

# TENNESSEE DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS CASE RESOLUTION AND INVESTIGATION MANUAL

## INTRODUCTION

The mission of the Tennessee Department of Education Office for Civil Rights (TOCR) is to ensure equal access to education through the vigorous enforcement of the civil rights statutes applicable to the educational institutions within the Tennessee Department of Education (Department). It is the Department's responsibility to ensure that recipients of State and Federal funds are not engaging in unlawful discrimination. The Case Resolution and Investigation Manual (CRIM) provides procedures for effectuating the prompt and effective investigation and resolution of complaints against recipients allegedly engaging in discriminatory practices.

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## **ARTICLE I: EVALUATION OF THE COMPLAINT**

### ***Section 101: Determine What Constitutes a Complaint***

A complaint is a written or electronic statement alleging a violation of one of the civil rights statutes. The complaint should include a written explanation of what happened; contact information (name, address, and phone number) of the complainant (the person filing the complaint); identification of the person or group injured by the alleged discrimination; and identification of the person or institution alleged to have discriminated. If the party on whose behalf the complaint was made is a minor, the complainant should seek and receive written permission from the legal parent or guardian of that minor, so that TOCR may speak with the minor regarding the allegations. Copies of such permissions should be forwarded to TOCR, along with the complaint.

Complaints may be filed by mail, fax, or electronic mail (e-mail). Some correspondence that TOCR receives, even if it concerns an alleged civil rights violation, may not be a complaint. The following are **NOT** considered a complaint:

- Oral allegations that are not reduced to writing and signed;
- Anonymous correspondence;
- Courtesy copies of correspondence or a complaint filed with others; or
- Inquiries that seek advice or information, but do not seek action or intervention from the Department.

### ***Section 102: Acknowledgment of the Complaint***

Upon receipt of the complaint, TOCR shall issue a letter to the complainant and recipient acknowledging receipt of the complaint. The Acknowledgment Letter shall state that the complaint is being evaluated by TOCR. The letter shall state that the complainant and recipient will be notified, in writing, within ten (10) days from the date of the acknowledgment letter, whether TOCR will initiate a full investigation or if the complaint will be dismissed on jurisdictional grounds. During this time, TOCR will also review any additional documentation by the complainant to determine if there is sufficient information to establish a possible civil rights violation.

### ***Section 103: Determine Subject Matter Jurisdiction***

TOCR must have subject matter jurisdiction of the complaint. For TOCR to establish jurisdiction, the complaint must allege, or TOCR must be able to infer from the facts given, an allegation of: 1) discrimination based on race, color or national origin; 2) discrimination based on sex; or 3) retaliation for the purpose of interfering with any right or privilege secured by the civil rights laws enforced by TOCR, or as a result of making a complaint, testifying, or participating in any manner in a TOCR proceeding.

TOCR conducts a legal evaluation of the facts presented to determine whether or not the law has been violated. Below are general overviews of the legal analysis conducted by TOCR. The overviews in no way represent the full extent of the legal analysis which is conducted on a case-by-case basis, but is meant to represent the minimum analysis conducted.

#### *Title VI of the Civil Rights Act of 1964*

Title VI prohibits discrimination based on race, color, or national origin in all programs or activities that receive Federal financial assistance. The theories of discrimination under Title VI, include, disparate impact, disparate treatment (intentional), and hostile environment discrimination.

Discrimination in employment is limitedly covered under Title VI. Title VI covers employment discrimination only if the primary purpose of the federal funds is employment, unless the primary beneficiaries were impacted by the discriminatory employment practices. In the case of an LEA as employer, the primary beneficiaries of federal funds would be the students, and the primary purpose of the funds would be for education and not employment. Therefore, it would be necessary to show the impact on students, unless obvious, before this office would be able to enforce Title VI. Employment discrimination complaints are referred to the Tennessee Human Rights Commission or the Equal Employment Opportunity Commission.

The authority of this office is to enforce compliance through the LEAs loss of federal funding. Remedies, such as monetary awards, are not available through this office.

