

U.S. Department of Education
Office for Civil Rights

Annual Report
to Congress
Fiscal Year 2003

December 2004

U.S. Department of Education

Rod Paige

Secretary

Office for Civil Rights

James Manning

Delegated the Authority of the Assistant Secretary

December 2004

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Mission:

*Ensuring equal access to education and
promoting educational excellence
throughout the nation through
vigorous enforcement of civil rights.*

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FOREWORD

This report covers the activities of the U.S. Department of Education's Office for Civil Rights (OCR) from October 1, 2002, to September 30, 2003. In addition to describing OCR's civil rights compliance program, the report demonstrates how OCR is able to make a real difference in the lives of students.

As we submit this report, 2004 marks a special year in America's longstanding efforts to bring about equal educational opportunity for all people. It commemorates the 50th anniversary of the landmark *Brown v. Board of Education* decision that declared separate but equal schools to be unconstitutional. *Brown* stands as one of the greatest decisions handed down by the U.S. Supreme Court.

The No Child Left Behind Act (NCLB Act), the comprehensive reform of federal elementary and secondary education programs that President George W. Bush signed into law on January 8, 2002, may be viewed as furthering the intent of the *Brown* decision. The goal of the NCLB Act is to ensure that every child from every background receives a high quality education and that every school in America is a place of high expectations and high achievement.

The fair, effective and efficient enforcement of the civil rights laws works to advance both equity and educational excellence. There is no better way to honor this historic *Brown* anniversary than to stay focused in our efforts to help all of our children have an equal chance to succeed and reach their full potential. We will continue to build on these accomplishments in bringing access to high quality education to all students in our nation.

Respectfully submitted,

James Manning
Delegated the Authority of
Assistant Secretary for Civil Rights

"Any system and any person that gives up on any child because of what he looks like or who his parents are is no less discriminatory than a jeering mob blocking the schoolhouse door. It is every inch the bigotry that once exiled some people to the back of the bus."

Rod Paige
Secretary of Education
March 12, 2003

"Even though progress has been made, there is more to do. There are still people in our society who hurt. There is still prejudice holding people back. There is still a school system that doesn't elevate every child so they can learn."

President George W. Bush
January 20, 2003

OVERVIEW OF OCR COMPLIANCE AND ENFORCEMENT PROGRAM

The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) is responsible for enforcing five federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability and age by recipients of federal financial assistance. These laws are:

- Title VI of the Civil Rights Act of 1964 (prohibiting discrimination based on race, color and national origin);
- Title IX of the Education Amendments of 1972 (prohibiting sex discrimination);
- Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination);
- The Age Discrimination Act of 1975 (prohibiting age discrimination); and
- Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination by public entities, e.g., public elementary and secondary school systems, postsecondary schools, and vocational education programs, whether or not they receive federal financial assistance).

In addition, OCR enforces the Boy Scouts of America Equal Access Act. Under the Act, no public elementary school, public secondary school, or state or local education agency that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities shall deny equal access or a fair opportunity to meet, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed as a patriotic society in Title 36 of the United States Code.

These civil rights laws represent a national commitment to end discrimination in education programs. Since most educational institutions receive some type of federal financial assistance, these laws apply throughout the nation.

Coverage of these civil rights laws extends to:

- 14,859 school districts;¹
- 4,197 colleges and universities;²
- 5,059 institutions conferring certificates below the associate degree level, such as training schools for truck drivers and cosmetologists;³ and
- thousands of other entities, such as libraries, museums, and vocational rehabilitation agencies.

¹ U.S. Department of Education, National Center for Education Statistics (2003). *Digest of Education Statistics 2002* (NCES-2003060), Washington, D.C.: Author, Table 89, p. 98.

² *Ibid*, Table 243, p. 295.

³ *Ibid*, Table 362, p. 407.

Consequently, these civil rights laws protect millions of students attending or seeking to attend our educational institutions. In certain situations, the laws also protect persons who are employed or seeking employment at educational institutions. Overall, these laws protect:

- nearly 54.3 million students attending elementary and secondary schools;⁴ and
- nearly 16.4 million students attending colleges and universities.⁵

Enforcing these laws is critical to carrying out the mission of the U.S. Department of Education — ensuring equal access to education and promoting educational excellence throughout the nation.

In FY 2003, OCR's budget was \$85,715,000, with full time equivalent (FTE) staff of 672. See Figure 1 on historical funding and FTE.

U.S. Department of Education, Office for Civil Rights Appropriations, FTE & Workload Data FY 1993 – FY 2003							
FY	Presidential Request	Congressional Appropriation	FTE	Complaints		Compliance Reviews	
				Filed	Resolved [†]	Initiated	Resolved [†]
2003	\$89,710,000	\$85,715,000	672	5,141	5,246	74	14
2002	\$79,934,000	\$79,666,000	698	5,019	4,842	11	18
2001	\$76,000,000	\$75,822,000	696	4,571	4,777	21	43
2000	\$73,262,000	\$71,200,000	712	4,897	6,364	47	71
1999	\$68,000,000	\$66,000,000	727	6,628 ^{††}	5,369	76	93
1998	\$61,500,000	\$61,500,000	685	4,847	4,753	102	100
1997	\$60,000,000	\$54,900,000	681	5,296	4,981	152	140
1996	\$62,784,000	\$55,277,000	744	4,828	4,886	146	173
1995	\$61,457,000	\$58,236,000	788	4,981	5,559	96	178
1994	\$56,570,000	\$56,570,000	821	5,302	5,751	144	90
1993	\$61,400,000	\$56,402,000	854	5,090	4,484	101	82
[†] Includes cases carried over from previous years. ^{††} 1,614 filed by a single complainant.							

Figure 1

⁴ U.S. Department of Education, National Center for Education Statistics (2003).

Projections of Education Statistics to 2013 (NCES-2004013), Washington, D.C.: Author, Table 1, p. 45.

⁵ *Ibid*, Table 10, p. 57.

