equitable resolution of complaints of sex and disability discrimination. OCR's investigation concluded that while the college had designated individuals to coordinate its efforts to comply with Title IX and Section 504, it did not provide consistent or complete information about the identity of the coordinators and how those individuals could be contacted in the event of a complaint. OCR also found that while the college had adopted grievance procedures to address complaints of sexual harassment, it had not adopted grievance procedures for addressing other complaints of sex discrimination or for complaints of disability discrimination. To resolve the compliance concerns, the college agreed to notify students, staff and other beneficiaries of the identity and location of its Section 504 and Title IX coordinators. The college also agreed to adopt grievance procedures that address complaints of sex discrimination, other than harassment, and disability discrimination.

### *Technical Assistance*

As part of its proactive enforcement of Title IX in FY 2007 and 2008, OCR provided technical assistance presentations on such topics as sexual harassment, the athletic provisions of Title IX, the responsibilities of a Title IX coordinator, and the Title IX single-sex regulations. Audiences for these presentations included students, parents, school attorneys, school board members, teachers, school administrators, college counselors, and career and technical education professionals.

OCR's deputy assistant secretary for enforcement participated on a panel at a national forum on gender equity hosted by an athletics organization. At the request of a state department of education, OCR provided technical assistance on Title IX athletics, sexual harassment, the single-sex regulations, and the responsibilities of a Title IX coordinator to approximately 150 elementary and secondary school Title IX coordinators. At a separate event, OCR provided a technical assistance presentation on sexual harassment at a workshop for over 20 superintendents and principals from high schools and middle schools.

OCR provided presentations on both the athletic provisions of Title IX and the Title IX single-sex regulations to approximately 200 representatives from school districts throughout a state, including superintendents and school board members. The coordinator of the event reported to OCR that the presentations were very well received by seminar participants.

## **C. Regulatory and Policy Development**

### *Single-sex Education*

In October 2006, new regulations were published in the *Federal Register* amending the Title IX regulations. These new regulations provide recipients more flexibility to offer nonvocational elementary and secondary school classes, extracurricular activities, and schools on a single-sex basis, consistent with the nondiscrimination requirements of Title IX. The new regulations took effect on Nov. 24, 2006. On Jan. 31, 2007, OCR issued a

“Dear Colleague” letter to all local education agencies. The letter summarized the requirements for single-sex classes, extracurricular activities and schools, and enclosed a copy of the new regulatory provisions. OCR also provided a designated e-mail box for questions or technical assistance requests regarding the new single-sex regulations. This e-mail box operated until Dec. 31, 2007.

### *35th Anniversary of Title IX*

On June 22, 2007, OCR issued a “Dear Colleague” letter recognizing the 35th anniversary of Title IX. The letter highlighted the progress that has been made since Title IX’s enactment in 1972 in providing education to all students, male and female, free of discrimination. The letter noted the increase in the percentage of women earning bachelor’s, master’s and doctoral degrees. It highlighted the increase in women participating in athletics at both the high school and college levels. The letter also recognized that Title IX brought substantial focus on the issue of sexual harassment in schools and that the enforcement of Title IX principles made it easier for schools to recognize and address sexual harassment. While there was significant progress to report, the letter also noted that there was still considerable work before us.

### *Pregnancy and Scholarships*

*From 1972 to 2005, the percentage of women who enrolled in college immediately after graduating from high school rose from 46 percent to 70 percent. In 1972, approximately 3,512,000 women were enrolled in undergraduate institutions, making up 44 percent of undergraduate enrollment; by fall 2005, that number had increased to 8,555,000, or 57 percent. Between academic years 1971–72 and 2004–05, the percentage of bachelor’s degrees earned by women also increased from 44 percent to 57 percent. Additionally, more and more women have entered the work force with advanced degrees—from 1971–72 to 2004–05, the percentage of master’s degrees earned by women increased from 41 percent to 59 percent, and the percentage of doctoral degrees awarded to women increased from 16 percent to 49 percent. Women also are pursuing professional degrees in increasing numbers. In fall 1972, women made up only 11 percent of students enrolled in first-professional degree programs; by fall 2005, that percentage more than quadrupled to 49 percent, and women are projected to have exceeded 50 percent of total first-professional enrollment for the first time in 2006.*

Assistant Secretary Stephanie Monroe  
*Dear Colleague Letter Celebrating the 35th  
Anniversary of Title IX, June 22, 2007*

On June 25, 2007, OCR issued a “Dear Colleague” letter to college and university presidents, reminding them of the Title IX regulatory requirements as they apply to the nondiscriminatory treatment of pregnant students. The letter responded to recent media reports that some postsecondary institutions were terminating the scholarships of female athletes on the basis of pregnancy. The letter reiterated that terminating or reducing financial assistance on the basis of pregnancy or a related condition is prohibited under Title IX.

*Athletic Activities Counted for Title IX Compliance*

On Sept. 17, 2008, OCR issued a “Dear Colleague” letter to state education agencies, local education agencies and postsecondary institutions providing information to help them determine whether interscholastic or intercollegiate athletic activities can be counted for the purpose of Title IX compliance. The letter explained that when OCR conducts an investigation to determine whether an institution provides equal athletic opportunities for male and female students, OCR evaluates the opportunities provided by the institution's intercollegiate or interscholastic "sports." OCR does not have a definition of the term "sport." Instead, OCR will consider several factors related to an activity's structure, administration, team preparation and competition when determining whether an activity is a sport that can be counted as part of an institution's athletic program for the purpose of Title IX compliance. The letter identified the specific factors OCR will consider in determining whether an activity will be counted as a "sport" under Title IX. The factors set forth in the letter give recipients flexibility to expand student athletic opportunities and allow students to take advantage of a wide array of competitive athletic activities.

### **III. SECTION 504 OF THE *REHABILITATION ACT OF 1973* AND TITLE II OF THE *AMERICANS WITH DISABILITIES ACT OF 1990***

Section 504 of the *Rehabilitation Act of 1973* (Section 504) prohibits discrimination on the basis of disability in all programs or activities that receive federal financial assistance. The Section 504 regulations (34 C.F.R. Part 104) contain general provisions as well as more specific provisions addressing employment; accessibility; preschool, and elementary and secondary education; postsecondary school education; health, welfare and social services; and procedures.

OCR also enforces Title II of the *Americans with Disabilities Act of 1990* (Title II of the *ADA*), which prohibits discrimination on the basis of disability by public entities, including public schools. OCR is responsible for enforcing Title II of the *ADA* with respect to public elementary and secondary school education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing and other health-related schools), and public libraries.

*I am writing to express my sincere gratitude for the service of the two OCR employees who handled my recent complaint to your office. Both employees took the time to understand the issues involved and to help me clarify what actions I needed. They made several phone calls to facilitate mediation between me and the school system involved and that mediation was successfully held today. Without their assistance, I would still not have a resolution to this issue and I am indebted to them for their exceptional services. Both of these individuals truly define what is meant by government service and are a credit to the Department of Education and to Federal employees everywhere. I hope that you will convey to them my appreciation for their dedication, hard work, and professional service. All of us are fortunate to have such exceptional persons defending our rights.*

Letter From Complainant

#### **A. Complaint Resolutions**

##### *Resolved Through Early Complaint Resolution (ECR)*

- A complaint alleged that students with emotional disabilities, who were in two self-contained classrooms, were assigned to “closets” for their classrooms, and were not provided classrooms comparable in terms of their space and conditions to those provided to students without disabilities. OCR facilitated an agreement between the parties in which the district agreed to move the self-contained students with disabilities to larger and comparable classrooms as those provided to the general education population. The district agreed to no longer use the space to which the students had been assigned for any special education class.
- A complaint alleged that a school district would not allow a student with Down Syndrome to graduate with other high school students in the district’s graduation ceremony. Instead, the district offered the student a private graduation ceremony on another day. With the district’s graduation ceremony quickly approaching, OCR acted

promptly and facilitated an agreement between the parties that allowed the student to participate in the district's graduation ceremony alongside his peers.