#### *Title IX of the Education Amendments of 1972*

Title IX prohibits discrimination based on sex in all programs or activities that receive Federal financial assistance. Title IX covers sexual harassment (including same gender harassment), pregnancy discrimination, athletics, and any discrimination with a basis in the differences between the genders.

Employment discrimination is broadly covered under Title IX. Complaints involving employment discrimination are generally referred to the Tennessee Human Rights Commission or the Equal Employment Opportunity Commission, unless the allegation of discrimination directly involves students.

#### *Section 504 of the Rehabilitation Act of 1973*

Section 504 prohibits discrimination based on disability in all programs or activities that receive Federal financial assistance, including employment complaints. Enforcement of Section 504 is solely within the jurisdiction of the United States Department of Education Office for Civil Rights (OCR). TOCR will provide technical assistance and respond to general questions regarding Section 504, including attempts to assist the school system and the complaining party to agree on a compromise that is satisfactory to all parties and is in compliance with the law. If a compromise cannot be reached, TOCR will refer the complaining party to OCR for filing a complaint. If a child, on whose behalf a complaint is filed, is also a recipient of special education services, the complaint will be forwarded to the Department's Division of Special Education for a compliance investigation.

Complaints involving employment discrimination are generally referred to the Tennessee Human Rights Commission or the Equal Employment Opportunity Commission, unless the allegation of discrimination directly involves students.

### Age Discrimination Act of 1975

That Age Discrimination Act prohibits discrimination based on age in all programs and activities that receive Federal financial assistance. It does not include the employment practices of such programs. The regulations of the Age Discrimination Act do not apply to:

- (1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body that
  - (i) Provides any benefits or assistance to persons based on age;
  - (ii) Establishes criteria for participation in age-related terms; or
  - (iii) Describes intended beneficiaries or target groups in age-related terms;

or

- (2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except any program or activity receiving Federal financial for employment under the Job Training Partnership Act. (29 U.S.C. 1501 *et. seq.*)

Complainants alleging discrimination in employment will be referred to the Equal Employment Opportunity Commission under the Age Discrimination in Employment Act. TOCR will provide technical assistance and respond to general questions regarding the Age Discrimination Act only. Complaints alleging violations under the Age Discrimination Act will be referred to OCR.

### Title II of the Americans with Disabilities Act

Title II prohibits disability discrimination in the benefits of services, programs, or activities of a public entity. TOCR will provide technical assistance and respond to general questions regarding Title II, including attempts to assist the school system and the complaining party to agree on a compromise that is satisfactory to all parties and is in compliance with the law. If a compromise cannot be reached, TOCR will refer the complaining party to OCR for filing a complaint.

Complaints involving employment discrimination are generally referred to the Tennessee Human Rights Commission or the Equal Employment Opportunity Commission, unless the allegation of discrimination directly involves students.

### **Section 104: Determine Personal Jurisdiction**

TOCR must have jurisdiction over the institution alleged to have discriminated. TOCR will determine if the complaint has been filed against a recipient who the Department provides Federal and State financial assistance. If the recipient does not receive Federal or State financial assistance from the Department, the complaint will be dismissed. TOCR does not have personal jurisdiction over a non-recipient LEA. When appropriate, TOCR will refer the complaint to the appropriate agency.

### ***Section 105: Determine Whether the Complaint is Timely***

TOCR will only initiate an investigation on complaint allegations that have been filed in a timely manner. A complaint must be filed within one hundred eighty (180) days of the most recent discriminatory act, unless the act is deemed a continuing violation. A continuing violation is defined as an act or series of acts which began on a date one hundred eighty (180) days prior to the filing of the complaint, but continue to occur until, or beyond the date the complaint was filed.

A waiver of timeliness shall be granted on a case-by-case basis, and shall be based only upon a reasonable excuse.

