

The Latest Agency Views Impacting Education: Recent Guidance from OCR, DOJ, PTAC & OSERS

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Today's Presenters



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Today's Agenda

- **OCR's** Annual Report
- **OCR** and **DOJ**: joint guidance to Ensure English Learner Students Have Equal Access to High-Quality Education
- **OCR**: guidance package on Title IX coordinators
- **PTAC**: Protecting Student Privacy While Using Online Educational Services: Model Terms of Service
- **OSERS**: Dear Colleague Letter: Use of Due Process Procedures After a Parent Has Filed a State Complaint

By the Numbers:

OCR's Annual Report (FY13-14)

- OCR received nearly 10,000 complaints in each of the past two fiscal years
- Resolved nearly 20,000 cases during the past two fiscal years
- During fiscal years 13-14, OCR launched 68 proactive investigations independent of any complaint; resolved 44 such investigations
- Posted more than 500 new resolution agreements to OCR's website, released lists of institutions under investigation
- Issued 11 policy guidance documents

OCR and DOJ: joint guidance to Ensure English Learner Students Have Equal Access to High-Quality Education

January 7, 2015 Dear Colleague Letter:

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

The impact of English learners

- Almost 5 million students in the United States are English learners—almost 9 percent of all public school students.
- From 2002 to 2011, the percentage of English learners in public schools increased in 40 states and DC.
- Currently, 3 out of every 4 public schools enroll English learner students.

"More than 40 percent of our students in Denver Public Schools are English language learners, and our community's future depends in large measure on our success in providing them with the education they deserve. The guidance—which provides clarity and synthesizes ELL requirements—will be a useful resource as we continue to work to meet the needs of our English language learners."

— Tom Boasberg, Superintendent of Denver Public Schools

Background: Legal requirements

- In 1974, the Supreme Court ruled that under Title VI of the Civil Rights Act of 1964 (“Title VI”), public schools must take affirmative steps to ensure that students with limited English proficiency can participate meaningfully in their educational programs and services
- In 1974, Congress also enacted the Equal Educational Opportunities Act (“EEOA”), which confirmed that public schools must act to overcome language barriers that impede students’ equal participation

Identifying and Assessing All Potential EL Students

- Schools must have procedures in place to accurately and timely identify potential EL students
 - For example, use a home language survey at the time of enrollment to gather information about a student's language background and to identify students whose primary or home language is other than English
- Determine if potential EL students are, in fact, EL through a valid and reliable test that assesses English language proficiency in speaking, listening, reading, and writing

Providing Language Assistance to EL Students

- EL students are entitled to appropriate language assistance services to become proficient in English and to participate equally in the standard instructional program within a reasonable period of time
- Schools can choose among programs designed for instructing EL students provided the program is educationally sound in theory and effective in practice

Staffing and Supporting an EL Program

- EL students are entitled to EL programs with sufficient resources to ensure the programs are effectively implemented, including highly qualified teachers, support staff, and appropriate instructional materials
- Schools must have qualified EL teachers, staff, and administrators to effectively implement their EL program, and must provide supplemental training when necessary

Providing Meaningful Access to All Curricular and Extracurricular Programs

- EL students must have access to their grade-level curricula so that they can meet promotion and graduation requirements
- EL students are entitled to an equal opportunity to participate in all programs, including pre-K; magnet; gifted and talented; career and technical education; arts; athletic programs; AP and IB courses; clubs; and honor societies



Avoiding Unnecessary Segregation of EL Students

- Schools generally may not segregate students on the basis of national origin or EL status
- Although certain EL programs maybe designed to require that EL students receive separate instruction for a limited portion of the day or period of time, schools are expected to carry out their program in the least segregative manner consistent with achieving the program's stated educational goals

Evaluating EL Students for Special Education and Providing Dual Services

- EL students with disabilities must be provided both the language assistance and disability-related services to which they are entitled
- EL students who may have a disability must be located, identified, and evaluated in a timely manner
- To avoid inappropriately identifying EL students as students with a disability because of their limited English proficiency, EL students must be evaluated in an appropriate language based on the student's needs and language skills