- A complaint alleged that students with disabilities in an exceptional children's class were denied the opportunity to participate in a school's art and music program, field trips and assemblies as well as use of the school's library. OCR facilitated an agreement between the parties in which the district agreed to provide students in the exceptional children's class the opportunity to participate in these programs and activities to the same extent as students without disabilities.
- A complaint alleged that a high school student with juvenile diabetes was excluded from participating in band activities due to unavailability of staff trained to treat the student's diabetes during the after-school activity. Through early complaint resolution, OCR successfully mediated an agreement whereby the district agreed to ensure that a person trained to administer medication for the student's diabetes is available whenever an after-school practice for the student's band section is held.

#### *Excluding or Limiting Students From a Program*

- OCR investigated a complaint alleging that a student who used a wheelchair but did not require special education services was denied admission to two charter schools in the district because of his need for related aids and services. OCR confirmed the allegations and found that the two charter schools, along with three others in the district, used screening methods to determine whether students had a disability prior to enrollment. The district voluntarily agreed to ensure that each of the district's 13 charter schools implement their admission policies in a nondiscriminatory manner to avoid screening out or categorically denying admission to students with disabilities. Specifically, the district agreed to ensure that charter schools removed from the enrollment form any questions pertaining to a student's disability status or IEP; that charter schools would provide related aids and services on an individual basis, as needed, to any student with a disability who met the enrollment criteria; and that a statement of nondiscrimination regarding equal access and treatment of persons with disabilities would be included on district handouts, brochures, school choice literature, and charter school Web sites. The agreement impacted approximately 379 students with disabilities.
- OCR investigated a complaint alleging that a district charged students with disabilities who required an aide more than it charged non-disabled students to participate in the district's after-school enrichment program. Specifically, parents of children who needed a special education aide to participate in the program were required to pay \$25 for

*I wanted to follow up with you to let you know that I appreciate the way you handled the complaints in our district. ... [F]acing three OCR complaints my first year was overwhelming. Your professionalism and courtesy in answering my questions and arranging interview dates and times helped make the process less frightening. Thank you, again, for your consideration to our district and me.*

E-mail From a District's Exceptional Children's Program Director

each session of an after-school course in order to cover the cost of the aide. The district agreed to resolve the complaint by amending its fee policy and to reimburse parents who paid the additional fee during the school year.

- OCR investigated a complaint alleging that a district discriminated on the basis of disability when it refused to admit a student with autism into its childcare program for children of district employees. As a result of the district's discrimination, both parents ultimately lost their jobs due to the need to stay home to care for the child. OCR confirmed the allegations and found that integrating the child into the program would not have caused a fundamental alteration to the program. Among other things, the district agreed to reinstate the mother, who was a district employee, and to admit the student into the childcare program.
- OCR investigated a complaint alleging a district discriminated against special education students at a middle school on the basis of disability by excluding special education students from recognition on its A and B honor roll or comparable honor roll. OCR found that the district was selectively applying its unwritten honor roll policy by treating severely disabled students who met the honor roll criteria differently without a legitimate, non-discriminatory reason. The district agreed, among other things, to develop a written honor roll policy that is consistent with Section 504 and Title II and to submit evidence to OCR showing that the school uniformly applied the honor roll policy in effect and provided equal recognition to all eligible honor roll students for the previous six-week grading period, regardless of their disability status.
- OCR investigated a complaint alleging a district discriminated against a student on the basis of disability when it denied the student admission to an online high school operating statewide under a management service agreement with the district. OCR found that the online school contractor had established and applied written and unwritten criteria that denied admission to the online high school to students with disabilities solely because of their need for certain special education or related services. The district entered into an agreement to revise the admissions policies and procedures for the online high school to ensure disabled students were not excluded from participation solely because of a need for special education or related services. The district informed the student of the online high school's new admissions policies and procedures and offered the student an opportunity to apply for admission to the school.

#### *Free Appropriate Public Education (FAPE)*

- OCR investigated a complaint alleging that a student with a significant medical disability was not evaluated for Section 504 eligibility. OCR found that the district's practice was to place students with medical conditions on intervention plans rather than to consider whether such students were eligible for services under Section 504. As a result of OCR's investigation, the student was found to be eligible for a Section 504 plan and thereby received such modifications as a reduced course load, a plan for homebound instruction when needed, and modifications on the state's standardized

assessments. Moreover, the district reviewed all students with medical conditions on intervention plans to determine which students might be eligible for Section 504 services. As a result of the review, 91 students with medical conditions were evaluated and found eligible for Section 504 services.

- OCR's investigation found that students with disabilities at 12 of the district's 99 schools were denied educational services due to the district's transportation schedule. Students with disabilities who were transported on the district's buses arrived at their assigned schools after the official start of the school day and left school before the official end of the school day. Students who lost 15 minutes of instruction daily missed a total of six full days of instruction per year; students who lost 30 minutes of instruction daily missed more than 12 full days of instruction per year; and students who lost one hour of instruction daily missed more than 19 full days of instruction per year. To correct the noncompliance, the district agreed to adjust the transportation schedules for the 75 buses that transported students with disabilities so that the students would arrive at, and depart from, their assigned schools at the official designated start and end time of the school day. The district also agreed to determine on an individual basis each student's need for compensatory services for the loss of instructional time. The agreement impacted 880 students.
- OCR investigated a complaint alleging a district failed to consider and address all relevant information about a student's disability. The student had been diagnosed with asthma and had a need for frequent and long-lasting disability-related absences. He also needed to use an inhaler at school. OCR found that, when the district determined that the student was ineligible for Section 504 status, it did not address whether the student's asthma substantially limited the major life activity of breathing. The district also failed to consider the impact of the student's asthma on his ability to attend school. To resolve these compliance concerns, the district agreed to solicit information about the student's asthma from his parents and physician and to invite his parents to participate in a team meeting to determine whether the student needed a Section 504 plan. The district also agreed to revise its Section 504 policies and procedures to include a more detailed definition of an individual with a disability and to train relevant school staff on identifying students with a health or medical disability under Section 504.

### *Grievance Procedures*

- OCR investigated a complaint alleging that a very large local education agency (LEA) failed to respond appropriately to a complaint that a teacher harassed a student because of his disability. OCR's investigation determined that nearly two years after a complaint had been filed with the LEA on the student's behalf, no final determination of the complaint had been made. OCR found that the duration of most of the LEA's other complaint investigations was similar. OCR also determined that the LEA had not adopted grievance procedures that provided for the prompt and equitable resolution of complaints. To resolve the underlying OCR complaint, the LEA agreed to adopt and publish grievance procedures for addressing complaints of disability discrimination, including harassment, which would incorporate appropriate due



process standards and provide for the prompt and equitable resolution of such complaints. It also agreed to immediately conclude its investigation of the complaint alleging that the student was harassed on the basis of disability.

- OCR investigated a complaint alleging that a college discriminated against a student on the basis of her disability when it placed her on involuntary medical leave following a voluntary admission as an inpatient at a psychiatric facility. The complaint alleged that the student was not given an opportunity to grieve the vice president's decision to place her on medical leave, and there was no individualized assessment of her ability to return to college following her discharge from the facility. OCR determined that the college's policy did not provide students with an opportunity to appeal decisions or otherwise provide students with due process comparable to that provided to students without mental or emotional disorders. The college agreed to revise its policy on involuntary withdrawal in order to ensure that students are afforded an appeal process and/or other due process rights comparable to those provided to students without mental or emotional disorders. The college partially reimbursed the student for the semester in which she was placed on involuntary leave.

#### *Postsecondary Education (Academic Adjustments and Housing)*

- OCR investigated a complaint alleging that a college failed to provide electronic texts to a student with a reading disability. OCR's investigation found that one month prior to the start of the semester, the student provided a list of nine textbooks he needed. Two of the e-texts were mailed two days before the start of class. At that time, the college offered to scan five textbooks, but this would have required the student to be without the books for at least two weeks after the start of the semester. The student received two more e-texts approximately a month after the start of class, but never received the remaining five textbooks. OCR determined that the college failed to provide the student with the necessary textbooks in an alternative format in a timely manner. To resolve the complaint, the college agreed to revise its procedures for requesting textbooks in an alternative format to ensure that requests are processed in a timely manner. The college also agreed to process the student's request for texts for the next semester in a timely manner.
- OCR investigated a complaint alleging that a university discriminated against a student with cystic fibrosis in its housing program by charging her more than its standard room rate for a single room with a semi-private bathroom that she needed because of her disability. OCR found that the university acknowledged that the student required the single room because of her disability, but the university's housing policy made no provision for adjustments to the rate structure for reason of disability. As a result of OCR's negotiations, the university agreed to revise its student housing policy and rate structure and to reimburse the student the difference between its standard room rate and the higher rate she was charged for the year she occupied the private room.