### ***Section 106: Assignment of a Complaint Number***

TOCR will open for investigation all allegations, which, if true, would constitute a violation of one of the laws it enforces. A complaint will be dismissed, if it is so incoherent that, as a whole, it cannot be considered to be grounded in fact. If the allegations as stated by the complainant are unclear, TOCR will contact the complainant to request information that will assist TOCR in understanding the basis for the complaint. If TOCR learns or if it is confirmed by the complainant that the allegations are not within TOCR's jurisdiction, TOCR will dismiss the complaint.

All complaints moving forward to investigation will be assigned a complaint number ranging from 001 to 025. Complaints from more than one person against the same recipient that contain different allegations are treated as separate complaints. Complaints filed by more than one person that raise substantially identical allegations against the same recipient may be treated as one complaint and may be assigned the same complaint number; however if the complaint allegations raise distinct allegations, TOCR will assign separate complaint numbers. New allegations filed by the same person against the same recipient after complaint resolution has begun are reviewed on a case-by-case basis to determine whether the allegations should be added to the open complaint or treated as a new complaint.

### ***Section 107: Notification Letter***

After the complaint has been fully evaluated by TOCR, a notification letter shall be issued to both the complainant and the recipient stating whether a full compliance investigation will be initiated or if the complaint will be dismissed. If the complaint is to be dismissed, the notification letter shall include the basis for the dismissal. If an investigation is to be initiated, the recipient shall have fifteen (15) days from the date of the notification letter to respond to the complaint. The recipient's response should include any relevant documentation and/or witness information. Further documentation and additional specified responses may be required by TOCR from one or both parties.

The notification letter will inform both parties that TOCR will be in separate contact with them to arrange necessary interviews and/or document evaluation, as needed for the efficient investigation of the allegations. Failure of either party to provide necessary documentation, grant necessary interviews, or respond to specified questions, could result in a dismissal of the complaint or a finding of noncompliance by the recipient.

To investigate the complaint, TOCR may need to collect and analyze personal information. Complaints pertaining to students, and information gather for the investigation, shall be maintained as confidential records protected under the Family Educational Rights and Privacy Act (FERPA). Complaints pertaining to parties other than students may be public records under the Tennessee Public Records Act. *See Tenn. Code Ann. § 10-7-503.* TOCR will not reveal the name or other identifying information about a complaint to anyone other than the recipient or its representatives, unless such information is requested to be disclosed under the Tennessee Public Records Act.

## **ARTICLE II: INVESTIGATION, RESOLUTION AND ISSUING LETTERS OF FINDINGS**

TOCR will ensure that investigations are legally sufficient and that they are dispositive of the allegations raised in the complaint. TOCR will keep the parties informed of the progress in investigating a complaint and will communicate with the parties regularly regarding the status of any complaint. TOCR will return the parties' telephone calls promptly, generally by the end of the following business day. TOCR will acknowledge receipt of the parties' substantive letters and emails promptly, and, where a response is needed, provide a response to those letters and emails in a timely manner. These communications shall be documented in the case file.

### ***Section 201: Investigation: Interviews, Document Retrieval, and Specific Responses***

#### ***Interviewing the Complainant***

The complainant, and the minor child, if applicable, will be called regarding an interview with TOCR regarding the allegations in the complaint. The interview could occur in person, via telephone, or questionnaire. Please note, if the interview is conducted via questionnaire, the document will need to be in the writing of the minor child and notarized. The recipient and/or its representatives will not be present during the interview. TOCR wants to encourage the complainant and minor child to speak freely and without fear of retaliation generally associated with these types of investigations. The complainant should provide TOCR with any relevant documentation and/or witness information during this interview.

#### ***Interviewing the Recipient***

Following the interview with the complainant, TOCR will interview representative(s) for the recipient. The interview(s) could occur in person or via telephone. The recipient may be required to provide additional documentation, if necessary.

#### ***Interviewing Witnesses***

Witness interviews will not take place until after TOCR has had an opportunity to review all relevant documentation provided by the complainant and the recipient, and its representatives.