Organizational Structure

OCR is composed of a headquarters office, located in Washington, D.C., which provides overall leadership, policy development and coordination of enforcement activities, and 12 enforcement offices around the nation. The majority of OCR's staff are assigned to the enforcement offices, which are located in Boston, New York, Philadelphia (Eastern Division), Washington, D.C., Atlanta, Dallas (Southern Division), Cleveland, Chicago, Kansas City (Midwestern Division), Denver, San Francisco, and Seattle (Western Division).

Complaint Resolutions

One important way OCR carries out its responsibilities is by resolving complaints. Persons who believe there has been a violation of the civil rights laws enforced by OCR may file complaints with the appropriate enforcement office. OCR's process provides a forum for resolution of complaints of discrimination alleging violations of the civil rights laws.

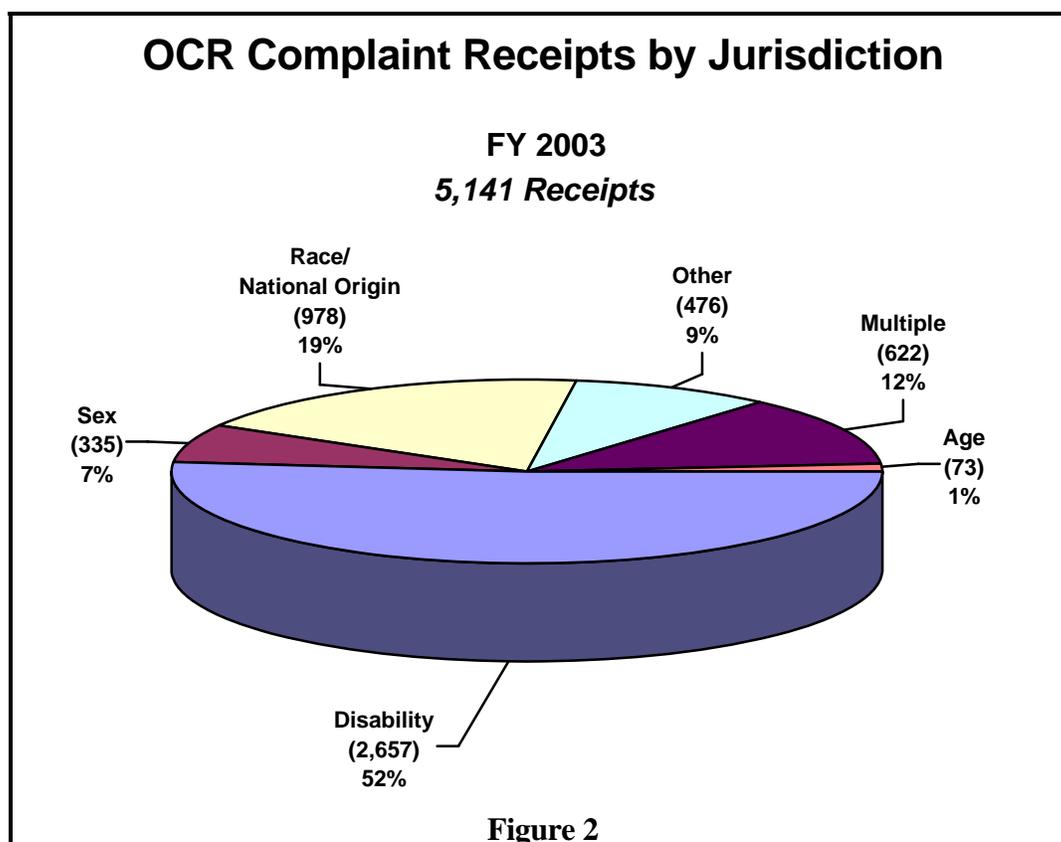
OCR's primary objective is to resolve the complainant's allegations of discrimination promptly, fairly and appropriately. In FY 2003, OCR received 5,141 complaints (an increase of 2.4 percent from FY 2002 receipts) and resolved 5,246, some of which had been filed in previous years. Figure 2 shows the percentage of complaint receipts by jurisdiction.

Historically, the majority of complaints OCR receives in a fiscal year allege discrimination on the basis of disability. This was the case again in FY 2003, when 52 percent of the complaints OCR received alleged discrimination on the basis of disability. In a report released in February 2003, the National Council on Disability (NCD) recognized and commended ED's Office for Civil Rights for its timeliness in processing Section 504 complaints. NCD also praised OCR as the only federal agency with detailed data available to the general public about its work on disability complaints.⁶

OCR uses a variety of techniques to resolve complaints, ranging from facilitating voluntary resolutions between parties to negotiating agreements with recipients for voluntary compliance after compliance concerns have been established. If these methods fail, OCR issues violation letters and enters into negotiations to correct those violations. It is only after OCR has advised recipients of their failure to comply with the civil rights laws and has determined that compliance cannot be secured by voluntary means that, as a last resort, OCR seeks compliance through the administrative hearing process or refers cases to the U.S. Department of Justice. This approach allows OCR to:

- provide timely and effective intervention at the beginning of the complaint process;
- focus on achieving positive change; and
- keep students, parents and school officials central to the resolution of complaints.

⁶ "Rehabilitating Section 504," National Council on Disability, February 12, 2003, Washington, D.C.



Appendix A shows FY 2003 complaint receipts by OCR enforcement offices and Appendix B lists the contact information for each enforcement office.

Compliance Reviews and Other Proactive Initiatives

In addition to resolving complaints, OCR initiates compliance reviews and takes other proactive steps to focus on specific compliance problems that are particularly acute or national in scope. In general, targeted compliance reviews and proactive initiatives maximize the impact of OCR's resources and complement the complaint resolution process. Experience indicates that these strategic activities benefit large numbers of students through policy or program changes by recipients that are designed to ensure compliance with the civil rights laws.

OCR initiated 74 compliance reviews in FY 2003 and brought 14 reviews to successful resolution, some of which had been started in previous years. Compliance review sites are selected based on various sources of information, including survey data and information provided by parents, education groups, media, community organizations and the public. In FY 2003, OCR conducted compliance reviews on the following issues:

- ensuring that minority and English language learner students are not inappropriately placed in special education programs; and

- ensuring that state agencies have designated Title IX coordinators, developed and disseminated antidiscrimination procedures, and implemented grievance procedures.