Meeting the Needs of Students Who Opt Out of EL Programs or Particular Services

- All EL students are entitled to services. Parents may, however, choose to opt their children out of a program or particular services within a program
- Schools may not recommend that parents opt out for any reason. Parents are entitled to guidance in a language they can understand
- A school must still take steps to provide opted-out EL students with access to its educational programs, monitor their progress, and offer EL services again if a student is struggling

Monitoring and Exiting EL Students from EL Programs and Services

- Schools must monitor the progress of all EL students to ensure they achieve English language proficiency and acquire content knowledge within a reasonable period of time
- An EL student must not be exited until he or she demonstrates proficiency in speaking, listening, reading, and writing
- Schools must monitor the academic progress of former EL students for at least two years to ensure that students have not been prematurely exited

Ensuring Meaningful Communication with Limited English Proficient Parents

- LEP parents are entitled to meaningful communication in a language they can understand, such as through translated materials or a language interpreter, and to adequate notice of information about any program, service, or activity that is called to the attention of non-LEP parents



OCR: guidance package on Title IX coordinators

April 24, 2015

Dear Colleague Letter: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

Letter to Title IX Coordinators: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf>

Resource Guide: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

Title IX Coordinators

- Title IX of the Education Amendments of 1972 prohibits sex discrimination in education programs and activities
- Implementing regulations require recipients of federal funds to designate at least one employee to coordinate Title IX compliance

Title IX Coordinators

“[S]ome of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient’s compliance with Title IX. By contrast, OCR has found that an effective Title IX coordinator often helps a recipient provide equal educational opportunities to all students.”

Guidance Package: Title IX Coordinators

- Three-document package issued April 24:
 - 7-page [Dear Colleague Letter](#)
 - 2-page [Letter to Title IX Coordinators](#)
 - 26-page [Resource Guide](#)
- Largely restates previous OCR guidance; also clarifies previous guidance and recommends certain practices
 - According to OCR, “those documents remain in full force.”

Guidance Package: Title IX Coordinators

The Title IX coordinator “should be independent” so as to avoid any potential conflict of interest. Although Title IX “does not categorically exclude particular employees from serving as Title IX coordinators,” school districts not designate an employee whose other job duties may create a conflict of interest, such as a general counsel or athletics director.

The Title IX Coordinator “should report directly to the recipient’s senior leadership, such as the district superintendent”.

Guidance Package: Title IX Coordinators

Although Title IX “does not specify” who should determine the outcome of Title IX complaints or the actions that a school district will take in response to such complaints, a Title IX coordinator “could play this role, provided there are no conflicts of interest, but does not have to.”

Title IX’s anti-retaliation provision protects Title IX coordinators from discrimination, intimidation, threats, or coercion, and an institution must not interfere with a Title IX coordinator’s participation in Title IX investigations or monitoring of compliance efforts.

PTAC: Protecting Student Privacy While Using Online Educational Services: Model Terms of Service

January 2015 Model Terms of Service:

http://ptac.ed.gov/sites/default/files/TOS_Guidance_Jan%202015_0.pdf

Training video:

<http://ptac.ed.gov/document/protecting-student-privacy-while-using-online-educational-services-training-video>

PTAC Model Terms of Service

- Guidance aimed at assisting schools and school districts when considering whether the use of online educational services and mobile applications complies with student privacy laws
- Two components, issued February 26:
 - *Protecting Student Privacy While Using Online Educational Services: Model Terms of Service*
 - User-friendly, 10-minute training video directed to administrators, teachers, and staff

PTAC Model Terms of Service

- Follows previous guidance ([*Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices*](#)) issued in February 2014
 - Importance of reviewing online educational service providers' Terms of Service (ToS) prior to sharing student data, to determine whether ToS are consistent with privacy requirements under laws including Family Educational Rights and Privacy Act (FERPA), Children's Online Privacy Protection Act (COPPA), and Protection of Pupil Rights Amendment (PPRA)

<https://tech.ed.gov/wp-content/uploads/2014/09/Student-Privacy-and-Online-Educational-Services-February-2014.pdf>