#### ***Interviews with Minors (Persons under 18) or Legally Incompetent Individuals***

TOCR shall obtain written consent from a parent or guardian prior to interviewing any person under 18 years of age or otherwise adjudicated legally incompetent, for example, mentally

impaired. Parental or legal guardian consent may not be required for persons under 18 if they are emancipated under state law and are therefore considered to have obtained majority. (See, Tenn. Code Ann. §39-11-106(a)(10)). For persons under 18 who state they are emancipated, TOCR will obtain proof of emancipation. Parental or legal guardian consent (or proof of emancipation) may not be necessary when the questions asked are of a general nature, not related to any specific events in which the minor was involved, and there are no records kept to identify the student. If a recipient refuses to allow minor students to be interviewed without consent even in the above circumstance, written consent must be obtained. If parents or guardians refuse to provide consent for an interview, and TOCR determines that the child's information is critical, TOCR may attempt to secure parental or guardian consent by inviting the parent or guardian to be present during the interview. If consent is denied, TOCR will not interview the child.

### *TOCRs Authority to Obtain Information*

TOCR has the right of access during a recipient's regular business hours to recipient's facilities and to information maintained by the recipient that is necessary to determine compliance status on those issues under investigation. See 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii). Generally, this includes access to oral information from a recipient's employees as well as to written or non-written information, such as electronic storage media, microfilming, retrieval systems, and photocopies maintained by the recipient. OCR, not the recipient, decides what information is relevant to a determination of compliance.

OCR has no legal authority to require the complainant or any other non-recipients to provide information.

### ***Section 202: Agreement Reached During an Investigation***

A complaint may be resolved when, in the course of an investigation, the recipient asks to resolve the complaint. Such a resolution agreement will require that the recipient admit in some manner that it has acted as alleged by the complainant, or as the investigation thus far has indicated. The admission need not be in writing; however, any oral or written admission will be noted in the case file. The provisions of the agreement will be aligned with the complaint or the investigation information and will be consistent with applicable regulations. A copy of the agreement will be included with the Resolution Letter. (See Section 205).

### ***Section 203: Investigative Determinations: Letter of Findings (Investigative Summary)***

At the conclusion of the investigation, TOCR will determine that:

- There is insufficient evidence to support a conclusion of noncompliance; or
- There is sufficient evidence to support a conclusion of noncompliance.

All letter so finding(s) that make a determination under Title II of the Americans with Disabilities Act will include the following language:

*"The complainant may file a private suit pursuant to section 203 of the Americans with Disabilities Act, whether or not TOCR finds a violation of Title II."*

(a) Insufficient Evidence Determination

When TOCR determines that the evidence does not support a conclusion that the recipient failed to comply with the applicable regulations, TOCR will issue a letter of finding(s) to the parties. The letter of finding(s) must include:

1. A statement of the issues raised by the complainant;
2. A statement of TOCR's jurisdiction over the complaint; and
3. A clear explanation of the pertinent legal standard and factual analysis, referencing the evidence relied upon in making the determination.

(b) Non-Compliance Determination

When TOCR determines that the evidence does support a conclusion that the recipient failed to comply with the applicable regulations, TOCR will issue a letter of finding(s) to the parties. The letter of finding(s) must include:

1. A statement of the issues raised by the complainant;
2. A statement of TOCR's jurisdiction over the complaint; and
3. A clear explanation of the pertinent legal standard and factual analysis, referencing the evidence relied upon in making the determination.

TOCR will also negotiate with the recipient a Resolution Agreement, which shall state the recipient's willingness to correct the inappropriate behavior and its agreement to future compliance.

***Section 204: Delay in Investigation***

If for reasons beyond the control of TOCR the investigation goes beyond sixty (60) days, all parties will be notified in writing of such delay. An indication of the anticipated date of closure will also be provided.