Monitoring

OCR monitors complaint and compliance review resolution agreements to ensure that the commitments made in these agreements are carried out and to maximize OCR's effectiveness in enforcing the civil rights laws. During FY 2003, OCR conducted 2,427 monitoring activities.

Following are some examples that show OCR's impact on both individual students and groups of students when schools and colleges carried out their resolution agreement commitments.

- Parents with limited English proficiency were excluded from participating in school board meetings because translation services were not available. Parents now receive the school board agenda in their primary language and can request translation services at board meetings, as well as in meetings with district and school staff.
- Nearly 3,600 students with learning disabilities were excluded by a school district's policy that made only students with certain other disabilities eligible for extended school year services. The school district now makes decisions on extended school year services based on the individual needs of students and not on the category of disability.
- A student-run university assault prevention transportation program excluded men from riding on or acting as volunteer drivers. The university modified the program so that it is now available to the campus community without regard to gender.
- A school district used a lottery system that gave preference on the basis of race to certain students for its optional programs. The district eliminated race as a selection criterion and all students now have an equal opportunity for selection.
- An elementary school developed new ways to meet the needs of its English language learners. As a result, students in grades 3-5 who were former English language learner students performed better than students whose primary home language is English on the state's competency examination.
- A school district agreed to conduct a comprehensive evaluation of the athletic interests and abilities of its students. As a result, a girls' water polo team was added at all five of the high schools. In its inaugural season, 85 girls competed and one of the teams qualified for the state championship tournament.

"I do want to once again thank you and your office for the job that you do everyday. I have been so impressed with your thoroughness with all of this, and the time spent with these investigations. I have really found that the positive changes that should be coming, can only help to protect our children. They are the ones that matter."

E-mail message complainant sent
to OCR investigator
June 3, 2003

- A university put procedures in place to help disabled students obtain necessary accommodations in housing. Students can now request and receive accommodations that ensure safe living arrangements.
- A school district had only two trained teachers for delivering services to English language learners, whose enrollment was increasing at a substantial rate. To comply with a resolution agreement it had entered into with OCR, the district developed a teacher training program with a local university. This resulted in the certification of 848 teachers for its English as a Second Language program.
- A school system failed to enter a student’s achievement test scores into its computer system because he was given extended time to accommodate a disability. After validating modifications for each of its standardized tests, the district developed procedures for recording, maintaining and providing access to scores of all students who take standardized achievement tests.
- Mobility-impaired persons now have access to a school district’s athletic facilities. Accessible parking, seating, restrooms, water fountains, concession stands and public telephones are available at the gymnasiums, football stadium and baseball field.
- A school district reviewed the placement of African American and Hispanic students with learning disabilities to determine whether the students were appropriately assigned. As a result, 94 students were reassigned to a less restrictive environment.
- A school district ended its practice of using race as a factor in approving transfer requests under its inter-district open enrollment program. As a result of its agreement, 32 students whose transfer requests were previously denied because of race were permitted to transfer to a neighboring school district.

Technical Assistance

Putting an end to discrimination includes preventing it before it starts. To do this, OCR provides information and other support services—known as technical assistance—to a variety of interested parties, including schools and colleges and community, student and parent groups. Assistance to educational institutions helps them comply with federal civil rights requirements, while assistance to parents, students and others informs them of their rights under law. OCR provides technical assistance through a variety of methods, including onsite consultations, conferences, training, community meetings and publishing and disseminating materials.

“Thanks for...educating our community residents. Your contributions inspire our board members to serve our community even better in the future...We are looking forward to collaborate to further serve the community.”

E-mail message from a
representative of a community group
acknowledging OCR’s technical assistance
June 12, 2003

OCR coordinated and/or participated in a number of conferences during FY 2003. In collaboration with the Department of Education's Office of Elementary and Secondary Education, OCR hosted a conference on American Indian and Alaskan Native education, *No Child Left Behind: Providing Educational Opportunity for American Indian and Alaskan Native Students*, in Washington, DC. The conference, which was attended by more than 200 educators, included presentations on reading, English language acquisition, standards, assessment and accountability, safe schools, school choice, charter schools, and technology. Information was provided to attendees on No Child Left Behind programs and resources that support state and district-level efforts to raise the academic achievement of American Indian and Alaskan Native students.

OCR hosted a number of follow-up events around the country. Approximately 230 people attended a Regional American Indian Symposium sponsored by OCR, in cooperation with Northern Arizona University and the WestEd Equity Assistance Center. More than 250 people attended a second Regional American Indian Symposium, cosponsored by OCR, Montana State University and the Interwest Equity Assistance Center. The symposia included sessions on reading readiness, teacher quality, highly qualified paraprofessionals, school choice, parental involvement, state civil rights laws and OCR enforcement procedures and were attended by representatives from the states' university systems, public schools, tribal governments, tribal schools, Bureau of Indian Affairs schools, the White House Indian Initiative on Tribal Colleges and Universities, and parents of Indian students. OCR staff also sponsored a workshop in Minnesota for school districts and tribal leaders serving Native American students in Minnesota and Wisconsin to address best practices in Indian student education and efforts to improve the educational achievement of Native American students.

OCR staff conducted a number of presentations around the country addressing a variety of other issues, including: access and transition from high school to college for students with disabilities; racial, sexual, disability and national origin harassment; provision of services to English language learners; minority student access to gifted and talented programs and services; and misidentification of minorities in special education programs. Participants at these presentations included students, parents, teachers, school administrators, counselors, social workers, school board members, state education officials, and advocacy group representatives.

For example, more than 200 educators attended a conference in North Dakota at which OCR made a presentation on racial harassment and services for English language learners. In another instance, OCR provided technical assistance on harassment based on national origin to over 300 refugees and refugee service providers.

Twice a year, OCR staff provides training to state coordinators of vocational education methods of administration. These state coordinators are responsible for conducting their own comprehensive civil rights compliance reviews of vocational education programs and schools funded by ED.

OCR also provides technical assistance to state departments of education and local school districts on reducing referrals to special education by implementing research-based reading programs.