## *Accessibility*

- OCR investigated a complaint alleging accessibility issues at a large university's stadium. OCR found that the stadium had over 107,500 seats, but only 88 wheelchair-accessible seats, all of which were located in the end zones. Over a period of several years the university effectively gutted most of the seating bowl in the stadium to accomplish what it argued were mere repairs. Despite having been advised by OCR that the construction activity was of sufficient magnitude to trigger compliance with Section 504 and *ADA* accessibility standards, the university completed the projects without adding a single accessible seat. OCR determined there was evidence to substantiate violations of Section 504 and the *ADA* with respect to: the number and location of accessible seating for persons with mobility impairments; accessible routes into and around the stadium; the accessibility of restrooms, concession stands and souvenir shops; and accessible parking. OCR's attempts to resolve these matters with the university resulted in impasse and the case was referred to the U.S. Department of Justice, which joined a lawsuit already filed. A settlement was reached under which the university will add approximately 248 permanent accessible seats over a two-year period, mostly along the sidelines. The university also agreed to modify its ticketing policies to ensure that persons with disabilities have a meaningful opportunity to obtain seats, to add accessible parking, improve inaccessible toilet rooms and provide accessible routes into and around the stadium.
- OCR investigated a complaint alleging, among other things, that a student with a disability fell out of his wheelchair into the street because of the deterioration of a curb ramp on a university campus. In its investigation, OCR found numerous violations of applicable accessibility standards. The university entered into an agreement with OCR in which it agreed to rebuild the curb ramp where the student had fallen and to make modifications to 11 campus buildings, including renovations to restrooms, adjusting the pulling pressure for doors, providing other accessible curb ramps, installing directional signage, providing accessible ramps, installing accessible water fountains and providing accessible parking spaces.
- OCR investigated a complaint alleging that a children's room of a public library was not accessible to persons with mobility impairments. OCR identified several compliance concerns, including the lack of an accessible bathroom that rendered the programs of the library inaccessible to persons with physical disabilities. The town entered into an agreement to make needed modifications in order to provide access to the programs and activities of the library.
- An OCR investigation found that three recently built playgrounds within a district had barriers that prevented children with mobility impairment from accessing any part of the playground. OCR also found barriers that prevented access to two of the district's elementary schools. The district agreed to take actions to remedy the accessibility compliance concerns at these sites to ensure that programs and activities are readily accessible to and usable by persons with disabilities.

- OCR investigated a complaint alleging that an elementary school student with mobility impairments had to be lifted and carried onto the school bus; that others had to push the student's wheelchair to the cafeteria because the route into the cafeteria was not accessible; that the activities held at the gymnasium were not accessible to the student because there was no ramp; that the main restroom for boys was not completely accessible; that there were insufficient disabled parking spaces at the school; and that the student could not play on the playground because it had a pea gravel surface. OCR's investigation found the district failed to provide program accessibility. Specifically, OCR found inaccessible transportation for students with disabilities, inaccessible restrooms, inaccessible playground routes and surface areas, inaccessible nonacademic programs (i.e., recess), an inaccessible gymnasium, and inaccessible routes and parking lots for persons with disabilities. The district entered into an agreement requiring that it ensure the inaccessible areas are brought into compliance under the applicable accessibility standards.

### *Monitoring*

- An OCR investigation determined that there were accessibility concerns with six buildings at a university. Specifically, there was a lack of accessible entrances and routes as well as a lack of appropriate signage indicating designated accessible routes. The university agreed to address all the compliance concerns identified by OCR. As part of its monitoring activities, OCR conducted a follow-up visit to the university. OCR determined that the university had successfully fulfilled its commitments and, therefore, OCR completed its monitoring of the case.
- An OCR investigation found that a district failed to comply with Section 504 and Title II in its policies and practices for students with disabilities seeking admission to its alternative and magnet schools through its intradistrict open-enrollment lottery. The district entered into an agreement to resolve the compliance concerns. In its monitoring of the agreement, OCR confirmed that the district developed written procedures for assigning students with disabilities to alternative schools under the district's intradistrict open enrollment program. These procedures will ensure that students with disabilities whose open enrollment lottery numbers entitle them to placement in their school(s) of choice will have equal access to existing district alternative schools. The district also revised all letters, informational materials, information on the district's Web site, and information provided to parents at school fairs about the district's open enrollment lottery to eliminate any statements advising or suggesting that special education services are not available at all alternative schools or similar statements that might discourage students with disabilities from applying for enrollment at alternative schools. In light of the actions taken by the district, OCR closed its monitoring of the agreement.

## **B. Proactive Enforcement**

### *Compliance Reviews*

In FY 2007, OCR initiated 2 accessibility compliance reviews and 1 compliance review on testing as it relates to Section 504 and Title II issues. OCR also initiated 2 compliance reviews concerning the procedural requirements of Section 504 and 3 compliance reviews that considered the procedural requirements of Section 504 along with the procedural requirements of other regulations enforced by OCR. As discussed in the Title VI section above, OCR initiated compliance reviews on whether LEP students were being inappropriately included in or excluded from special education and whether minority students were being inappropriately included in or excluded from special education. These compliance reviews concern Section 504 and Title II as well as Title VI. In FY 2007, OCR resolved 9 accessibility compliance reviews. OCR also resolved compliance reviews on whether LEP students were being inappropriately included in or excluded from special education, whether minority students were being inappropriately included in or excluded from special education, as well as the procedural requirements of Section 504 and other regulations enforced by OCR.

In FY 2008, OCR focused on the important issues of access to AP and other high-level learning opportunities. OCR initiated 2 compliance reviews that focused on access of students with disabilities to AP and similar courses and 1 compliance review on the access of both students with disabilities and LEP students to these courses. In FY 2008, OCR resolved 2 compliance reviews on the issue of access of students with disabilities to AP and similar courses.

Additionally, in FY 2008, OCR initiated 2 compliance reviews on FAPE issues, 1 compliance review on accessibility, and 2 compliance reviews on the procedural requirements of the Section 504 regulations and other regulations enforced by OCR. In FY 2008, OCR resolved 3 compliance reviews on the procedural requirements of Section 504, 2 compliance reviews on the procedural requirements of Section 504 and other regulations enforced by OCR, 2 compliance reviews on minorities in special education, 3 compliance reviews on accessibility, 1 FAPE-related compliance review, and 1 compliance review on whether students with disabilities were discriminated against in interdistrict transfer policies, practices and procedures.

- OCR initiated a compliance review of a university to evaluate whether the university's buildings and programs were accessible to individuals with disabilities. OCR's investigation determined there were compliance concerns and the university entered into an agreement to resolve these concerns. The university agreed to make modifications to approximately 60 buildings as well as athletic fields and parking facilities on two separate campuses.
- OCR found compliance concerns at another university where it reviewed whether a university's buildings and programs were accessible to individuals with disabilities. The university entered into an agreement to resolve the compliance concerns in which it agreed to modify approximately 31 parking facilities and 16 buildings, including entrances, restrooms, classrooms, meeting areas, residential buildings and laboratories.

## *Technical Assistance*

As part of OCR's proactive enforcement of Section 504 and Title II, OCR provided numerous technical assistance presentations on disability issues. Disability is the most requested subject matter for OCR technical assistance and the area with the largest number of complaints filed.

In FY 2007, OCR provided 115 technical assistance presentations that focused entirely or partially on disability issues. Presentation topics included the requirements of Section 504 of the *Rehabilitation Act of 1973* for public elementary and secondary schools, assistive technology, academic adjustments and auxiliary aids in postsecondary education, accessibility and Web accessibility.

