NEW APPROACH FROM THE OFFICE FOR CIVIL RIGHTS?

OCR's Authority

The United States Office for Civil Rights ("OCR") is charged with the vital task of ensuring the civil rights of all students in America's public schools. OCR investigates complaints of civil rights violations, makes findings, requires corrective action, and refers certain cases to the Department of Justice for litigation. OCR may seek to withhold federal funding to individual school divisions based on civil rights violations. Finally, OCR is charged with completing periodic compliance reviews not precipitated by a complaint.

Examples of traditional OCR complaints include allegations that a disabled student is bullied due to his disability; a female student is subjected to unwanted sexual commentary or actions, thereby being denied access to educational programming; or African-American and disabled students are disciplined at a disproportionately higher rate than their Caucasian and non-disabled peers. Recently, OCR has been flooded with complaints that school/division websites are inaccessible by persons with disabilities.

OCR utilizes its Case Processing Manual, a fairly detailed set of procedures for investigating and resolving complaints. School divisions subject to investigation by OCR often are called upon to provide volumes of data – a time-consuming and sometimes costly exercise – even when responding to a complaint involving one individual student. Realizing that the civil rights of all students are paramount, divisions seeking to honor those rights may see resources diverted to responding to OCR complaints. A new manner of doing business by the federal agency may now bring some relief for school divisions.

A New Directive for Conducting Investigations

On June 8, 2017, the United States acting assistant secretary for civil rights, Candice Jackson, issued an internal memorandum to OCR regional directors providing "new internal guidance regarding the scope of the investigation of all OCR cases." The memo specifically directed that "there is no mandate that any one type of complaint is automatically treated differently than any other type of complaint with respect to the scope of the investigation, the type or amount of data needed to conduct the investigation, or the amount or type of review or oversight needed over the investigation by Headquarters." In addition, the memo states "there is no longer a 'sensitive case' or 'call home' list; rather, Headquarters and the Regional Offices (Regional Director) will consult regularly to determine on a case-by-case basis whether complex or problematic investigations require Headquarters review or intervention and when trends emerge that require Headquarters oversight or direction."

Notably, Ms. Jackson wrote that "OCR will
no longer follow the existing investigative rule of obtaining three (3) years of past complaint data/files in order to assess a recipient's [school division's] compliance, which rule had been stated [in various OCR internal policy documents issues in preceding years]." Further, "there is no longer a 'one-size fits all' approach to the investigation of any category of complaints….OCR will only apply a 'systemic' or 'class-action' approach where the individual complaint allegations themselves raise systemic or class-wide issues or the investigative team determines a systemic approach is warranted through conversations with the complainant."

School attorneys and other observers note that this new approach already is impacting pending investigations, including the downward revision of large-scale data requests. Anecdotal reports by some Virginia school divisions reveal that investigations initiated before (in some cases years prior to) the June 8 memo are being scaled back. Related consequences of the new regime likely will be the narrowing of the scope of investigations and affording more discretion to local offices to complete the case-by-case approach referenced in the memo – rather than following a prescribed approach dictated by OCR Headquarters.

“These instructions in particular are designed to empower our investigative staff to clear case backlogs and resolve complaints within a reasonable time-frame...”

Candice Jackson, United States acting assistant secretary for civil rights

were administratively closed; 2% were resolved through the early complaint resolution process; 9% were resolved with a finding of insufficient evidence; and 5% were resolved with resolution agreements.

Closing Thought

Public School administrators charged with guaranteeing student civil rights should be well-versed in local school board policies regarding those rights – especially the division's internal complaint processes – and stand prepared to implement them faithfully. With a tip of the hat to an oft-repeated phrase: Have policy; know policy; follow policy! And document, document, document.