In addition to these kinds of proactive initiatives, OCR responds to inquiries and requests from the public. Calls and letters requesting assistance come from other federal agencies, state agencies, local school districts, community groups, parents and students.

STRATEGIC PRIORITIES

The Office for Civil Rights has aligned its resources to ensure accomplishment of the goals and objectives of the No Child Left Behind Act and the Department's Strategic Plan. Following is a discussion and examples of OCR's activities in support of the No Child Left Behind Act, the Strategic Plan, and other high priority activities.

Putting Reading First

One of the goals set by No Child Left Behind is that all children will read on grade level by the third grade. The Department has determined that, to reach this goal, reading instruction must be based on sound scientific research. Research has established a link between ineffective reading instruction and unusually high numbers of referrals for special education. Survey data have long shown that minority students in particular may be mislabeled in certain special education categories. Students inappropriately placed in special education often do not receive the same curriculum content as regular education students and may face barriers in their later efforts to obtain a regular high school diploma, pursue postsecondary education, and prepare for employment.

"My Administration will continue to promote policies that expand educational opportunities for Americans from all racial, ethnic, and economic backgrounds."

President George W. Bush
June 23, 2003

Therefore, OCR emphasizes the importance of implementing high quality research-based reading programs to reduce the number of students who are misidentified and inappropriately placed in special education. Through its investigative outreach and technical assistance activities, OCR helps ensure that all children have equal access to high quality education.

In April 2003, OCR launched nationwide compliance reviews in 37 school districts around the country on the issue of the misidentification of minority students in special education. The reviews focus on school districts' possible misidentification of minority students and language minority students as disabled and their placement in special education programs. Where OCR identifies civil rights violations, it will work with districts to determine whether existing reading programs are effective or are contributing to the inappropriate referral of minorities. As necessary, OCR provides technical assistance to school districts in identifying effective, research-based reading programs.

Moving English Language Learners to English Proficiency

One of the key strategies in No Child Left Behind is to ensure that English language learner (ELL) students meet rigorous standards. The OCR enforcement offices are working with districts to help them develop evaluation plans to ensure that language acquisition programs are research-based and that ELL students are meeting performance standards. OCR monitors

implementation of resolution agreements to ensure that districts conduct effective program evaluations and measure the progress of ELL students.

As a part of its April 2003 nationwide compliance initiative on misidentification of minorities in special education, OCR also focused on ensuring that national origin minority students are not referred for evaluation or placed in special education programs on the basis of their limited English proficiency. Special education programs are essential to ensure that language minority students with disabilities receive an appropriate educational experience. However, studies have documented discrepancies in the levels of referral and placement of ELL students in special education. Where violations of the law are found, OCR will work with districts to develop resolution agreements, including a technical assistance component that emphasizes reaching out to parents of language minority students so that they are better able to make sound educational choices concerning their children's schooling.

"I want to commend you for your efforts over the past three years...I have been very gratified by the results you have gotten at [the school]. You have eased my mind tremendously. I feel that the [English language learner] students are being educated and supported as they have never been before... You have done something miraculous for everyone in that school."

November 26, 2003, letter from complainant after OCR completed case monitoring activities

Promoting Informed Parental Choice and Innovative Programs

Single Sex Education

The No Child Left Behind Act authorizes local educational agencies to use Innovative Assistance Programs funds provided by the Act to support same-sex schools and classrooms, consistent with applicable law. The Act also requires the Department to issue guidelines on single-sex classes and schools. OCR implemented this Congressional mandate by issuing guidelines for school districts that describe and explain which types of single-sex instruction are permissible under current regulatory requirements.

OCR also issued a Notice of Intent to Regulate (NOIR) to explore the feasibility of providing additional flexibility to the Title IX implementing regulations so that educators may establish single-sex classes and schools at the elementary and secondary levels, while ensuring that recipients do not discriminate on the basis of sex. After reviewing and assessing all of the approximately 170 public comments on the NOIR received, OCR drafted proposed amendments to the Title IX regulations to permit more flexibility for single-sex schools and classes. During FY 2004, OCR published the proposed amendments in the Federal Register for public comment.

New Freedom Initiative

OCR is undertaking a number of activities to help students with disabilities make the transition from high school to college. As part of an ongoing effort to support students with disabilities,

OCR made multiple presentations to such groups as state departments of education, a consortium on higher education, staffs of individual schools, and special education students. Materials such as a pamphlet on transition of students to postsecondary education and a Frequently Asked Questions document were widely disseminated.

Information for Parents and Recipients

OCR assisted the National Diabetes Education Program (NDEP) in preparing a comprehensive guide for management of diabetes at school. NDEP is a federally sponsored partnership of the National Institutes of Health, Centers for Disease Control and Prevention, and more than 200 partner organizations. *Helping the Student with Diabetes Succeed: A Guide for School Personnel* provides information about diabetes, how it is managed, and how each member of the school staff can help meet the needs of students with the disease.

OCR uses technology to deliver timely, accessible information to parents, students, teachers, and education decision makers through its interactive, Web-based, contact information system to improve access to OCR information appropriate to customer needs (<http://www.ed.gov/ocr>). Consistent with the Freedom of Information Act (FOIA), the Department of Education has made certain types of records, created on or after November 1, 1996, available electronically on the Internet. During FY 2003, OCR updated its electronic E-FOIA reading room, where recipients and the public can access OCR regulations and Federal Register documents. Additional policy documents will be posted in FY 2004. The documents will be available in both printed and electronic format.

OCR's Elementary and Secondary Schools Survey (E&S Survey) is being merged with the Department's Educational Data Exchange Network (EDEN), a central database that will be the main repository of information for No Child Left Behind Act data. Because the E&S Survey is merging with EDEN, OCR will no longer conduct its data collection survey. Civil rights data will be collected through EDEN's Supplemental Survey Tool Civil Rights Data Collection. OCR contributed its FY 2003 survey funding to develop EDEN's supplemental survey tool and pilot the tool's capability. OCR's contribution to EDEN will expedite the Department's development of an integrated data collection system that can capture essential NCLB data, as well as important civil rights data.

