



Health, Education, and  
Human Services Division

B-281748

March 23, 1999

The Honorable Nathan Deal  
House of Representatives

Subject: Department of Education: Resolving Discrimination Complaints Has  
Improved With New Processing System

Dear Mr. Deal:

The Department of Education's Office for Civil Rights (OCR) enforces federal civil rights laws prohibiting discrimination in education programs and activities receiving federal financial assistance from the Department. At the end of fiscal year 1993, OCR had a backlog of nearly 2,400 unresolved discrimination complaints—an increase of 34 percent from the year before. Recognizing the need to reassess its approach to complaint processing, OCR initiated major changes in the way in which it processed and resolved complaints in early fiscal year 1994. You asked us to provide information on these changes and their effects, thus far. Specifically, you asked us to describe

- the changes OCR has made in its complaint resolution process since fiscal year 1993 and
- any changes in the timeliness and efficiency in resolving complaints between fiscal years 1993 and 1997.

In conducting our review, we obtained information for the period between fiscal years 1993 through 1997 from interviews with officials at OCR headquarters and selected field offices and from OCR databases. In addition, we reviewed reports by the U.S. Commission on Civil Rights and the Office of Inspector General in the Department of Education on OCR's complaint processing. We also interviewed officials of these organizations. Our review was conducted between June 1998 and March 1999 in accordance with generally accepted government auditing standards.

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In summary, since fiscal year 1993, OCR has improved its complaint resolution process in two major ways. First, it replaced a process that focused on investigating complaints with a more flexible system that focuses on resolving complaints as soon as possible, which allows complaints to be mutually resolved at any point in the process. OCR has also replaced its hierarchical structure for investigating complaints with case resolution teams—which include attorneys, investigators, and support staff—having the authority to reach final determination for most complaints. Second, OCR has undertaken several information and communication efforts to (1) replace a mainframe-based discrimination case information system with a personal computer-based system directly accessible by field office staff, (2) provide on-line access to critical case resolution resources through an electronic library, and (3) establish internal networks for key subject matter issues.

During fiscal years 1993 through 1997, OCR improved the average time to resolve complaints and reduced its inventory of unresolved complaints. For example, the average time to resolve a complaint was reduced from 152 days to 98 days, while the year-end backlog of unprocessed complaints dropped by 35 percent during the period. These improvements occurred while the annual number of complaints received by OCR increased slightly (from 5,093 to 5,296) and OCR's staffing declined 20 percent (from 854 to 681 full-time equivalent staff).

## BACKGROUND

OCR enforces federal civil rights laws prohibiting discrimination in programs and activities receiving federal financial assistance from the Department of Education. It derives its authority from the Department of Education Organization Act. The civil rights laws prohibit discrimination on the basis of race, color, national origin, sex, disability, and age. Most of OCR's activities are conducted by its staff in 12 offices located throughout the country. The Assistant Secretary for Civil Rights provides overall leadership and coordination.

OCR responds to complaints of discrimination and conducts reviews to ensure compliance with civil rights laws. It also provides technical assistance—that is, information and other services—to help educational institutions that receive federal funds to comply with civil rights laws and to help their students and employees understand their rights under the laws.

A discrimination complaint may be filed by anyone who believes that an educational institution receiving federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, handicap, or age. The person or organization filing the complaint need not be a victim of the alleged

discrimination but may complain on behalf of another person or group.<sup>1</sup> OCR's discrimination complaint workload data for fiscal year 1997 show that OCR received 5,296 complaints alleging a range of civil rights violations and resolved 4,981 complaints, some of which were received during previous years. Almost 54 percent of complaints filed alleged discrimination due to disability, more than 19 percent alleged race or national origin discrimination, about 8 percent alleged sex discrimination, 1 percent alleged age discrimination, and the remaining 18 percent of complaints filed alleged discrimination citing either multiple causes or other types of discrimination.

Compliance reviews evaluate the practices of educational institutions to ensure they are complying with civil rights laws. They differ from complaint investigations in that they are initiated by OCR and usually cover broader issues and affect larger numbers of individuals than complaint investigations. OCR completed 140 compliance reviews in fiscal year 1997.

OCR provides technical assistance to parents, students, and educators, as well as federal, state, and local governments through on-site consultations, conferences, training, community meetings, and the Internet. In addition, guidance is given, in writing and over the telephone, in response to tens of thousands of inquiries OCR receives annually from these groups.