***Section 205: Guidelines for Resolution Agreements***

Whenever TOCR determines that the evidence supports a conclusion that the recipient failed to comply with applicable regulations, TOCR will negotiate with the recipient a Resolution Agreement, which shall state the recipient's willingness to correct the inappropriate behavior and its agreement to future compliance. This agreement may be reached before or after completion of an investigation, but must be based on evidence of legal non-compliance, rather than unfounded allegations or nonspecific concerns. The complaint will be considered resolved and the recipient deemed compliant if the recipient enters into an agreement that, fully performed, will remedy the identified violations.

Each Resolution Agreement:

1. Must be signed by a person with authority to bind the recipient and approved by their board or staff attorney;

2. Must be approved by the TOCR Director, or a person specifically designated as acting on his/her behalf; and
3. Must include a Corrective Action Plan (CAP), which provides:
  - a. Specific acts or steps the recipient will take to resolve compliance issues;
  - b. Dates for implementing each act or step; and
  - c. Dates for submission of reports and documentation verifying implementation.

The Resolution Agreement and Corrective Action Plan should be submitted to TOCR within thirty (30) days of the final investigative determination.

While many agreements may be fully implemented within a short period of time, some agreements will involve more complex terms that require additional time to complete. The general expectation is that Resolution Agreements should be implemented and monitored for not more than two (2) years after its issuance. The following are examples of circumstances that may justify extending the period of implementation and monitoring beyond two (2) years:

- Action involving construction of, or major modification to, a recipient's facilities;
- Action that cannot be completed without action by a legislative body; or
- Action requiring the collection and analysis of data lasting more than one school year.

A copy of the agreement will be attached to the letter of finding(s).

### ***Section 206: Request for Reconsideration***

TOCR is committed to a high quality resolution of every case. Each letter of findings will inform the parties that any questions or concerns about TOCR's case determination should be raised with the TOCR Director. In addition, each party may send a written request for reconsideration to the Department's Office of General Counsel (OGC) within fifteen (15) days of the date of the letter of findings. Contacting the TOCR Director, neither tolls the 15-day timeline for filing the request for reconsideration, nor is a prerequisite for filing a request for reconsideration with the OGC. The request should be as specific as possible, focusing on factual or legal concerns that could change the disposition of the case. General dissatisfaction with the letter of findings will not be sufficient.

Although each party is generally expected to submit a request for reconsideration within fifteen (15) days of the letter of findings, the OGC may exercise discretion in granting a waiver of the 15-day timeframe where:

1. The requesting party was unable to submit the request for reconsideration within the 15-day timeframe because of illness or other incapacitating circumstances and the request was filed within thirty (30) days after the period of illness or incapacitation ended; or
2. Unique circumstances generated by agency action have adversely affected the requesting party.

The review will entail an assessment of all documents, audio/video tapes, and other records submitted by both sides. In limited circumstances, and by the reviewer's request, the review may include additional responses or submissions from the complainant and/or the recipient. It may also be necessary to re-interview certain witnesses if the record does not reflect clear response to the alleged violations of law. The complainant/recipient will be advised to be as specific as

possible, focusing on factual or legal questions that could change the disposition of the case, and advised also that OGC will not consider any issues or concerns that were not raised prior to the close of the initial investigation. The decision of OGC on a review constitutes the final agency decision on the case.

Any determination made by this Department with regard to the civil rights statutes, as defined above, is subject to a review by the United States Department of Education Office for Civil Rights (OCR). Both parties also have a right to have such review conducted by OCR.

### ***Section 207: Monitor Post-Investigation Resolution Agreement***

TOCR will promptly conduct its monitoring activities consistent with the following standards and procedures:

#### *Verification of Recipient's Implementation*

TOCR will obtain sufficient information to determine whether the commitments made by the recipient have been implemented consistent with the terms of the resolution (settlement) agreement. In many instances verification of remedial actions can be accomplished by careful review of reports, documentation, and other information submitted by recipients and knowledgeable persons. In some instances, a site visit may be required to verify actions taken by the recipient that may be deemed the most efficient method of verification. Monitoring site visits will be conducted as necessary to verify or ensure compliance with the agreement.