Encouraging Safe Schools

Harassment could deny a student the right to an education free of discrimination and could threaten a student's physical or emotional well-being, influence how well a student does in school and make it difficult for a student to achieve his or her career goals. Also, the courts have made it clear that, where harassment is so severe, pervasive, and objectively offensive that it interferes with benefits protected by law, it creates an illegal "hostile environment."

Racial Harassment

After investigating a complaint, OCR found that an African American student was subjected to disparaging comments and physical threats because of his race. The student's parents removed him from the school district because it failed to take appropriate action to end the harassment. The district agreed to reimburse the family \$3,000 for expenses in transporting the student to and from his new school district and will cover the cost of psychological counseling.

“Racial prejudice is a reality in America. It hurts many of our citizens. As a nation and as a government and as individuals, we must be vigilant in responding to prejudice where we find it.”

President George W. Bush
January 15, 2003

Disability Harassment

OCR found that a student with cerebral palsy was continually teased, hit and called names by other students and that school officials did not take sufficient steps to end the harassment. The school district agreed to publish and implement effective disability harassment procedures, train all staff on the procedures and maintain a recordkeeping system.

Preventing Harassment

OCR participated in several state initiatives aimed at preventing hate crime, harassment and bullying. Following the events of September 11, 2001, OCR responded to numerous requests for technical assistance to prevent harassment of students, teachers or other persons perceived to be Arab Americans or of Middle Eastern or South Asian origin.

Encouraging Accountability

Case Management System

In order to become a high performance, customer-focused organization, during FY 2003 OCR began implementation of its new Case Management System (CMS). The CMS is an automated tool for tracking OCR's complaint and compliance review investigations and such proactive activities as significant technical assistance. The CMS is a primary data source for measuring progress in achieving objectives under OCR's Annual Program Plan. It reduces reliance on paper complaint files for documenting OCR's law enforcement case resolution activities and provides users the ability to perform a variety of functions involving particular cases, such as indexing of party and witness interviews and evidentiary documents.

One-ED

Pursuant to the President's Management Agenda initiatives concerning competitive sourcing, human capital, and restructuring and the Department's One-ED process, which is designed to implement these initiatives, OCR formed a One-ED Team to analyze its primary business process—the case resolution process. The Departmental process provides an integrated, five-

year human capital, strategic sourcing, and restructuring plan that builds on the Department's *Culture of Accountability* Report and echoes the Strategic Plan themes by focusing on "No Employee Left Behind" and providing employee learning and achievement opportunities.

OCR produced a business case analysis of its process and conducted a presentation for the Department's Executive Management Team (EMT) that considered the relative benefits of maintaining the status quo, reengineering the case resolution process, and subjecting the process to competitive sourcing. OCR recommended reengineering. The EMT issued a decision adopting OCR's recommendation. The business process reengineering strategies, when implemented, will result in a case resolution process that provides consistent high performance, quality customer service, and enhanced efficiency.

New Statutory Responsibility

The Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act, addresses equal access to public school facilities for the Boy Scouts and other specified patriotic youth groups. In November 2002, OCR issued an Advance Notice of Proposed Rulemaking inviting comments from the public on issues to be considered in developing proposed regulations. After reviewing the comments, OCR began drafting a Notice of Proposed Rulemaking, which was published during FY 2004. OCR received six complaints alleging violations of the Act and four complaints were resolved during FY 2003.

Secretary of Education's Commission on Opportunity in Athletics

The Assistant Secretary for Civil Rights served as an *ex officio* member of the Secretary of Education's Commission on Opportunity in Athletics, composed of representatives of athletes, educators, coaches and other interested parties. The Commission was charged with examining the enforcement of Title IX and making recommendations to increase athletic opportunities for all students. The Commission held town hall meetings across the country, receiving testimony from over 50 expert witnesses and 150 members of the public. On February 26, 2003, the Commission presented its final report to Secretary Paige. The report is entitled "Open to All: Title IX at 30," and contains a number of factual findings and recommendations for improving and strengthening the enforcement of Title IX.

With the Commission's report in mind, in July 2003, OCR mailed "Dear Colleague" letters to education leaders at 6,600 postsecondary education institutions. The letter reaffirms the flexibility given to educational institutions in ensuring their athletics programs are operated free from discrimination on the basis of sex. The document also clarifies that nothing in the

"OCR [investigators] were very professional and extremely competent...[OCR's investigation] turned out to be very worthwhile. The [investigation] was very thorough and it was extremely helpful in helping us with our Title IX programming...[OCR] didn't intimidate the coaches or the students they interviewed. They would also explain why they were looking...The whole process was surprisingly easy."

Statement of a university athletics director published in an April 2003 professional journal

Title IX statute requires the cutting or reduction of teams in order to demonstrate compliance with Title IX and that the elimination of teams is a disfavored practice.

Brown v. Board of Education 50th Anniversary Commission

President Bush signed legislation on September 18, 2001, establishing a Commission to encourage and coordinate activities to commemorate the 50th anniversary of the U.S. Supreme Court’s landmark 1954 decision in *Brown v. Board of Education* declaring racially segregated schools unconstitutional. The Commission has been disseminating information about the *Brown* decision through lectures, town hall meetings, writing contests, and public service announcements. OCR is responsible for organizing and managing the Commission. Among other events, the Commission met in Washington, D.C., in May 2003 where the centerpiece was a panel discussion in which some of the original plaintiffs discussed their experiences during and after the litigation.

“As we honor this important anniversary, I encourage all Americans to continue the march to equality and opportunity for all.”

President George W. Bush
August 28, 2003, Presidential Message
on the 40th Anniversary of
Dr. Martin Luther King, Jr.’s
“I Have a Dream” Speech

OTHER EFFORTS TO ENFORCE THE CIVIL RIGHTS LAWS

OCR Regulatory and Policy Guidance

OCR strives to communicate clearly how the civil rights laws apply in particular situations to help people understand their rights and education institutions understand their obligations. Clearly articulated standards enable OCR staff to make consistent compliance determinations that are legally supportable and based on a fair and thorough analysis of information.

