

# CLIENT NEWS BRIEF

## New OCR Case Processing Manual - Significant Changes For Public School Civil Rights Enforcement

The U.S. Department of Education's Office for Civil Rights (OCR) made a second round of revisions to its Case Processing Manual (CPM), effective November 19, 2018. The CPM outlines the procedures OCR uses to investigate and resolve complaints under the civil rights laws which it enforces. The CPM last underwent revisions in March of 2015 and March of 2018. The most recent changes are wide ranging and include how OCR will evaluate, investigate and resolve complaints. Key revisions include the following:

- Requires OCR to interpret its statutes and regulations consistent with the requirements of the First Amendment, and to comport with the First Amendment when investigating and resolving complaints. This means that OCR will not interpret any statute or regulation to impinge upon rights protected under the First Amendment or to require recipients to encroach upon the exercise of such rights;
- Restores appeals for complainants, who can appeal findings of insufficient evidence, as well as certain types of dismissals, and provides recipients with the opportunity to respond to appeals;
- Eliminates section 108(t) from the earlier CPM, which had provided that OCR would dismiss a complaint that is part of a pattern of complaints that places an unreasonable burden on OCR's resources; and
- Requires OCR to have more than statistical data alone to warrant opening an investigation. Statistical data can be considered with other facts and circumstances to support the opening of an investigation.

The November 2018 CPM revision also retained several important changes from its March 2018 revision such as:

- Investigation and resolution activities must focus on the individual allegation(s) stated by the complainant;
- OCR will undertake systemic investigations only where it is appropriate to do so in light of the allegations or based on facts ascertained in the investigation; and
- A focus on increased opportunities for the resolution of complaints through the Rapid Resolution Process (RRP) and the Facilitated Resolution Between the Parties (FRBP) process, which permit the parties to resolve a complaint themselves with OCR's facilitation.

Lastly, OCR is implementing post-case closure Quality Assurance Reviews to assure consistency and quality in case processing among the 12 regional OCR offices. OCR will use the reviews to identify areas where further internal training is necessary, and to identify and share best practices among its regional offices.

### Takeaways

The revised CPM will likely impact current and future investigations conducted by OCR. School districts can also expect OCR to be more receptive to defenses to complaints of bullying, discrimination, harassment etc., where the defense is based on free speech. While it is unclear how each regional office will interpret

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the changes to the CPM, school districts currently dealing with a civil rights complaint investigated by OCR should consult with counsel to determine whether the revisions are relevant to the matter.

For additional information regarding OCR's November 2018 CPM revision, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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