*Thank you for addressing our questions. You answered all my questions and I am no longer afraid of 504's.*

Written comment on evaluation following a technical assistance presentation on Section 504

OCR's presentation on students with disabilities transitioning from high school to college was the most frequently offered presentation in FY 2007, with over 30 of them given. Because there are differences between the rights and responsibilities of students with disabilities in the high school setting and those of students with disabilities in the postsecondary education setting, OCR has provided students with information proactively to make this transition effectively. OCR has given this presentation to students with disabilities and their parents as well as to teachers, administrators, school counselors and disability services staff.

In FY 2007, OCR also provided technical assistance on more specialized areas within Section 504 and Title II compliance. At a conference sponsored by a university and local bar association, OCR participated on a panel discussing mental health accommodations and discipline in postsecondary education. OCR provided a presentation at a statewide conference on issues related to deaf and hard-of-hearing students in postsecondary education. At a national conference for disability support service providers, OCR presented technical assistance on grievance procedures for processing disability discrimination complaints as well as strategies for creating access for students with disabilities in health science-related programs. OCR continues to provide technical assistance in the area of disability to varied audiences on a wide range of topics.

In FY 2008, OCR presented approximately 130 technical assistance presentations that focused entirely or partially on disability issues. The presentation on students with disabilities transitioning from high school to college as well as the presentation on Section 504 for public elementary and secondary schools remain among the most frequently offered presentations. OCR has also offered a presentation on whether food allergies can be a disability under Section 504 and a presentation on grievance procedures for Section 504 cases. OCR continues to offer technical assistance on such issues as academic adjustments and auxiliary aids, accessibility, Web accessibility and assistive technology.

## C. Regulatory and Policy Development

### *Transition of Students From High School to Postsecondary Education*

On March 16, 2007, OCR issued a “Dear Colleague” letter and a “Dear Parent” letter regarding the legal rights and responsibilities of students with disabilities as they transition from secondary to postsecondary education settings. The letters noted that postsecondary education institutions have significantly different responsibilities from those of elementary and secondary school districts and they highlight examples of the unique relationship between postsecondary institutions and students with disabilities. To further inform students with disabilities, parents and educators, OCR highlighted its newly revised pamphlet *Students With Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities* as well as the newly published guide *Transition of Students With Disabilities to Postsecondary Education: A Guide for High School Educators*, which responds to frequently asked questions on the topic of students with disabilities transitioning to postsecondary education. The pamphlet and guide, which are available electronically on OCR’s Web site, explain the legal requirements of Section 504 and Title II in the postsecondary education context.

### *Access by Students With Disabilities to Accelerated Programs*

On Dec. 26, 2007, OCR issued a “Dear Colleague” letter regarding the issue of students with disabilities seeking enrollment in challenging academic programs, such as Advanced Placement (AP) and International Baccalaureate (IB) classes or programs. The letter made clear that it is unlawful to deny a qualified student with a disability admission to an accelerated class or program solely due to that student’s need for special education or related aids and services or because the student has an IEP or a Section 504 plan. The letter emphasized that the practice of conditioning participation in these classes or programs by a qualified student with a disability on the forfeiture of special education or related aids and services to which the student is legally entitled violates Section 504 and Title II requirements.

### *18th Anniversary of the Americans with Disabilities Act (ADA)*

On July 25, 2008, OCR issued a “Dear Colleague” letter commemorating the 18th anniversary of the *ADA*. In addition to reflecting on the accomplishments made towards providing educational opportunities to students with disabilities, OCR announced its Wounded Warriors Initiative. This initiative focuses on the veterans returning from Operation Iraqi Freedom and Operation Enduring Freedom who are now individuals with disabilities who want to pursue higher education. Because these veterans often have recently acquired their disability, they may not have a history of receiving disability-based accommodations and may not be familiar with their disability-related rights and responsibilities. Moreover, many colleges and universities have not had much experience accommodating students with the types of disabilities common among these veterans, including post-traumatic stress disorder, traumatic brain injury, late acquired blindness or deafness, significantly disfiguring burns and multiple amputations. With its Wounded Warriors Initiative, OCR seeks to work with both the veterans with disabilities who need

to know their *ADA* rights and responsibilities and the institutions seeking to know how to best support these students.

#### **IV. THE AGE DISCRIMINATION ACT OF 1975**

The *Age Discrimination Act of 1975* (the *Age Act*) generally prohibits discrimination on the basis of age in programs or activities that receive federal financial assistance. ED's regulations implementing the *Age Act* are codified at 34 C.F.R. Part 110 and state that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

OCR received 402 complaints of age discrimination in FY 2007. Of these, 97 were "age-only" complaints and 305 were "multiple bases" complaints. Of the 402 complaints received, 223 were processed in OCR and 179 were referred to other federal agencies for processing as appropriate. Issues surrounding allegations of discrimination on the basis of age vary. The most frequently cited issues involving students include "student treatment" (76 complaints); "program requirements" (52 complaints); and "admissions" (46 complaints).

In FY 2008, OCR received 410 complaints of age discrimination. Of these, 96 were "age-only" complaints and 314 were "multiple bases" complaints. Of the 410 complaints, 215 were processed in OCR and 195 were referred to other agencies.

##### **A. Complaint Resolutions**

- A student who had dropped out of his local high school was denied admission to a college's adult high school diploma program because he was 16 years old. The community college's policy was that applicants to the program must be at least 18 years old. With OCR's help, the complainant and the college decided to resolve the complaint allegation through an early complaint resolution agreement. The college agreed to admit the student into the program.
- A complaint alleged that a district: failed to designate an employee to coordinate its efforts to comply with the *Age Act*, Section 504, and Title II; failed to adopt and publish required notices regarding age and disability discrimination; and failed to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints of age and disability discrimination. Following notification from OCR of the complaint, the district conducted a self-assessment and, based on that self-assessment, the district submitted an agreement that resolved the complaint. It agreed to designate and adequately train at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the *Age Act*, Section 504 and Title II, and to adopt and disseminate a notice regarding its *Age Act*, Section 504 and Title II coordinator(s). The district also agreed to adopt and post on its Web site a notice of nondiscrimination regarding the protections against discrimination and retaliation assured by the *Age Act*, Section 504 and Title II. Further, the district agreed to develop grievance procedures that provide for the prompt and equitable

resolution of complaints alleging any action prohibited by the *Age Act* and to develop grievance procedures for Section 504 and Title II complaints that incorporate appropriate due process standards as well as provide for prompt and equitable resolution of complaints.

## **B. Proactive Enforcement**

### *Compliance Reviews*

In FY 2007, OCR initiated a compliance review that concerned the procedural requirements of the *Age Act* regulations, as well as the procedural requirements of Section 504 and Title IX regulations. This compliance review was resolved in FY 2008. In FY 2008, OCR initiated a compliance review of another recipient that concerned the procedural requirements of the *Age Act* regulations as well as the regulations of Title VI, Title IX, Section 504 and Title II of the *ADA*.

## **V. THE BOY SCOUTS OF AMERICA EQUAL ACCESS ACT**

The *Boy Scouts of America Equal Access Act* (the *Boy Scouts Act*), part of the *No Child Left Behind Act of 2001*, applies to any public elementary school, public secondary school, LEA or SEA that has a designated open forum or limited public forum and that receives funds made available through ED. Under the *Boy Scouts Act*, these entities may not 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 United States Code (as a patriotic society) that wishes to conduct a meeting within the covered entity's designated forum. The law gives ED, through OCR, responsibility for ensuring that the Boy Scouts and other covered youth groups have equal access to public school facilities. On March 24, 2006, OCR published final regulations implementing the *Boy Scouts Act* in the *Federal Register*.

In FY 2007, OCR received 8 complaints alleging violations of the *Boy Scouts Act*. Of these cases, OCR resolved 7 and continues to investigate 1 case. In FY 2008, OCR received 5 complaints alleging violations of the *Boy Scouts Act*.



## **VI. OTHER PROGRAM MANDATES AND ACTIVITIES**

### **A. Magnet Schools Assistance Program (MSAP)**

The Magnet Schools Assistance Program (MSAP), administered by ED's Office of Innovation and Improvement (OII), provides financial assistance to school districts seeking to improve education programs and to reduce, prevent or eliminate minority group isolation. The program provides three-year grants for the enhancement or establishment of magnet schools. The MSAP statute expressly requires that the assistant secretary for civil rights determine whether applicant school districts will meet nondiscrimination assurances specified in the MSAP statute. OCR also assesses whether applicants' MSAP plans are consistent with Title VI of the *Civil Rights Act of 1964*.