A July 28, 2003, Dear Colleague Letter was issued to postsecondary institutions regarding the application of the civil rights laws and First Amendment issues. It confirms that OCR's regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment.

Race-Neutral Alternatives

In FY 2003, OCR began an initiative to provide technical assistance and public education regarding race-neutral approaches to achieving student body diversity. In order to enable students to exchange ideas with a wide variety of people from diverse geographic regions, socioeconomic backgrounds, cultural heritages and points of view, numerous educational institutions are grappling with ways to ensure that their student body comes from a wide variety of backgrounds. In the 2003 University of Michigan decisions, the U.S. Supreme Court held that institutions must undertake "serious good faith consideration of workable race-neutral alternatives" prior to adopting racial preferences.

The goal of OCR's initiative is to foster thinking about using race-neutral means to produce diversity in educational institutions and to help create a positive climate in which such race-neutral alternatives can be considered. OCR prepared a 40-page report entitled, "Race-Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity," which was published by the Department on March 29, 2003. The Report catalogs many of the race-neutral approaches that states are implementing around the country. For example, many educational institutions are providing preferences on the basis of socioeconomic status. Colleges and universities are expanding their recruitment and outreach efforts by targeting students from schools that traditionally have not been "feeder schools" for those institutions. More importantly, states are also promoting advanced placement courses and skill development programs designed to improve educational achievement among students who attend traditionally low performing schools.

OCR also hosted a national conference in Miami, Florida, in April 2003 to present the concepts described in the Report to leading members of the postsecondary education community. Building on the Michigan decisions, OCR has more recently published an additional report that describes race-neutral programs being implemented across the country. The report, which is entitled "Achieving Diversity: Race-Neutral Alternatives In American Education," revises and expands

the first edition and includes information on various race-neutral approaches used in K-12 schools, public and private colleges, and graduate and professional schools. Both reports are available at <http://www.ed.gov/ocr>. Additional reports, disseminating information regarding various aspects of this issue, will be issued in FY 2005 and FY 2006.

Magnet Schools Assistance Program

The Magnet Schools Assistance program (MSAP), administered by the Department's Office of Innovation and Improvement, provides financial assistance to school districts that are seeking to improve educational programs and to reduce, prevent or eliminate minority group isolation. The program provides three-year grants for the enhancement or establishment of magnet schools. The Assistant Secretary for Civil Rights reviews applicants' voluntary desegregation plans to determine if they are "adequate under Title VI." Additionally, the Assistant Secretary is required to certify the civil rights eligibility of applicants for MSAP funds and to annually review school district grantees' progress in meeting their desegregation goals. During FY 2003, OCR reviewed the annual reports of the 62 districts receiving MSAP assistance. As necessary, OCR also provided technical assistance to several MSAP recipients in complying with civil rights statutes as well as program goals.

Equal Opportunity in Vocational Education

Under OCR's *Vocational Education Programs Guidelines*, state vocational education agencies are responsible for conducting civil rights reviews and other compliance activities with their sub-recipient schools and programs and reporting to OCR about these activities. State vocational education agency reports are submitted biennially to OCR, which provides recommendations for improving student access to vocational programs on the basis of race, national origin, sex or disability. OCR responded to the state agency reports by providing suggestions for enhancing the effectiveness of the agencies' compliance and enforcement activities.

OCR, in conjunction with state agencies, presented training conferences for state agency civil rights staff. These conferences provided in-depth training on the procedures and techniques state agencies should use in conducting their civil rights compliance reviews and reporting to OCR. Training also was provided about program requirements and investigating techniques applicable to a variety of complex civil rights issues. Participants later reported that the workshops provided valuable tools and information, as well as contacts, to enhance the effectiveness of their civil rights compliance and enforcement programs.

"The work of reform is well begun and we are determined to continue that effort until every school in America is a place of learning and achievement."

President George W. Bush
Radio Address to the Nation
January 4, 2003

Higher Education Agreements

During FY 2003, OCR continued to monitor the implementation of its higher education agreements with six states. Florida, Texas, Kentucky, Pennsylvania, Maryland and Virginia

were among nineteen states that previously operated racially segregated higher education systems. In *United States v. Fordice*, the U.S. Supreme Court set out standards for determining whether such states have met their affirmative duty to dismantle those systems and their vestiges under the Fourteenth Amendment to the U.S. Constitution and Title VI.

In Virginia, several new academic programs were staffed and are now operational at Virginia State University and Norfolk State, the state's historically black institutions. Also, funds were designated for the improvement of their facilities. Pennsylvania, Texas and Maryland also made progress in the enhancement of the facilities of their historically black institutions. For example, Prairie View A&M and Texas Southern received \$25 million in state line item appropriations, which were used for constructing new facilities, improving technology, and adding high demand academic programs, including graduate programs in Electrical Engineering and Urban Planning and Environmental Policy. Another accomplishment was the accreditation of Texas Southern University's teacher preparation programs.

Examples of OCR Case Resolutions

OCR's enforcement program is having a profound influence on the lives of people, at all education levels, across the country. Below are some examples.

Admitting Students Without Regard to Sex

A male applicant alleged that he was denied admission to a college nursing program because of his sex. OCR mediated a resolution and the college admitted him to its nursing program.

"I cannot speak highly enough of the services that your office provides or about the quality and dedication of the people who work there."

May 15, 2003, letter from an attorney representing a family who filed a discrimination complaint with OCR

Extending Intercollegiate Athletic Opportunities to Older Students

A 31-year old student was denied an opportunity to try out for the university football team because of his age. The university resolved the complaint by offering him a tryout, using the same selection criteria applied to other students.

Making School Programs Accessible to Students with Disabilities

A school district conducted an annual field trip to an inaccessible theater. Mobility-impaired students were carried from the bus to the second floor of the theater to see the performance and placed in seats or fold-up strollers. Because the theater is a National Historic landmark, structural changes could not be made to provide physical access to the second floor. However, as a result of an on-site investigation, OCR determined there was an accessible first floor dinner theater nearby and management was willing to relocate performances there. The district agreed to this arrangement and students can now be taken in their wheelchairs to the accessible theater location.

