



- **Demonstrate willingness to take corrective action**
- **Search for similar cases**
- **Reach out to OCR to resolve backlogged cases**

OCR's 'efficient' case resolution as 'opportunity,' attorney says

"The best defense is a good offense" is a popular saying that has often been uttered in situations ranging from boxing matches to military combat. It can also be applied to OCR investigations.

The [Office for Civil Rights](#), under the current administration, has resolved more complaints in the previous two years than the prior administration did in the same time period, the [U.S. Education Department](#) recently [reported](#). In 2017 and 2018, OCR resolved an average of 16,000 complaints per year.

"From day one, our approach has been clear and unwavering: vigorously enforce civil rights laws, treat students as individuals, and resolve cases both efficiently and effectively," said ED Secretary Betsy DeVos in a statement.

However, the data as reported are leaving some observers with more questions than answers.

"It's laudable to resolve complaints," said Michael Joyce, a school attorney at [Nuttall, MacAvoy & Joyce PC](#) in Massachusetts. "That being said, it's hard from these numbers, from the broad definition of 'resolved cases,' to know what that means."

Regardless, OCR's priority of resolving complaints and expeditiously reducing backlog provides an opportunity for districts, Joyce said. "Generally, this administration is more cooperative with districts in seeking resolution."

Here are a few things you can do to prevent or resolve OCR complaints in your district under the current administration.

- **Utilize Facilitated Resolution Between the Parties and Rapid Resolution.** These two processes, as described in OCR's [Case Processing Manual](#), are avenues districts can use to work toward complaint resolution.

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"I think you're going to find that OCR is more receptive to those avenues if the district puts forth a credible resolution, [and] if you can demonstrate that you're willing to take corrective action through FRBP or through RRP," Joyce said.

- **Research similar cases.** Search OCR's database to find similar cases that resulted in resolution agreements, suggested Josh Douglass, a school attorney at [Mickes O'Toole](#) in Missouri and former chief attorney of OCR's Region VII. The resolution letter for the case should also be in the database. "It sometimes has really good examples of OCR's legal analysis, in a particular case given a particular set of facts," he said.

You can also use the [Topical Index Search](#) on *Special Ed Connection*® to quickly locate similar cases.

"Generally, no one case at OCR is considered to be precedent, so you can't guarantee your case will come out the same as a similar case you find in the database," Douglass said. But looking at previous case law is a good place to start, he said.

If you need more information, you can make a request under the Freedom of Information Act, Douglass said. Ask for cases with similar facts or legal issues to yours.

- **Clean out the backlog.** If your district has an older case that is still unresolved, consider whether there may be an opportunity to work with OCR on resolving it, Joyce said. "OCR [seems to be] taking some of these older backlog cases and working hard with districts to find some compromise," he said. "Proactively reach out to OCR to see if you can resolve and bring that complaint to closure."

The older a claim gets, the more difficult it is to investigate, Joyce said. It's challenging to find witnesses, and when you do, they may not have a clear memory of the event. "From an OCR perspective, these older cases might be worth resolving," he said.

- **Ensure district compliance with the law.** Review OCR's *Dear Colleague* letters, the regulations OCR enforces, and OCR's Case Processing Manual to ensure your district's policies and practices are procedurally compliant, Douglass said.

- **Train your staff.** Even the best policies are meaningless if school employees are unaware of their requirements. "OCR investigations often find school employees who

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are unable to identify who the Title IX coordinator is or state what their obligation is to respond to reports of discrimination or harassment," Douglass said. "Training is absolutely necessary to ensure staff at every level know what to do under the school's civil rights policies."

See also:

- [When OCR comes knocking: What to do during an investigation](#)
- [Test your staffers' knowledge using OCR's scenarios as case examples](#)
- [Section 504 Scenarios and Solutions: Case-Based Staff Compliance Training](#) by Frank Ferreri, J.D.

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