In FY 2007, OCR reviewed 47 MSAP applications from school districts. In FY 2008, OCR conducted reviews of 41 MSAP applications. After review and, for some districts, negotiation of agreements to address specific civil rights concerns, OCR certified that all the FY 2007 and FY 2008 applicant districts were meeting their MSAP civil rights assurances. In FY 2008, OCR completed its MSAP reviews in less time than it did in FY 2005, FY 2006 or FY 2007, thus enabling OII to more quickly deliver MSAP funding to the districts. In addition, in both FY 2007 and FY 2008, OCR provided technical assistance to the majority of MSAP recipients to help them comply with the civil rights aspects of the MSAP statute.

### **B. Vocational Education Methods of Administration**

OCR oversees the civil rights compliance programs of 68 state agencies that administer vocational education at the secondary and postsecondary levels. Under the *Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs* (Appendix B of the Title VI regulation), OCR leverages state agency resources to enhance compliance by school districts and community colleges that provide career and technical education. To guide and assist state agencies in their civil rights compliance activities, OCR conducts annual training conferences, provides case-specific technical assistance, evaluates state agency compliance reports, and provides individualized recommendations for improvement of state agency compliance programs. In FY 2007 and FY 2008, the 68 state agencies conducted approximately 300 comprehensive compliance reviews, and approximately 90 percent of these reviews resulted in corrective action. As a result of the training, guidance and technical assistance that OCR provides to the state agencies, these agencies have steadily improved the quality of their compliance reviews and findings and the adequacy of the resulting remedies.

### **C. Minority and Related Institutions**

In April 2006, OCR developed and launched a redesigned Web site providing the lists of minority and related institutions. OCR published updated versions of these lists in September 2007, and updated these lists again in 2008. OCR provides these lists solely as

a service to the public. None of the lists are necessarily a complete listing of all colleges and universities that might fall within a particular category. Whether or not an institution of higher education appears on one of these lists, institutions are responsible for establishing their eligibility for a particular grant or contract competition, or other benefit, with ED or any other federal agency. OCR has also continued to provide technical assistance to callers on this issue.

#### **D. Good Guidance Practices**

In FY 2007, the Office of Management and Budget (OMB) issued new requirements for federal agencies regarding the development and distribution of new significant guidance documents and the posting of existing significant guidance documents on agency Web sites. These requirements address drafting and language use, agency clearance, OMB notification and review, posting on agency Web sites, and public input through public comment and the filing of public complaints. OCR is working with ED's Office of the General Counsel and other offices in ED to implement these requirements, which took effect July 24, 2007 (August 23, 2007 for posting existing significant guidance documents). Among other developments, OCR's significant guidance documents have been published on ED's Web site, at <http://www.ed.gov/policy/gen/guid/significant-guidance.doc>. The Web site will be updated as appropriate.

### **VII. TECHNOLOGY**

In FY 2007 and 2008, OCR continued a concerted effort to create a paperless office environment, which would contribute to the effectiveness and efficiency with which OCR carries out its mission.

#### **A. Case and Activity Management System**

OCR's Case and Activity Management System (CAMS) includes the combined tools of a Case Management System (CMS), an Activity Management System (AMS) and a Document Management System (DMS). CMS manages the tracking of OCR complaints, compliance reviews and proactive activities, such as technical assistance. In FY 2005, OCR began development of augmented capabilities through AMS that will allow for automated tracking of other OCR activities carried out by the Program Legal Group in OCR headquarters, including such activities as general legal and policy guidance, case-specific legal and policy guidance, and responses to information requests from the public. CAMS also includes an integrated DMS, which enables electronic storage of a wide range of OCR work products. In FY 2008, OCR reached a milestone with more than a quarter of a million documents stored on DMS. Several civil rights offices in other federal agencies have contacted OCR for information on CAMS and are considering developing similar systems.

OCR has developed performance measures to gauge the effectiveness of CAMS, including a measure capturing the percentage of OCR resolution documents that are available electronically via DMS. As Table 4 below shows, the percentage of documents

available continues to increase rapidly, ensuring that all OCR staff across the nation have quick and easy desktop access to important case resolution documents.

<b>Table 4. Percentage of Final Case Resolution Documents Accessible to OCR Staff via CAMS' Document Management System: FY 2004-08</b>	
<b>FY 2008</b>	<b>99.6%</b>
<b>FY 2007</b>	<b>99%</b>
FY 2006	98%
FY 2005	73%
FY 2004	61%

In FY 2007 and 2008, OCR has continued its efforts to expand the Paperless Office Initiative, and launched the Paperless Office Pilot in OCR's Seattle Office in preparation for expanded use of CAMS' document management capabilities. OCR's vision through this initiative is that one day it will house all case-, policy- and management-related OCR documents to truly provide expanded access and efficiency.

In FY 2007 and 2008, OCR continued to expand the project, with partial implementation in FY 2006, of a comprehensive, automated OCR Policy Repository. This repository provides OCR staff, for the first time, with a single, centralized, electronic source of current OCR policy documents—all readily accessible and easily searchable. In FY 2007, OCR developed a comprehensive interactive Web-based library reference tool, Legal and Policy Resource Guide, that includes links to statutes, regulations, case law and policy documents. This tool also resides in OCR's DMS.

## **B. Civil Rights Data Collection**

The Civil Rights Data Collection (CRDC) (formerly OCR's Elementary and Secondary School Survey (E&S Survey)) has now been merged with the Department's EDFacts data collection and reporting system, a central repository of information on K–12 programs, including *NCLB* data. CRDC data are collected through a Web-based collection, the Supplemental Survey Tool, which assists EDFacts by providing a system with the capability to collect district- and school-level data from school districts that integrates civil rights and other data, including essential data related to *NCLB*.

CRDC is primarily Web-based. For the 2006 CRDC, approximately 97 percent of the 5,929 districts reporting provided data through the Web-based data collection, an increase from the approximately 66 percent of districts that provided data using the Web for the 2004 CRDC. Implementation of data collection through the Web, combined with augmented outreach to school districts, resulted in a 100 percent response rate for the 2006 CRDC. The 2006 CRDC represents the first time in the history of the CRDC (or of its predecessor collection, the E&S Survey) that 100 percent of the surveyed school districts responded.

The information collected by the CRDC is useful not only to ED, the Department of Justice and other federal agencies; the CRDC data also help school administrators and researchers evaluate schools, and help parents make better-informed education choices for their children. Data from the 2006 CRDC were made available to ED staff on the Internet in November 2007, and to the general public on the Internet in December 2007. The 2006 CRDC marks the first time that the CRDC data have been made available to the public on the Web in the same calendar year in which these data were collected.

Two reports published in FY 2008 rely, in whole or in part, upon data from the CRDC. One report, issued by an education foundation, incorporates data from the 2006 CRDC and from the National Center for Education Statistics. The report highlights information, derived from the CRDC data, regarding race and high school graduation rates. The report also introduces a new analytical tool, which is based on data related to graduation rates, NAEP results, discipline, special education classification, and placement in gifted and talented and AP courses. Most components of this proposed analytical tool are based on data from the CRDC. Another report published in 2008 relied on CRDC data in its findings on corporal punishment during the 2006–07 school year.

### **C. Web-based Electronic Complaint Filing**

OCR has increased the efficiency and cost effectiveness of its complaint filing process by promoting the use of a Web-based electronic complaint filing system. The dramatic increase in complaints filed using this system is testament to its customer-friendly, efficient and effective design and implementation. In FY 2007, over 62 percent of the 5,894 complaints received were filed electronically. In FY 2008, 66.5 percent of the 6,194 complaints received were filed electronically. This represents a significant increase from FY 2004, when 34.4 percent of complaints were filed electronically.