PTAC Model Terms of Service

- “Model ToS” (despite the title) not a template
- Checklist of types of provisions that commonly appear in ToS, such as: marketing and advertising, modifications to ToS, data use, data sharing, security controls, data de-identification
- Sample ToS provisions under headings: “GOOD! This is a Best Practice” and “WARNING! Provisions That Cannot or Should Not Be Included in ToS” and explains why

PTAC Model Terms of Service

	Provision	GOOD! This is a Best Practice	WARNING! Provisions That Cannot or Should Not Be Included in TOS	Explanation
8	Data Sharing	<p>"Data cannot be shared with any additional parties without prior written consent of the User except as required by law."</p> <p>Or</p> <p>"The [School/District] understands that Provider will rely on one or more subcontractors to perform services under this Agreement. Provider agrees to share the names of these subcontractors with User upon request. All subcontractors and successor entities of Provider will be subject to the terms of this Agreement."</p>	<p>"Provider may share information with one or more subcontractors without notice to User."</p> <p>Or</p> <p>"Where feasible, Provider will require third-party vendors to comply with these Terms of Service."</p>	<p>While it is perfectly acceptable for providers to use subcontractors, schools/districts should be made aware of these arrangements and subcontractors should be bound by the limitations in the TOS.</p>

PTAC Model Terms of Service

- “Training video provides an overview of obligations of schools and school districts when using online educational services:

“Technology in classrooms can improve education by expanding our knowledge, communication, and productivity. But as we enjoy these new tools, we must be mindful of the risks they bring, and follow best practices to secure and protect students’ private information.”

PTAC Model Terms of Service

- Summarizes FERPA's consent requirement and common exceptions; obligations under COPPA and PPRA; offers examples:

“Meet Ms. Jones, a high school teacher. She just found a great new app to help kids with math through games. Her students love to play games, and the app is free. . . . Some apps require the acceptance of Terms of Service. These can be long, boring, and full of complicated legal language. Ms. Jones needs to fully understand what she is agreeing to in the Terms of Service. We may not think of clicking an “Accept” button as the same thing as signing a written contract, but they can be legally binding agreements. For these reasons, and more, Ms. Jones should talk to the appropriate individuals about the school’s policies and procedures before signing up for the app. Administrators should review the app and the Terms of Service to make sure it won’t adversely affect student privacy or the security of the school’s systems. If your school or school district doesn’t already have a process for reviewing and approving apps and online services for classroom use, you should create one.”

PTAC Model Terms of Service

- School officials can check to see if a potential online educational service partner has signed the **Student Privacy Pledge**
- List of 12 commitments by which signatories (currently, numbering 154) agree to treat student information when providing online educational services to K-12 schools
- ED and President Obama have endorsed the Pledge, which is issued by the Future of Privacy Forum and The Software & Information Industry Association
- www.studentprivacypledge.org

OSERS: Dear Colleague Letter: Use of Due Process Procedures After a Parent Has Filed a State Complaint

April 15, 2015 Dear Colleague Letter:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/dcl04152015disputeresolution2q2015.pdf>

Use of Due Process Procedures

- Dear Colleague Letter issued by Office of Special Education and Rehabilitative Services on April 15