Eliminating Shortened School Day for Students with Disabilities

Special education students were routinely dismissed earlier than other students in one school district. This resulted in a shorter school week of up to two hours for some disabled students. The district agreed to stop this practice unless early release time is specified in a student's individualized education program.

Providing Auxiliary Aids for Students with Disabilities

A hearing-impaired student alleged that a university denied her the service of note takers and dismissed her after she failed several courses. The university resolved the complaint by reinstating the student and providing free tuition for six credit hours. The university assured that note takers would be provided for all her future classes.

At another university, OCR found that interpreters were routinely 25-35 minutes late for their assigned classes. One student was dropped from class because the interpreter was not present during roll call. Under the resolution agreement, students who use interpreter services will be asked to provide feedback that will determine whether interpreters are retained.

Assigning Students Without Regard to Race

OCR investigated a complaint by a parent that an elementary school has been reassigning students on the basis of their race for several years. The parent also alleged that his son, who is African American, was reassigned from a kindergarten class with White students and a White teacher to an all minority class with a minority teacher. OCR's investigation established that the school was not following its own nondiscriminatory assignment policy, which led to racially segregated classrooms. The district is now assigning students without regard to race.

OCR resolved another complaint, which alleged that a school district's open enrollment process resulted in discrimination against White students and non-African American minority students. OCR found that the district divided applications for each school into "black" and "non-black" and then selected by lottery three applicants from the pool of black applicants for every two non-black applicants selected. To resolve this matter, the district assured OCR that the dual lottery system would no longer be employed to select students for assignment and that race would no longer be a factor in the allocation of available open enrollment slots.

Making Academic Adjustments for Students with Disabilities

A law school student with a disability alleged that the school denied a request for academic adjustments, which resulted in her academic dismissal. The law school resolved the complaint by permitting the student to retake an examination with the necessary academic adjustments. If the student passes the examination, the law school will readmit the student.

OCR received another complaint alleging a state board of regents denied accommodations for its General Educational Development test for a student with disabilities. The state board resolved the complaint by allowing the student extended time and the use of a calculator.

Delivering Services in Correctional Facilities

A state agency entered into a resolution agreement after OCR completed a compliance review of services for English language learners at 12 correctional facilities for youthful offenders. The review found a number of violations in identifying and providing instructional programs to English language learners and the lack of qualified personnel to deliver services. As a result of the agreement, the state legislature appropriated \$1.2 million for curricular materials and teacher training for the 2003-04 school year.

“The past three years of fighting day after day, year after year, have been most difficult test of my life. There was a lot of hurt and despair. There was the point where I hit rock bottom and I was left to try to put back the pieces of shattered lives... I have never felt so much hurt. But, it is over finally. Thank you for all that you have done and for making a difference in my life as well as [my son].”

March 9, 2003, letter sent to an OCR enforcement office

Providing Transportation Services for Students with Disabilities

One of OCR’s enforcement offices received a complaint from a parent alleging that a school district was not providing her daughter, who has a disability, with transportation services from an after-school program as required in her individualized education program (IEP). After being contacted by OCR, the district agreed to provide transportation from after-school activities in accordance with the student’s IEP. The district also agreed to reimburse the parent for the expenses she had incurred while transporting her daughter from after-school activities.

“The school started working on paving the paths to the portable classrooms the end of the second week in December... There are now blacktop-paved paths to the portable buildings that my daughter... needs to negotiate in the wheelchair. The paved paths make a big difference. It is much easier for her to get around independently in the wheelchair.”

January 10, 2003, letter from parent whose complaint was resolved by OCR

Upgrading Facilities for Female Athletes

A complaint alleged that the quality of interscholastic practice and competitive facilities provided to female athletes in a school district was inferior to facilities provided to male athletes. The district developed a detailed plan of improvement and a specific timeline to complete modifications to practice and competitive facilities so that female athletes are afforded comparable facilities.

Providing Educational Support Services for Students with Disabilities

The parent of a high school student contacted OCR about her son not being provided with the instructional support services that were outlined in his IEP. OCR determined that some teachers were not fully aware of the services that the student was supposed to be receiving and did not know how to raise that issue with school administrators. The school district entered into an agreement, which included training teachers on the importance of fully implementing a disabled student's IEP and on the process to follow if they believe that IEP services are not being provided or if they believe that additional or different services are needed.

Ensuring Opportunity for Students with Disabilities to Participate in School Graduation

A high school student with a psychological disorder was denied the opportunity to walk with his graduating class during the commencement exercise. The district felt the student constituted a threat to himself and others. In investigating the complaint, OCR found that the decision was made unilaterally by a school administrator without input from the student's IEP team and based on assessments from the previous school year. The district agreed that in the future it would make such decisions based on the determination of an IEP team and on current and complete evaluation information.

“Our President has called upon this nation to commit itself to a bold vision. He’s called upon us to create in this nation an education system that educates **all** of our children, an education system which leaves no children behind. This is our goal. It is not to educate **some** of the children, but to educate all of them well.”

Rod Paige
Secretary of Education
July 12, 2003

Making Libraries Accessible to the Community

A complaint was received alleging that a city library was not accessible to persons with mobility impairments. The complaint was investigated under Title II and, after OCR pointed out several concerns, the library identified a way to make its programs and services accessible.

MEASURING OCR'S WORK

OCR's current performance indicators measure timeliness of case processing and program outputs, such as percentages of OCR-directed technical assistance and resource materials for recipients and parents. These indicators address only a portion of OCR's enforcement activities, and we are collecting data and working to develop additional indicators to reflect more fully the work that we do.

OMB and Congress have each recognized our indicator on case processing—that 80 percent of our complaints are to be resolved within 180 days—as a very useful measure of the efficiency and effectiveness of our complaint resolution process. Timeliness is critical to students and parents in the resolution of civil rights issues and is an indicator of positive case outcomes. In FY 2003, OCR resolved 91 percent of its complaints within 180 days, as compared to FY 2002 when 89 percent were resolved within the 180-day timeframe; this is one of the highest annual complaint resolution rates since OCR began tracking this data in the 1970s.