## **VIII. PROMOTING MANAGEMENT EXCELLENCE**

In FY 2007 and 2008, OCR continued its focus on management excellence. These efforts have allowed OCR to maximize its ability to carry out its law enforcement mission in a timely and effective manner, even in light of shrinking resources and expanding demands. The processes OCR has put into place ensure synchronization as well as communication and coordination at all levels, including in OCR's customer service, human resources, and fiscal responsibilities.

OCR continues to make efforts to ensure that its strategic goals and priorities are regularly communicated to staff at all levels. In FY 2007, the assistant secretary for civil rights visited all 12 of OCR's enforcement offices. These visits provided her with the opportunity to share OCR's achievements, priorities and goals with the enforcement offices as well as to receive feedback from the staff in these offices. In FY 2008, the assistant secretary again visited all 12 of OCR's enforcement offices and met with teams at each office, which provided OCR staff a greater opportunity to provide feedback.

In December 2006, OCR held a national managers conference in Nashville, Tenn., which brought together OCR managers from each of OCR's regional offices and headquarters.

This conference provided training on the latest management and leadership strategies. It also allowed for discussions on how to improve coordination and OCR's current case investigation processes.

In September 2007, OCR's managers met again in California and brought in management experts to discuss such topics as coaching others to be effective leaders and successful in their job responsibilities as well as broadening strategic management perspectives and problem-solving skills within the public administrative environment. A representative of the Office of Personnel Management and a human resources consultant discussed implementing effective succession planning and developing new leaders as the need arises to replace OCR's retiring staff members.

In July 2008, OCR's office directors and chief attorneys met in Texas to discuss a full agenda, including key policy, enforcement and management issues. OCR's senior management also gave careful thought and discussion to a proposed 2009 enforcement docket and the issues on which OCR will focus its limited discretionary funding resources. Due to OCR's funding constraints during FY 2008, this was the only national managerial meeting OCR was able to have during the fiscal year.

The following illustrates OCR's efforts in FY 2007 and 2008 to promote effective management throughout the various mission-critical business processes in OCR.

#### **A. Customer Service**

Effective civil rights enforcement in education requires that the public as well as education institutions understand the legal regulatory requirements and that students, parents, educators and other members of the public understand their rights. To meet these goals, OCR makes its guidance available in many different media, including through the Internet, and updates and augments that guidance regularly to ensure it reflects current developments.

OCR also serves the public through its national toll-free customer service line. In FY 2007, OCR responded to over 6,325 hotline phone inquiries, a 17 percent increase over FY 2006. OCR responded to 6,891 hotline calls in FY 2008, an 8.94 percent increase over FY 2007. OCR responds to written requests from Congress, other federal agencies, state agencies, education institutions at all levels and others. In FY 2007, OCR provided written and oral guidance in response to tens of thousands of inquiries, and exceeded ED's goal of a 10-day average for responding to controlled secretarial correspondence. Using an enhanced managerial oversight of the process, OCR was able to improve the average for completion of secretarial correspondence significantly. In FY 2008, OCR continued to improve its average time for responding to correspondence. Office of the secretary correspondence

*Thank you both for your time and diligence. It was helpful learning how Federal law applies to issues we discussed .... Both of you are to be commended for your patience and attention to detail in how you handled my questions and concerns and helped me understand the issues and law that pertain to my complaint.*

Letter From Complainant

received a final response in fewer than two days, and general correspondence received a final response in an average of 3.3 days.

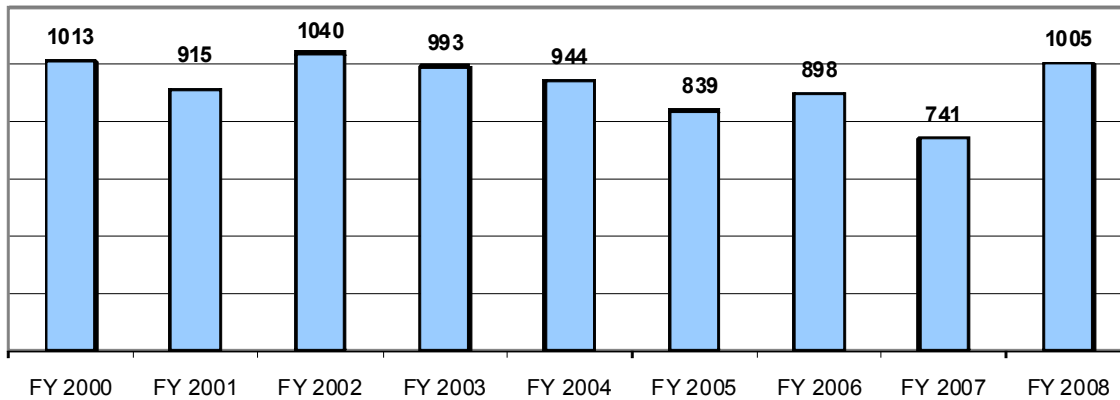
OCR also carried out its customer service responsibilities through its work involving the *Freedom of Information Act (FOIA)*, 5 U.S.C. § 552, and the *Privacy Act of 1974*, 5 U.S.C. §552. The *FOIA* was enacted in 1966 and generally provides that any person has the right to request access to federal agency records. The *Privacy Act*, a companion to the *FOIA*, also regulates federal government agency recordkeeping and disclosure practices. Under these two acts, persons (i.e., complainants, students, parents, school districts, colleges, universities and the media) have the right to request access to, or copies of, records maintained by OCR. OCR reviews and responds to the requests, consistent with the Department's *FOIA* and *Privacy Act* regulations.

Each year, OCR receives a significant number of such requests, which are processed in OCR's headquarters and regional offices. (See Figure 10.) OCR devotes considerable resources to meeting the requirements of these laws and to providing timely and effective access to information to the public. In FY 2007, OCR received a combined total of 741 *FOIA* and *Privacy Act* requests. OCR received a combined total of 1,005 *FOIA* requests in FY 2008.

To further customer service with respect to *FOIA* and *Privacy Act* requests, OCR has been a significant participant in the Department's initiative to automate case management under these laws. Executive Order 13392, "Improving Agency Disclosure of Information," issued on Dec. 14, 2005, emphasizes the need for more efficient and effective processing of *FOIA* and *Privacy Act* requests. OCR is committed to producing tangible and measurable improvements in processing them and, in FY 2006, OCR successfully piloted FOIAXpress, the Department's Web-based solution for *FOIA* and *Privacy Act* case management, in two of its enforcement offices and in headquarters. By the end of FY 2007, FOIAXpress was fully implemented in all OCR field offices and headquarters.

In addition, in FY 2007, consistent with Executive Order 13392, OCR established new *FOIA* procedures, including delegation to the 12 OCR office directors the authority of *FOIA* denial officers. In addition, in FY 2007 the function of *FOIA* Service Center is provided by each of the enforcement offices directly to its customers for the *FOIA* requests it processes. This allows *FOIA* requests to be processed in a more efficient and timely manner, and establishes clear accountability for *FOIA* processing.

**Figure 7. Number of FOIA Requests Received by OCR, FY 2000-08**



## **B. Staff Training and Development**

In FY 2007 and 2008, OCR continued its implementation of its national training and developmental strategy, ensuring that OCR employees receive adequate programmatic and professional development. For example, in FY 2007, OCR held a legal and investigative conference for its new employees both in its enforcement offices and headquarters. This conference, held in New Orleans, allowed new employees to learn from and interact with seasoned OCR staff. Experienced OCR staff taught sessions on: the laws and regulations enforced by OCR as well as OCR policy; effective investigative techniques; and how to efficiently use OCR's document management system. The conference also provided new employees with an overview of the secretary of education's initiatives, a discussion of how OCR interacts with the rest of the Department of Education and other agencies, as well as a summary of OCR's customer service survey and the organizational assessment initiatives.

As part of its national training strategy, OCR has invested in the development of two Web-based training modules: one on general investigative procedures and a second on investigating allegations of harassment. While Web-based training will not replace classroom training, it will be available to the staff at their desks at minimal cost to OCR.

To ensure successful implementation of the new Case Processing Manual (CPM), OCR provided training sessions to all employees in each enforcement office and in headquarters. The training highlighted the new procedures set forth in the CPM and focused on conducting quality, legally sufficient investigations. Because the CPM was revised to provide greater flexibility for resolution, training emphasized the procedural tools employees may use to conduct investigations thoroughly and promptly. While all formal training sessions were completed by March 14, 2008, staff has continued to receive instruction and additional training, as necessary, to ensure all staff are trained to investigate and resolve complaints in the most effective manner.