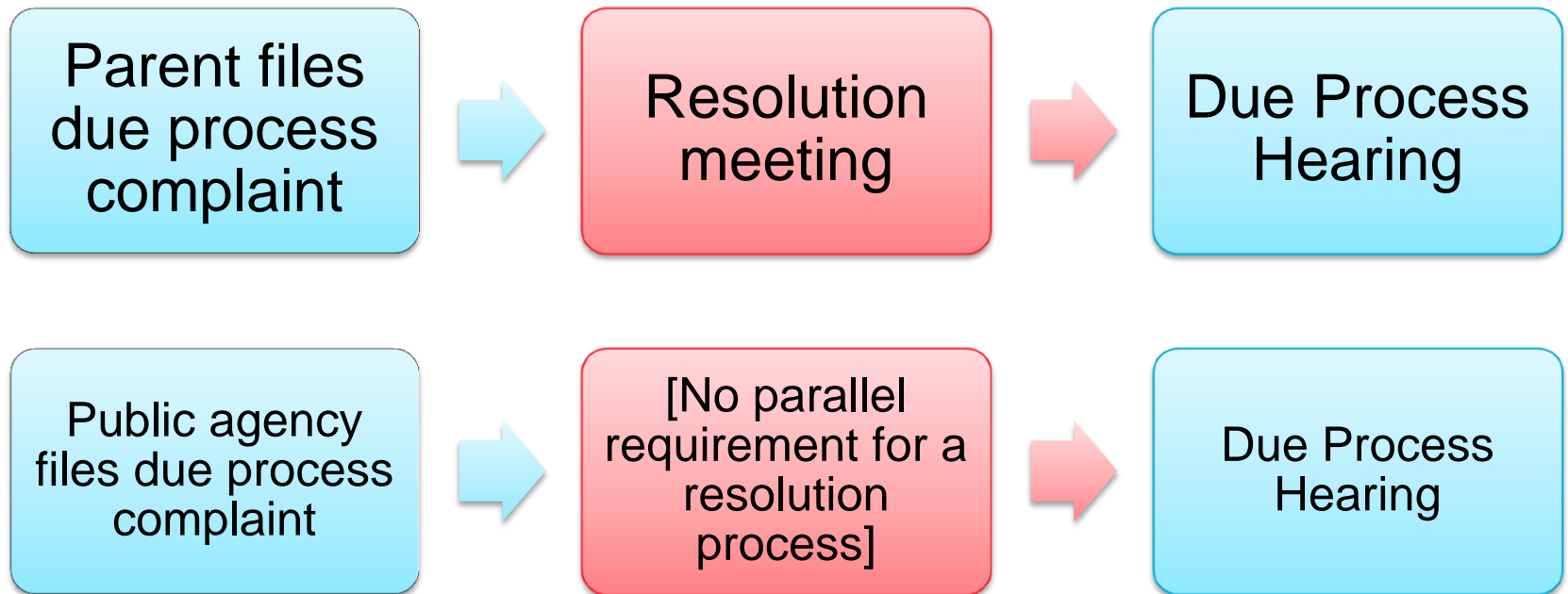
“It has come to our attention that some public agencies may be filing due process complaints concerning the same issue that is the subject of an ongoing State complaint resolution, ostensibly to delay the State complaint process and force parents to participate in, or ignore at considerable risk, due process complaints and hearings. Increased costs and a potentially more adversarial and lengthy dispute resolution process are not in the best interests of children with disabilities and their families.”

Dear Colleague Letter: Legal Background

- The Dear Colleague Letter does not constitute new regulations
- The Dear Colleague Letter does not add requirements to applicable law
- Courts would likely show deference to the Department's guidance

OSERS Dear Colleague Letter

- Due Process Complaint Procedures



OSERS Dear Colleague Letter

Mediation process (34 C.F.R. 300.506)

- Must be voluntary
- Less complex than due process complaint resolution process

OSERS Dear Colleague Letter

State complaint procedures

- Required, separate from due process procedures
- Complaint may be filed if an individual or organization thinks a public agency has violated IDEA or the regulations, **even if** a due process complaint is pending
- If a State complaint is filed on an issue that is also the subject of a due process complaint, the State **must set aside any part of the State complaint that is being addressed in the due process hearing** until after the hearing

OSERS' Concern

Some public agencies are filing **due process complaints** on the same issue as an ongoing **State complaint**

