

RULES
OF
THE STATE BOARD OF EDUCATION
THE TENNESSEE DEPARTMENT OF EDUCATION

CHAPTER 0520-12-04
CIVIL RIGHTS COMPLIANCE

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0520-12-04-.01 DEFINITIONS

- (1) "Charter School" means a public charter school as defined at T.C.A. § 49-13-104.
- (2) "Complainant" means an individual who is has filed an allegation or report of harassment or discrimination under Title VI or Title IX with TOCR.
- (3) "Complaint" means a report or notice of discrimination or harassment under Title VI or Title IX filed with TOCR.
- (4) "Department" means the Tennessee Department of Education.
- (5) "Federal Financial Assistance" means the definition of "federal financial assistance" provided at 34 C.F.R. §100.13(f) and §106.2(g).
- (6) "LEA" means local education agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (7) "Pass-through Entity" means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.
- (8) "Records" include, but are not limited to, original or copies of the following: the complaint, investigative notes, investigation reports, evidence logs, transcripts or video documentation of testimony, electronic files and communications, photographs and evidentiary documents, lists of all personnel and witnesses involved in proceedings, resolution agreements, findings or determinations of responsibility, and appeal documents; or for the purposes of Title IX sexual harassment allegations, items prepared and maintained in accordance with 34 C.F.R. § 106.45(b)(10).
- (9) "Title VI" means Title VI of the Civil Rights Act of 1964, a federal statute codified at 42 U.S.C. § 2000d et seq. that prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal Financial Assistance.
- (10) "Title IX" means Title IX of the Education Amendments of 1972, a federal statute codified at 20 U.S.C. § 1681 et seq. that prohibits discrimination based on sex in education programs and activities that receive Federal Financial Assistance.
- (11) "TOCR" means the Tennessee Department of Education Office for Civil Rights.

(Rule 0520-12-04-.01, continued)

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-3-201, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq., 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.02 PURPOSE

The purpose of this chapter is to assist in Department, LEA, and Charter School compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.).

Authority: T.C.A. §§ 49-1-102, 49-1-302, 4-4-123, 49-3-201, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq., 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.03 TOCR RESPONSIBILITIES

(1) TOCR shall:

- (a) Ensure LEA or Charter School compliance with Titles VI and IX and this chapter pursuant to its obligations under 34 C.F.R. 76.770 and as a Pass-through Entity under 2 C.F.R. § 200.332;
- (b) Provide training and technical assistance to LEAs and Charter Schools regarding compliance with Titles VI and IX, and this chapter and any state statutes relevant to compliance with Titles VI and IX including, but not limited to T.C.A. Title 39 and Title 49, upon request;
- (c) Investigate complaints arising under Titles VI and IX filed with TOCR in accordance with this chapter;
- (d) Annually complete a Title IX compliance report and implementation plan in accordance with T.C.A. § 4-4-123;
- (e) Annually submit a Title VI compliance report and implementation plan in accordance with T.C.A. § 4-21-901;
- (f) Annually submit a civil rights and bullying compliance report to the education committees of the General Assembly pursuant T.C.A. § 49-6-4503; and
- (g) Maintain all Records or other investigative actions or resolution actions in accordance with federal, state, and local record retention laws, rules, and policies.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-6-4503, 4-4-123, 49-3-201 4-21-901; 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.04 TOCR INVESTIGATIONS

(1) Upon receiving a Complaint arising under Title VI or Title IX, TOCR shall:

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- (a) Assign the Complaint a complaint number and enter such into a log or electronic filing system that is maintained in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g;
 - (b) Contact the Complainant to obtain any additional information or clarification, as needed;
 - (c) Determine if TOCR has jurisdiction to investigate;
 - (d) Send an acknowledgement letter to the Complainant stating whether TOCR will pursue an investigation.
- (2) The following timeliness requirements apply to TOCR's investigation of a Complaint arising under Title IV or Title IX:
- (a) TOCR may investigate allegations that have been filed within one hundred eighty (180) days of the date on which the discrimination is alleged to have occurred.
 - (b) If the Complaint alleges discrimination of an ongoing or continuous nature, TOCR shall include older events in its investigation as long as the most recent event of the ongoing discrimination occurred within one hundred eighty (180) days of submitting the Complaint.
 - (c) TOCR may grant waivers of timeliness if:

 - 1. The Complainant could not reasonably be expected to have known the act was discriminatory within the one hundred eighty (180) calendar day period and the Complaint was filed within sixty (60) calendar days after the Complainant could have become aware of the alleged discrimination. Lack of previous awareness of TOCR's complaint process or the civil rights laws and regulations enforced by TOCR shall not be a basis for a waiver;
 - 2. The Complainant was unable to file a Complaint because of incapacitating illness or other incapacitating circumstances during the one hundred eighty (180) calendar day period that rendered the Complainant physically or mentally incapable of filing a Complaint or obtaining assistance so that a Complaint could be filed on their behalf, the Complainant provides to TOCR documentation demonstrating such lack of capacity, and the Complaint allegation was filed within sixty (60) calendar days after the incapacitation ended;
 - 3. The Complainant filed a complaint alleging the same or similar allegation based on the same operative facts within the one hundred eighty (180) calendar day period in federal or state court, and filed a Complaint with TOCR within sixty (60) calendar days after there had been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice shall be considered a decision on the merits;
 - 4. The Complainant filed a complaint alleging the same or similar allegation based on the same operative facts within the one hundred eighty (180) calendar day period with another federal, state or local agency, and filed a Complaint with TOCR