To measure progress in achieving objectives in OCR's Annual Program Plan, the new Case Management System (CMS) collects available outcome information once case monitoring is complete. Implementation of the CMS began in 2003. Once the system is well populated, we will be in a position to develop other measures of OCR's effectiveness in addition to those measures of timeliness of case processing and provision of technical assistance already in place. The CMS is expected to be fully operational by the end of FY 2004.

“Now it's up to us to stay focused on the task and to do whatever it takes to help every child learn, so no child is left behind.”

Rod Paige
Secretary of Education
February 26, 2003

**APPENDIX A: FY 2003 COMPLAINT RECEIPTS
BY OCR ENFORCEMENT OFFICES**

FY 2003 Complaint Receipts by OCR Enforcement Offices							
	<i>Race/ National Origin</i>	<i>Sex</i>	<i>Disability</i>	<i>Age</i>	<i>Multiple</i>	<i>Other</i>	<i>Total</i>
Boston	39	21	185	6	27	13	291
New York	59	22	203	6	41	39	370
Philadelphia	57	31	232	9	42	48	419
District of Columbia	39	23	123	2	28	18	233
Atlanta	160	36	399	2	59	84	740
Dallas	128	48	306	10	108	67	667
Chicago	119	25	183	14	63	20	424
Cleveland	45	41	160	6	27	24	303
Kansas City	60	18	160	4	50	23	315
Denver	82	19	188	5	34	63	391
San Francisco	133	32	351	3	99	66	684
Seattle	57	19	167	6	44	11	304
National	978	335	2,657	73	622	476	5,141

APPENDIX B: OFFICES AND ADDRESSES

OFFICE FOR CIVIL RIGHTS

U.S. DEPARTMENT OF EDUCATION

400 Maryland Avenue, SW, Washington, DC 20202-1100

Customer Service #: (800) 421-3481 ♦ TDD#: (877) 521-2172 ♦ <http://www.ed.gov/ocr>

Eastern Division

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Office for Civil Rights, *Boston Office*
U.S. Department of Education
J. W. McCormack POCH, Room 701
Boston, MA 02109-4557
Telephone: (617) 223-9662; Facsimile: (617) 223-9669
TDD: (617) 223-9695; Email: OCR.Boston@ed.gov

New Jersey, New York, Puerto Rico, Virgin Islands

Office for Civil Rights, *New York Office*
U. S. Department of Education
75 Park Place, 14th Floor
New York, NY 10007-2146
Telephone: (212) 637-6466; Facsimile: (212) 264-3803
TDD: (212) 637-0478; Email: OCR.NewYork@ed.gov

Delaware, Maryland, Kentucky, Pennsylvania, West Virginia

Office for Civil Rights, *Philadelphia Office*
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107
Telephone: (215) 656-8541; Facsimile: (215) 656-8605
TDD: (215) 656-8604; Email: OCR.Philadelphia@ed.gov

Southern Division

Alabama, Florida, Georgia, Tennessee

Office for Civil Rights, *Atlanta Office*
U.S. Department of Education
61 Forsyth Street S.W., Suite 19T70
Atlanta, GA 30303-3104
Telephone: (404) 562-6350; Facsimile: (404) 562-6455
TDD: (404) 562-6454; Email: OCR.Atlanta@ed.gov

Arkansas, Louisiana, Mississippi, Texas

Office for Civil Rights, *Dallas Office*
U.S. Department of Education
1999 Bryan Street, Suite 2600
Dallas, TX 75201
Telephone: (214) 880-2459; Facsimile: (214) 880-3082
TDD: (214) 880-2456; Email: OCR.Dallas@ed.gov

North Carolina, South Carolina, Virginia, Washington, DC

Office for Civil Rights, *District of Columbia Office*
U.S. Department of Education
P.O. Box 14620
Washington, DC 20044-4620
Telephone: (202) 208-2545; Facsimile: (202) 208-7797
TDD: (202) 208-7741; Email: OCR.DC@ed.gov

Midwestern Division

Illinois, Indiana, Iowa, Minnesota, North Dakota, Wisconsin

Office for Civil Rights, *Chicago Office*
U.S. Department of Education
111 North Canal Street, Suite 1053
Chicago, IL 60606-7204
Telephone: (312) 886-8434; Facsimile: (312) 353-4888
TDD: (312) 353-2540; Email: OCR.Chicago@ed.gov

Michigan, Ohio

Office for Civil Rights, *Cleveland Office*
U.S. Department of Education
Bank One Center, Suite 750
600 Superior Avenue East
Cleveland, OH 44114-2611
Telephone: (216) 522-4970; Facsimile: (216) 522-2573
TDD: (216) 522-4944; Email: OCR.Cleveland@ed.gov

Kansas, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota

Office for Civil Rights, *Kansas City Office*
U.S. Department of Education
8930 Ward Parkway, Suite 2037
Kansas City, MO 64114
Telephone: (816) 268-0550; Facsimile: (816) 823-1404
TDD: (800) 437-0833; Email: OCR.KansasCity@ed.gov

Western Division

Arizona, Colorado, New Mexico, Utah, Wyoming

Office for Civil Rights, *Denver Office*
U.S. Department of Education
Federal Building, Suite 310
1244 Speer Boulevard
Denver, CO 80204-3582
Telephone: (303) 844-5695; Facsimile: (303) 844-4303
TDD: (303) 844-3417; Email: OCR.Denver@ed.gov

California

Office for Civil Rights, *San Francisco Office*
U.S. Department of Education
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, CA 94102-4102
Telephone: (415) 556-4275; Facsimile: (415) 437-7783
TDD: (415) 437-7786; Email: OCR.SanFrancisco@ed.gov

Alaska, American Samoa, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington and the Mariana Islands

Office for Civil Rights, *Seattle Office*
U.S. Department of Education
915 Second Avenue, Room 3310
Seattle, WA 98174-1099
Telephone: (206) 220-7900; Facsimile: (206) 220-7887
TDD: (206) 220-7907; Email: OCR.Seattle@ed.gov