#### *Responding to Monitoring Reports*

TOCR will periodically require the recipient to verify by way of a written report that the recipient continues to be in compliance with the resolution agreement. TOCR will acknowledge receipt of monitoring reports promptly. TOCR will evaluate the report and issue a decision as promptly as possible.

#### *Changed Circumstances Affecting Agreements*

##### *1. Mootness or Change in Law Policy*

TOCR may agree to modify or terminate the resolution agreement or corrective action plan if it learns that circumstances have arisen that fully resolve, or render moot, some or all of the compliance concerns that were addressed by the resolution agreement (e.g., further remedial action is not required because the student has moved out of the school district or the program no longer exist). TOR will also modify the resolution agreement or corrective action plan in response to changes in controlling case law, statutes, regulations, or agency policy that makes some or all of the provisions contained in the agreement inconsistent with the changes in controlling case law, statutes, regulations, or agency policy.

##### *2. New Compliance Issues*

Compliance issues identified for the first time during monitoring shall, in consultation with TOCR, be address by either providing technical assistance or the initiation of a new investigation.

In extreme circumstances, the resolution agreement and corrective action plan may be modified to include the new compliance issues, if they are proportional or congruent to the compliance issues being addressed in the current resolution agreement.

### *3. Implementation Problems*

TOCR will promptly provide written notice to the recipient of any deficiencies with respect to implementation of terms of the agreement, and will request immediate and appropriate action to address those deficiencies. TOCR shall seek additional commitments, where necessary, to address the failure of the recipient to implement commitments in the original agreement. Where a recipient notifies TOCR that it will carry out a provision of the agreement in the agreed-upon time or manner, or when TOCR reaches this determination after three (3) or more requests to comply and a failure to provide a reasonable excuse for the failure to implement that specific provision, TOCR will consider the resolution agreement terminated and a final statement of non-compliance shall be issued to the LEA. The final statement of non-compliance will be forwarded, along with the initial complaint and investigative files, to the appropriate authorities to withdraw federal and/or state financial assistance.

#### *Approval of Modifications*

Modification of the agreement provisions, reporting provisions, or timetable for completion of reporting will be granted on a case-by-case basis. Extensions of time of up to thirty (30) days for each report may be granted as authorized by TOCR, or legal counsel for TOCR. TOCR, or legal counsel for TOCR, must approve any modification that would extend the total monitoring period beyond two (2) years from the date of the original agreement. The recipient and the complainant will be notified, in writing, of significant modifications to the agreement.

#### *Conclusion of Monitoring*

TOCR will conclude the monitoring of a case when it determines that the recipient has fully implemented the terms of the settlement agreement, including any subsequent modifications to the agreement. The recipient and complainant will be promptly notified, in writing, of this decision.

### **ARTICLE III: INITIATING ENFORCEMENT ACTION**

If TOCR is unable to negotiate a settlement with the recipient, TOCR will initiate enforcement action. TOCR will either: (1) initiate administrative proceedings to suspend or terminate state financial assistance from funds made available through the Department to the recipient; (2) refer the case to OCR for enforcement of the resolution agreement, or when necessary to initiate proceedings to suspend or terminate federal financial assistance; or (3) refer the case to DOJ for judicial proceedings to enforce any rights of the United States under any law of the United States.

### **ARTICLE IV: COMPLIANCE REVIEWS**

The investigation procedures identified in this manual for complaint resolution will be utilized for compliance reviews, where appropriate. The “initiation date” is the date the recipient is notified of the compliance review.

If, during the course of an investigation, TOCR identifies compliance concerns involving unrelated issues that were not raised in the original complaint, TOCR may initiate a Compliance Review.

TOCR may treat a complaint as Compliance Review when:

- The complaint, because of its scope, involves systemic issues;
- A compliance review would be the most effective means of addressing multiple individual complaint against the same recipient; or
- The complainant decides to withdraw a complaint that includes class allegations.