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- within sixty (60) calendar days after the other agency completed its investigation;
or
5. The Complainant filed, within the one hundred eighty (180) calendar day period, an internal grievance with their school or LEA or Charter School alleging the same discriminatory conduct that is the subject of the TOCR Complaint, and the Complaint is filed no later than sixty (60) calendar days after the internal grievance is concluded.
- (3) If TOCR opens an investigation, it shall send a copy of the Complaint and a letter to the LEA and/or Charter School requesting a response.
- (a) The LEA or Charter School's response shall be provided by the deadline set by TOCR and shall include the information requested by TOCR and any relevant documentation and witness information the LEA or Charter School believes will aid TOCR in properly investigating and resolving the allegations.
- (4) The LEA or Charter School shall make available to TOCR all Records, information, documents, personnel, students, and evidence needed to resolve the investigation.
- (5) TOCR shall maintain the confidentiality of confidential student information in accordance with FERPA;
- (6) TOCR shall comply with the Tennessee Public Records Act at T.C.A. § 10-7-503 while maintaining the confidentiality of student records protected by FERPA.
- (7) Failure of the LEA or Charter School to provide necessary documentation, grant necessary interviews, or respond to specified questions, may result in a finding of noncompliance against the LEA or Charter School.
- (8) An LEA or Charter School may ask to resolve the Complaint with a resolution agreement before TOCR completes its investigation.
- (9) In accordance with Department procedures, TOCR and the LEA or Charter School may execute a resolution agreement in order to execute a mutually agreeable early resolution prior to the conclusion of the full investigation.
- (10) At the conclusion of an investigation, TOCR shall determine that there is either sufficient or insufficient evidence to support a conclusion of noncompliance. In its investigative summary and findings, TOCR shall include:
- (a) A statement of the issues raised by the Complainant;
- (b) A statement of TOCR's jurisdiction over the Complaint;
- (c) TOCR's determination of sufficient or insufficient evidence to conclude noncompliance;
and

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- (d) A clear explanation of the pertinent legal standard and factual analysis, referencing the evidence relied upon in making the determination.
- (11) The Complainant or LEA or Charter School may file a written request for reconsideration to the Department of Education's Office of General Counsel (OGC).

 - (a) The request for reconsideration shall be as specific as possible and highlight factual or legal concerns that could change the disposition of the case. General dissatisfaction with the investigative summary and findings shall not be a sufficient basis for a request for reconsideration.
 - (b) In its review, the OGC shall examine the documentation obtained throughout TOCR's investigation. If deemed prudent by the OGC, the OGC may, in limited circumstances, request and include in the review additional responses or submissions from the Complainant and/or the LEA or Charter School. It may also be necessary to re-interview certain witnesses if records do not reflect clear responses to the alleged violations of law. The OGC shall not consider issues or concerns that were not raised during the initial investigation.
- (12) In addition, the Complainant or LEA or Charter School may directly file for review of the Department's initial decision or reconsideration decision with the U.S. Department of Education Office for Civil Rights.
- (13) If TOCR determines that the evidence supports a conclusion that the LEA or Charter School failed to comply with applicable regulations, TOCR shall negotiate a resolution agreement with the LEA or Charter School after issuing its investigative summary and findings.
- (14) Any resolution agreement entered into between TOCR and an LEA or Charter School shall include a corrective action plan which provides:

 - (a) The purpose of the plan;
 - (b) Specific acts or steps the LEA or Charter School will take to resolve compliance issues, if applicable;
 - (c) Dates for implementing each act or step and anticipated completion; and
 - (d) Dates for submission of reports and documentation verifying implementation.
- (15) TOCR shall provide a copy of the signed resolution agreement entered into between TOCR and an LEA or Charter Schools to the LEA or Charter School. TOCR shall monitor resolution agreements to ensure LEA or Charter School compliance with the terms of each agreement.

 - (a) TOCR may require the LEA or Charter School to submit written reports and documentation that provides evidence of LEA or Charter School's continued compliance with the resolution agreement.
 - (b) TOCR shall provide written notice to the LEA or Charter School of any deficiencies in implementation and shall request immediate and appropriate action to address those

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deficiencies. When necessary, TOCR shall require additions to the resolution agreement to address the failure of the LEA or Charter School to fully implement commitments in the original agreement.

(16) TOCR may permit modification or termination of the resolution agreement or corrective action plan if it learns that circumstances have arisen that either fully resolve or render moot some or all of the compliance concerns that were addressed by the resolution agreement.

(17) TOCR may modify the resolution agreement or corrective action plan in response to changes in controlling case law, statutes, and/or regulations.

(18) Modification of any resolution agreement provision may be granted on a case-by-case basis. The Complainant shall be notified, in writing, of significant modifications to the resolution agreement.

(19) TOCR shall conclude the monitoring of a case when it determines that the LEA or Charter School has fully implemented the terms of the resolution agreement. The LEA or Charter School and Complainant shall be promptly notified, in writing, of the conclusion of monitoring.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-3-201, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**