Historically, OCR's procedures for processing complaints were extremely rigid. OCR was required—as a result of a 1977 court order and subsequent court orders—to process discrimination complaints within specified time frames.<sup>2</sup> To help ensure it met these time frames, OCR established a step-by-step complaint

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<sup>1</sup>34 C.F.R. 100.7(b).

<sup>2</sup>The 1977 court order was issued by the U.S. District Court for the District of Columbia in Adams v. Califano, 430 F. Supp. 118, 120, 121. The litigation began in 1970 when the NAACP Legal Defense and Educational Fund filed a class-action suit against the U.S. Department of Health, Education, and Welfare's Office for Civil Rights. The plaintiffs—mainly students attending public schools and their parents—alleged that OCR had failed to enforce title VI of the Civil Rights Act of 1964 in 17 southern and border states. The plaintiffs argued that OCR refused to initiate enforcement proceedings against a number of state systems of higher education, state-operated vocational and special-purpose schools, and local school districts found in actual or presumptive violation of title VI. In February 1973, the district court issued an order granting the plaintiffs declaratory and injunctive relief. Later that year, the U.S. Court of Appeals for the District of Columbia affirmed the district court's order, with modifications. Through a series of court orders issued in the litigation between 1973 and 1977, the court guided OCR's implementation, compliance, and enforcement activities toward more stringent enforcement procedures. The court's oversight required that OCR, within a certain specified time period, begin enforcement proceedings against various school districts and state systems of higher education found in actual or presumptive violation of title VI.

resolution process with extensive documentation requirements. Each step of the procedure was also subjected to multiple hierarchical reviews. According to an OCR official, complaint investigations that were not terminated by a mutual resolution between the parties early in the process had to be carried through to their conclusion. On June 26, 1990, the U.S. Court of Appeals for the District of Columbia removed all related court-imposed obligations from OCR,<sup>3</sup> effectively freeing OCR of its rigid requirements.

### OCR CHANGES IN COMPLAINT PROCESSING

Following numerous meetings with the education community and OCR staff, the Assistant Secretary for Civil Rights directed a study of OCR's approach to complaint processing, focusing on its timeliness and effectiveness. Two major changes initiated after fiscal year 1993 profoundly modified the way in which OCR processes complaints. First, rather than investigating complaints, the process was revised to focus on resolving them, allowing complaints to be processed as soon as possible. Second, its hierarchical structure for investigating complaints was replaced with case resolution teams—which usually include a team leader, attorneys, investigators, and support staff—having the authority to reach final determination for most complaints. In addition, OCR has initiated several information and communication efforts since fiscal year 1993, which it credits with contributing to improved timeliness and efficiency of its complaint processing. OCR officials believe that the restructuring of its senior management also contributed to improved complaint resolution.

#### More Flexible Complaint Resolution Process

OCR's revised process for handling complaints shifted from focusing on investigating complaints to focusing on resolving complaints. Its Complaint Resolution Manual (CRM), issued on December 1, 1993,<sup>4</sup> documents the new process and replaced the Investigation Procedures Manual. OCR trained all its regional employees on the new complaint resolution process.

CRM focuses on a complaint's allegations of discrimination and what it would take to resolve them, including reaching a settlement between the parties. Since CRM was issued, more complaints have been resolved in this manner. CRM also

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<sup>3</sup>The 1990 case, *Women's Equity Action League v. Cavazos*, 906 F.2d 742, denied the plaintiff's claim of a private right of action against the Department of Education under civil rights statutes and the Administrative Procedures Act. This ended the litigation's 20-year history.

<sup>4</sup>The manual was renamed "Case Resolution Manual" in November 1994.

allows complaints that involve multiple allegations to be unbundled so each allegation can be handled using the most appropriate type of resolution procedure.

According to Department officials, OCR formed a standing committee to evaluate suggested changes to CRM. A number of suggestions were made after CRM was first issued, and it was revised in February 1994. Although the number of suggestions has declined somewhat since then, CRM has been revised several times, most recently in February 1998.

#### Case Resolution Teams Introduced

OCR also instituted case resolution teams in all of its regions to handle complaints. OCR piloted the team approach in October 1993 in OCR's region II<sup>5</sup>—receiving the Vice President's Heroes of Reinvention ("Hammer") Award in 1994 for the pilot—and implemented resolution teams throughout OCR in fiscal year 1995.