### **C. Fiscal Management**

In the area of financial management in FY 2007, OCR was in compliance with the *Federal Managers' Financial Integrity Act* and had no reportable conditions or material weaknesses in its financial accounting systems. Also, OCR had no unpaid Purchase Card transactions for FY 2007. In FY 2008, OCR continued to maintain its fiscal integrity by complying with and closely monitoring fiscal management systems such as authorized travel and contracts. Important information about fiscal management—including appropriate use of travel cards—is routinely shared with employees in OCR, and OCR managers are held to high standards on these issues.

### **D. Human Capital Planning**

During the past decade, FY 1998 through FY 2008, OCR's complaint receipts rose by nearly 28 percent, from 4,847 in 1998 to 6,194 in 2008. However, OCR's FTE usage has steadily declined over these years, from 685 in FY 1998 to 614 in 2008. This represents simultaneously the smallest number of staff and nearly the largest number of complaints received in OCR's history.

OCR's FTE usage has dropped from 630 in FY 2006 to 614 in both FY 2007 and FY 2008. During this same period OCR's complaint receipts have increased from 5,805 in FY 2006 to 6,194 in FY 2008. To meet this increased workload with a smaller number of staff, OCR has developed a systematic and strategic approach for managing its human capital that includes a rigorous recruitment and hiring process, development of a national training program, and performance appraisal standards that clearly recognize and distinguish among levels of employee performance.

In hiring, OCR recruits widely from a range of sources that offer a large pool of qualified candidates. A panel, comprising knowledgeable OCR staff, reviews all resumes and conducts first-round interviews only of well-qualified applicants. The panel recommends the most highly qualified applicants for a second-round interview. Only applicants with the most excellent credentials are offered positions. As a result of this highly selective process in FY 2007 and FY 2008, OCR's new employees have made strong and effective additions to the offices.

In the area of employee performance appraisals in FY 2007 and FY 2008, OCR continued its exacting standards in scrutinizing employee performance under the Department's Performance Appraisal System (EDPAS). For employees whose performance is less than "Successful," steps are taken to improve or enhance performance to bring it to the "Successful" level.

## MEETING OUR MISSION

As we seek to educate new generations of Americans, it is vital that all students, regardless of race, color, national origin, sex, disability or age, receive a quality education. As part of ED's commitment to achieving this goal beyond FY 2008, OCR will continue to enforce federal civil rights laws through timely and efficient investigations, compliance reviews and policy guidance that address high-priority issues of significant impact, informative and proactive technical assistance, and innovative uses of technology.

Because complaint investigation and resolution remains one of OCR's most important responsibilities, OCR will continue to improve the quality, consistency and transparency of its case investigation and resolution process. In FY 2008, OCR continued to develop its enforcement abilities through increased training for OCR employees. In conjunction with added training, OCR's new Case Processing Manual clarified the filing of complaints, their investigation and eventual resolution, making the entire OCR process easier and more accessible for complainants, recipients and the general public.

OCR will continue to initiate compliance reviews on high-priority issues across the country designed to ensure that recipients are in compliance with the laws OCR enforces. To bolster OCR's impact in these areas, OCR will continue to develop guidance, including Dear Colleague letters, on these high-priority issues. In our efforts to ensure that students are given every chance to learn regardless of race, sex, disability or age, OCR has initiated compliance reviews focused on whether minority students and students with disabilities are provided nondiscriminatory access to Advanced Placement programs. In conjunction with these reviews, OCR developed a Dear Colleague letter emphasizing the importance of Advanced Placement and International Baccalaureate programs and discussing Title VI compliance issues in regard to these programs. OCR also developed a Dear Colleague letter on students with disabilities and access to accelerated programs. Using both compliance reviews and a Dear Colleague letter, OCR plans to address the Title VI non-discrimination requirements as applied to the *NCLB* transfer provisions for schools failing to make adequate yearly progress. In FY 2008, OCR began its rollout of a veterans with disabilities initiative designed to ensure that veterans who acquire

*If we don't believe that education is a civil right and a matter of economic competitiveness, we're kidding ourselves. The world doesn't grade on a curve. In 1975, we were number one in college completion rates. In 2005, we were number 10. And the world continues to pass us by. Just to stay competitive, postsecondary education must become twice as productive. Studies show that 20 million more Americans will need higher education by 2025. The American Dream is about our kids doing better than us. But, at current rates, my daughters' generation will not be better educated than mine. We need more accountability, not less.*

Secretary Margaret Spellings  
*Remarks on the future of the accountability movement*  
Sept. 15, 2008

disabilities during military campaigns have an equal opportunity to participate in higher education.

Additionally, OCR will continue to focus its compliance reviews on crosscutting issues with significant impact on students' lives. These issues will include physical access to campus facilities for students with disabilities; the provision of grievance procedures and coordinators under Title IX; ensuring equitable treatment on the basis of sex in accommodating the athletic interests and abilities of students; the provision of services for LEP students; the inappropriate inclusion or exclusion of LEP students in special education; and communication with LEP parents.

Over the past year, OCR has observed the emergence of specific trends that are complicating recipients' ability to comply with federal anti-discrimination laws. For example, in the area of Title IX athletics, schools are often forced to make changes to athletic programs that may jeopardize their membership in outside athletic organizations. Specifically, regulations imposed upon schools by member organizations often conflict with Title IX and impede a school's ability to comply with the law. In many instances, recipients face penalties or risk losing membership if they make changes required by Title IX. One of the challenges OCR faces is helping schools comply with Title IX without jeopardizing their membership in outside athletic organizations.

*Today, more than 50 years after Brown v. the Board of Education ... 40 years after the assassination of Dr. Martin Luther King ... and 25 years after A Nation at Risk ... do we finally have the willpower to achieve equal opportunity in education? Do we have the courage to aim higher, and prepare every student for today's global economy? I believe we do. Everywhere I go, I meet parents who are demanding change ... and hardworking educators who are wholeheartedly committed to achieving it. They need and deserve all the leverage we can give."*

Secretary Margaret Spellings  
Remarks at the Detroit Economic Club  
April 22, 2008

Additionally, in the area of Title VI, OCR is seeing a trend develop in cases dealing with the instruction of LEP students. State laws mandate the type of program instruction LEP students receive and sometimes, these laws conflict with the requirements of Title VI. The multiple legal requirements imposed by different laws create confusion and make it extremely difficult for recipients to be certain they are in compliance with Title VI.

OCR will assist schools dealing with these and other challenges and will continue to vigorously protect the right of every student to equal educational opportunities by using targeted technical assistance. Technical assistance will benefit schools, administrators, parents, and students by making clear the civil rights laws and regulations in education. OCR seeks to prevent conflict before it arises by proactively informing schools and students of their rights and obligations under the laws enforced by OCR.

In its continuing efforts to improve the quality and efficiency of all areas of its work, OCR will maximize its use of technology. OCR will continue its efforts to move towards a paperless system, which includes expanding the use of its document management

system. OCR plans to post all current policy documents on its Intranet site and create a centralized electronic collection in its document management system. OCR also will continue to develop Web-based training and seminars for its staff throughout the country.

As we celebrate the 35th anniversary of the *Rehabilitation Act of 1973*, we are reminded of the importance of all the laws enforced by OCR in providing access to education. In an increasingly competitive world the key to America's continuing prosperity is education. Secretary Spellings has made clear her belief that "[w]e cannot prepare students for the global economy if we don't get them to grade level first." OCR will continue to strive to achieve this goal by ensuring that every child, every student, and every applicant has equal access to the vast educational opportunities this country offers.