Although there is some variability among OCR offices as to how case resolution teams are formed, generally a team is headed by a team leader and consists of investigators, attorneys, and support staff. These teams have taken on most programmatic responsibilities and, according to OCR, minimized paper-shuffling and multiple layers of review. Working with both the pilot and a control group, OCR collected data to show major improvements in productivity in region II. For example, the average number of days for complaint resolution was reduced from 169 days under the old structure to 129 days with the new teams, a 24-percent improvement.

#### Information and Communication Initiatives

Since fiscal year 1993, OCR has also improved or created several systems to provide its staff with information needed to conduct and report on complaint investigations. OCR officials credit these changes with helping investigators more quickly and efficiently resolve complaints, noting three significant changes: using a personal computer-based discrimination case information system that is directly accessible by field offices; providing all OCR staff on-line access to critical case resolution resources through an electronic library; and establishing internal networks for key subject matter issues.

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<sup>5</sup>Region II is responsible for OCR activities in New Jersey, New York, Puerto Rico, and the Virgin Islands.

- Direct access to case files: In December 1993, OCR announced that staff would be provided direct access to case files through a personal computer-based case information system. The new system—adopted because OCR determined that its old mainframe-based computer system could not practicably be modified to accommodate the new CRM processes—collects essential complaint case data and provides basic management information. By providing OCR managers, attorneys, and investigators direct access to information regarding the status of all civil rights cases, the system allows OCR to more effectively track and process complaints and compliance reviews.
- Electronic library established: OCR's electronic library assists staff research by providing convenient on-line access to current documents related to civil rights and education, such as OCR and other federal statutes and regulations, policy documents, and selected case resolution letters. OCR's electronic library was first made available to headquarters staff in 1993; by the beginning of 1996, it was available to all regional offices. The Department of Education plans to make the local and wide area networks electronically accessible to all interested parties.
- Issue area networks created: In August 1996, OCR created networks of internal staff at multiple geographic locations who work in one of several key issue areas, including testing, affirmative action, and racial harassment and student discipline. The networks help OCR develop internal capacity and consistency by building organizational bridges between people doing the same job in different parts of the country. Networked staff collaborate on legal issues and provide one another on-the-job coaching and other professional support. One of the networks' common objectives is to refine case resolution tools and, thereby, increase the timeliness and efficiency of OCR's complaint processing. A facilitator was appointed for each issue area network to ensure that an active, multisite group was maintained for the issue area.

COMPLAINT PROCESSING TIMELINESS AND  
EFFICIENCY IMPROVED IN THE PERIOD  
BETWEEN FISCAL YEARS 1993 AND 1997

Between fiscal years 1993 and 1997, OCR showed improvement in three principal performance indicators: the time to process a complaint, the number of complaints processed annually, and the average backlog of unprocessed complaints at year end. These improvements occurred while the annual number of complaints received by OCR increased slightly—rising from 5,093 in fiscal year 1993 to 5,296 in fiscal year 1997—and while OCR's overall staffing level declined,

due to budget constraints, from 854 full-time equivalent staff in 1993 to 681 in 1997—a 20-percent reduction.

OCR reduced the average time required to resolve complaints between fiscal year 1994 and fiscal year 1997. (Data were not available for fiscal year 1993.) In fiscal year 1994, the average number of days to resolve complaints was 152; by fiscal year 1997, it was 98. As table 1 shows, the average number of days increased by 1 day in fiscal year 1995 before declining sharply in fiscal years 1996 and 1997. An OCR official said the 1-day increase in fiscal year 1995 may have been caused by OCR's resolution of a number of complaints that had been under investigation for a much longer than normal period of time.

**Table 1: Average Number of Days for OCR to Resolve Complaints in Fiscal Years 1994 Through 1997**

<b>Fiscal year</b>	<b>Average number of days to resolve complaints</b>
1994	152
1995	153
1996	126
1997	98

Note: Information may differ slightly from that OCR used in its budget requests and annual reports to the Congress due to subsequent adjustments made by the Department.

During the fiscal year 1993 through 1997 period, the number of complaints resolved<sup>6</sup> increased from less than 4,500 in fiscal year 1993 to over 5,700 in fiscal year 1994 but fell back to less than 5,000 in 1997. (See table 2.) Overall, during this period the annual number of complaints resolved by OCR rose by 11 percent. An OCR representative said that OCR had not made an analysis to determine why there was a rise in the number of complaints resolved.

<sup>6</sup>“Resolved” means a complaint was assessed and one of the following occurred: the complaint was found inappropriate for OCR action, the complaint was found appropriate for OCR action and civil rights concerns were addressed, or the complaint was found appropriate for the OCR action and there were no civil rights violations.

Table 2: Number of Complaints OCR Received, Resolved, and Had Outstanding in Fiscal Years 1993 Through 1997

<b>Fiscal year</b>	<b>Complaints outstanding at start of year</b>	<b>Complaints received<sup>a</sup></b>	<b>Complaints resolved</b>	<b>Complaints outstanding at year end</b>
1993	1,777	5,093	4,484	2,386
1994	2,386	5,273	5,735	1,924
1995	1,924	4,981	5,594	1,311
1996	1,311	4,831	4,898	1,244
1997	1,244	5,296	4,981	1,559

<sup>a</sup>Does not include complaints outstanding at start of year.

Note: Information may differ slightly from that OCR used in its budget requests and annual reports to the Congress due to subsequent adjustments made by the Department.

OCR's inventory of unresolved complaints at year end declined from 2,386 in fiscal year 1993 to 1,244 in fiscal year 1996 and increased to 1,559 in fiscal year 1997. For the entire fiscal year 1993 through 1997 period, outstanding complaints declined by 35 percent because in 3 of the 4 years, and overall for the period, OCR resolved more complaints than it received.

#### AGENCY COMMENTS

The Department of Education in commenting on a draft of this letter agreed with our evaluation of OCR's improvements in resolving discrimination complaints. It also said that the restructuring of OCR's senior management contributed to these improvements. We have added a statement recognizing this restructuring and the Department's belief that the restructuring may have contributed to the improvement in case procession. However, our review focused specifically on case processing initiatives, and we did not attempt to evaluate the impact of the restructuring on case processing. The Department also provided several technical comments, which we have incorporated as appropriate. Education's written comments are included as an appendix.

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We are sending copies of this letter to the Secretary of Education and other interested congressional offices. We will also provide copies to others on request. If you have any questions, please feel free to contact me or Joseph J. Eglin, Jr., Assistant Director, at (202) 512-7014. Charles M. Novak also contributed to this letter.

Sincerely yours,

A handwritten signature in cursive script that reads "Carlotta Joyner".

Carlotta C. Joyner  
Director, Education and  
Employment Issues

COMMENTS FROM THE DEPARTMENT OF EDUCATIONUNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

MAR 3 1999

Ms. Carlotta C. Joyner  
Director, Education and  
Employment Issues  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Ms. Joyner:

Thank you for the opportunity to comment on the draft of the General Accounting Office (GAO) report to Congressman Nathan Deal on the changes made to the processes for resolving discrimination complaints in the U.S. Department of Education's Office for Civil Rights (OCR). We believe that the organizational and operational changes we introduced in OCR have made us more efficient and improved the agency's ability to promptly and appropriately resolve complaints filed with this office. It is encouraging to see this confirmed in an independent study by GAO.

In addition to the factors discussed in your report, we believe that the OCR senior management restructuring contributed to the agency's improved performance in complaint resolution. Where OCR had ten regional offices reporting to a Deputy Assistant Secretary, OCR now has four divisions, each containing three enforcement offices, that report to two Enforcement Directors. The restructuring resulted in a larger percentage of OCR staff devoted to case work, as opposed to administrative functions. An OCR division now has greater resources than did a regional office to ensure that the division's complaints are resolved in an expeditious manner. Also, the case resolution teams within the divisions now have greater access to senior management through the Enforcement Directors than was previously available.

In a footnote to the data charts, the report notes that there are some discrepancies based on comparisons of the data submitted for this report to the data included in our budget requests to Congress for those same years. These minor discrepancies result from the need to report budget data soon after the end of the fiscal year. Other reports, such as OCR's Annual Report to Congress and the data submitted to GAO, are drawn from OCR's Case Information System later, after year-end edits have been made. The budget data are not revised to reflect the updated numbers, because the differences are statistically insignificant and would not affect funding decisions. With the exception of FY 1997, all data disparities in question are less than six-tenths of one percent. In FY 1997, because one field office reported its

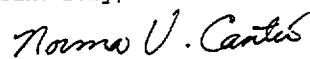
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information late in the cycle, the disparity in data was less than two percent. To avoid these minor discrepancies in the future, OCR plans to complete the year-end edit process sooner so that, beginning in FY 1999, the data will be consistent.

Thank you for the opportunity to comment on the report. We appreciate the recognition of the improvements that we have made in OCR's complaint resolution process.

Sincerely,



Norma V. Cantú

(104939)



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