## APPENDIX A: OFFICES AND ADDRESSES

### U.S. Department of Education Office for Civil Rights

400 Maryland Ave. S.W., Washington, DC 20202-1100  
Customer Service: 800-421-3481 ■ TDD: 877-521-2172 ■ Fax: 202-245-6840  
<http://www.ed.gov/ocr>

#### CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, RHODE ISLAND, VERMONT

Office for Civil Rights, *Boston Office*  
U.S. Department of Education  
33 Arch St., Suite 900  
Boston, MA 02110-1491  
Telephone: 617-289-0111; Fax: 617-289-0150  
E-mail: [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

#### NEW JERSEY, NEW YORK, PUERTO RICO, VIRGIN ISLANDS

Office for Civil Rights, *New York Office*  
U.S. Department of Education  
32 Old Slip, 26th Floor  
New York, NY 10005-2500  
Telephone: 646-428-3900; Fax: 646-428-3843  
E-mail: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

#### DELAWARE, MARYLAND, KENTUCKY, PENNSYLVANIA, WEST VIRGINIA

Office for Civil Rights, *Philadelphia Office*  
U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Telephone: 215-656-8541; Fax: 215-656-8605  
E-mail: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)

#### ALABAMA, FLORIDA, GEORGIA, TENNESSEE

Office for Civil Rights, *Atlanta Office*  
U.S. Department of Education  
61 Forsyth St. S.W., Suite 19T70  
Atlanta, GA 30303-3104  
Telephone: 404-562-6350; Fax: 404-562-6455  
E-mail: [OCR.Atlanta@ed.gov](mailto:OCR.Atlanta@ed.gov)

#### ARKANSAS, LOUISIANA, MISSISSIPPI, TEXAS

Office for Civil Rights, *Dallas Office*  
U.S. Department of Education  
1999 Bryan St., Suite 1620  
Dallas, TX 75201-6810  
Telephone: 214-661-9600; Fax: 214-661-9587  
E-mail: [OCR.Dallas@ed.gov](mailto:OCR.Dallas@ed.gov)

#### NORTH CAROLINA, SOUTH CAROLINA, VIRGINIA, WASHINGTON, D.C.

Office for Civil Rights, *District of Columbia Office*  
U.S. Department of Education  
1100 Pennsylvania Ave., N.W., Room 316  
P.O. Box 14620  
Washington, DC 20044-4620  
Telephone: 202-786-0500; Fax: 202-208-7797  
E-mail: [OCR.DC@ed.gov](mailto:OCR.DC@ed.gov)

#### ILLINOIS, INDIANA, IOWA, MINNESOTA, NORTH DAKOTA, WISCONSIN

Office for Civil Rights, *Chicago Office*  
U.S. Department of Education  
Citigroup Center  
500 W. Madison St., Suite 1475  
Chicago, IL 60661  
Telephone: 312-730-1560; Fax: 312-730-1576  
E-mail: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

#### MICHIGAN, OHIO

Office for Civil Rights, *Cleveland Office*  
U.S. Department of Education  
600 Superior Ave. East, Suite 750  
Cleveland, OH 44114-2611  
Telephone: 216-522-4970; Fax: 216-522-2573  
E-mail: [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)

#### KANSAS, MISSOURI, NEBRASKA, OKLAHOMA, SOUTH DAKOTA

Office for Civil Rights, *Kansas City Office*  
U.S. Department of Education  
8930 Ward Parkway, Suite 2037  
Kansas City, MO 64114-3302  
Telephone: 816-268-0550; Fax: 816-823-1404  
E-mail: [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov)

#### ARIZONA, COLORADO, NEW MEXICO, UTAH, WYOMING

Office for Civil Rights, *Denver Office*  
U.S. Department of Education  
Cesar E. Chavez Memorial Building, Suite 310  
1244 Speer Boulevard  
Denver, CO 80204-3582  
Telephone: 303-844-5695; Fax: 303-844-4303  
E-mail: [OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

#### CALIFORNIA

Office for Civil Rights, *San Francisco Office*  
U.S. Department of Education  
50 Beale Street, Suite 7200  
San Francisco, CA 94105  
Telephone: 415-486-5555; Fax: 415-486-5570  
E-mail: [OCR.SanFrancisco@ed.gov](mailto:OCR.SanFrancisco@ed.gov)

#### ALASKA, AMERICAN SAMOA, GUAM, HAWAII, IDAHO, MONTANA, NEVADA, OREGON, WASHINGTON AND NORTHERN MARIANA ISLANDS

Office for Civil Rights, *Seattle Office*  
U.S. Department of Education  
915 Second Ave., Room 3310  
Seattle, WA 98174-1099  
Telephone: 206-220-7900; Fax: 206-220-7887  
E-mail: [OCR.Seattle@ed.gov](mailto:OCR.Seattle@ed.gov)

**APPENDIX B: FY 2008 COMPLAINT RECEIPTS, BY JURISDICTION AND  
OCR ENFORCEMENT OFFICE**

<i>OCR Office</i>	<i>Race/ National Origin</i>	<i>Sex</i>	<i>Disability</i>	<i>Age</i>	<i>Multiple</i>	<i>Other</i>	<i>Total</i>
Boston	42	14	223	7	48	20	354
New York	84	21	270	14	90	91	570
Philadelphia	76	29	307	11	70	68	561
District of Columbia	78	25	241	4	69	48	465
Atlanta	136	28	321	6	92	117	700
Dallas	137	42	330	7	111	64	691
Chicago	119	45	291	15	93	45	608
Cleveland	67	23	242	6	48	27	413
Kansas City	74	23	199	6	67	15	384
Denver	40	13	199	9	50	96	407
San Francisco	88	45	350	10	108	86	687
Seattle	52	20	192	1	71	18	354
<b>National</b>	<b>993</b>	<b>328</b>	<b>3,165</b>	<b>96</b>	<b>917</b>	<b>695</b>	<b>6,194</b>

**APPENDIX C: FY 2007 COMPLAINT RECEIPTS, BY JURISDICTION AND  
OCR ENFORCEMENT OFFICE**

<i>OCR Office</i>	<i>Race/ National Origin</i>	<i>Sex</i>	<i>Disability</i>	<i>Age</i>	<i>Multiple</i>	<i>Other</i>	<i>Total</i>
Boston	50	25	262	3	43	26	409
New York	63	20	265	10	80	54	492
Philadelphia	75	31	260	7	73	43	489
District of Columbia	76	18	250	8	55	41	448
Atlanta	143	35	308	8	81	109	684
Dallas	116	38	326	5	97	79	661
Chicago	105	44	243	13	102	47	554
Cleveland	73	18	183	9	51	34	368
Kansas City	44	18	191	2	62	28	345
Denver	37	22	197	3	50	93	402
San Francisco	98	31	326	24	93	79	651
Seattle	54	27	202	5	61	42	391
<b>National</b>	<b>934</b>	<b>327</b>	<b>3,013</b>	<b>97</b>	<b>848</b>	<b>675</b>	<b>5,894</b>

## APPENDIX D: SAMPLE OF OCR TECHNICAL ASSISTANCE PUBLICATIONS AVAILABLE AT WWW.ED.GOV/OCR

Listed below is a sample of publications available on OCR's Web site, including those most frequently requested by mail. *How to File a Complaint With OCR* and *Ensuring Access to High-Quality Education* are available in 17 or more languages in addition to English.

- *Students With Disabilities: Preparing for Postsecondary Education: Know Your Rights and Responsibilities*, (English version), June 2006 and September 2007.
- *Ensuring Equal Access to High-Quality Education*, (English version), June 2006.
- *Auxiliary Aids and Services for Postsecondary Students With Disabilities: Higher Education's Obligations Under Section 504 and Title II of the ADA*, Revised September 1998.
- *Preparación para la educación postsecundaria para los estudiantes con discapacidades: Conozca sus derechos y responsabilidades* (Spanish version of *Students With Disabilities Preparing for Postsecondary Education*), April 2007.
- *Asegurar la igualdad de acceso a educación de alta calidad* (Spanish version of *Ensuring Equal Access to High Quality Education*), September 2004.
- *Transition of Students With Disabilities to Postsecondary Education: A Guide for High School Educators*, June 2007.
- *How to File a Discrimination Complaint With the Office for Civil Rights*, October 2007.
- *Annual Report to Congress—FY 2006*, July 2007.
- *Federal Register*: Wednesday, Oct. 25, 2006: Part III: Department of Education: 34 CFR Part 106: *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, Final Rule.
- *Title IX: Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test—Part Three*, March 2005.