Increases
the costs of
dispute
resolution for
both parties

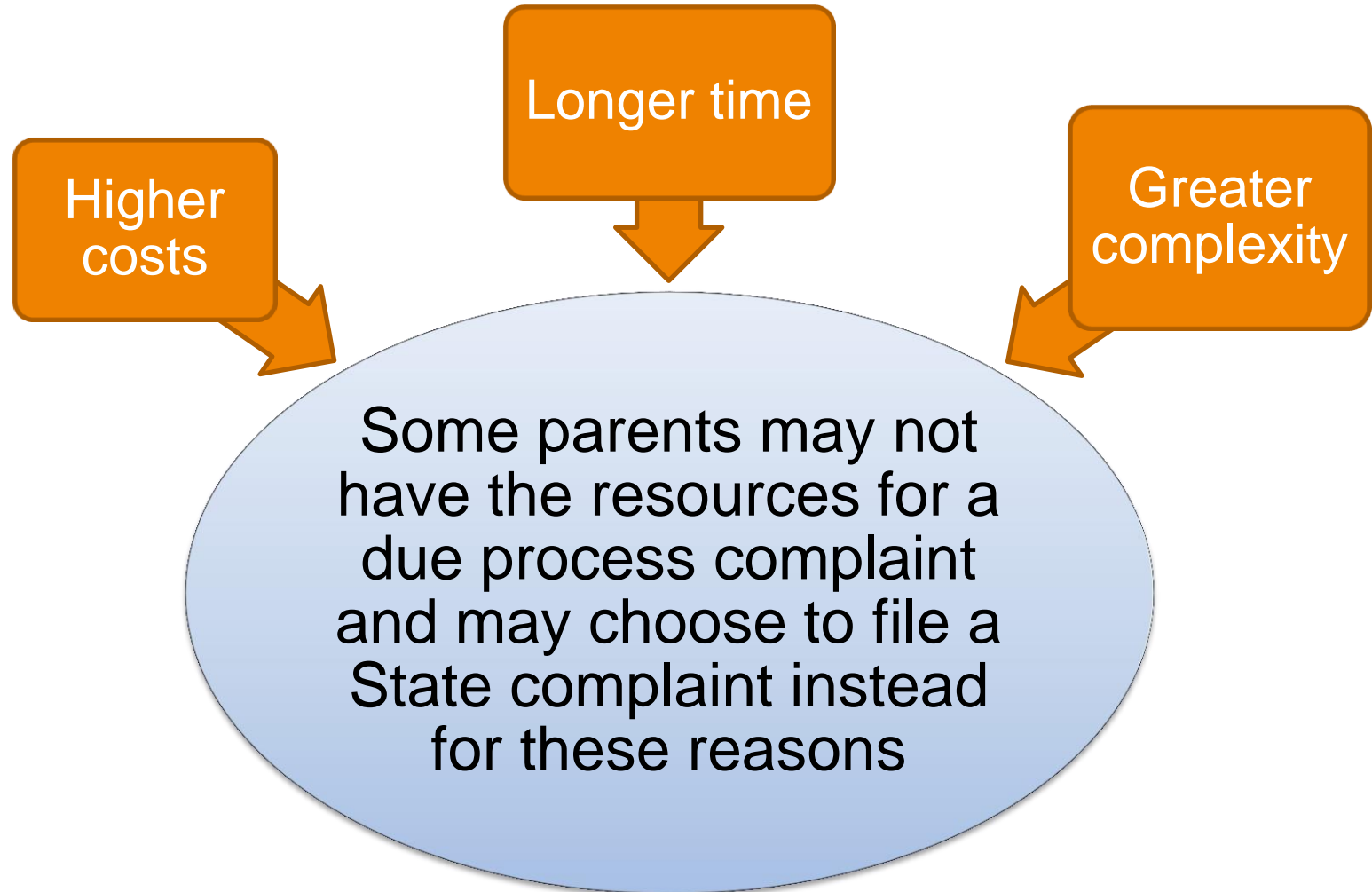
Lengthens
the time
period for
dispute
resolution

Potentially
more
adversarial

Dear Colleague Letter: The Department's Position

“While these same issues could be the subject of a due process complaint, it is the Department’s long-standing position that a State may not refuse to resolve a parent’s State complaint challenging a public agency’s eligibility determination or a State complaint alleging a denial of FAPE through its complaint resolution procedures even if the State complaint concerns a matter that could also be the subject of a due process complaint. This is true even if the State believes that the parent should file a due process complaint against the local educational agency or that a due process hearing is a more appropriate mechanism to resolve such disputes.”

OSERS' Rationale



Dear Colleague Letter: The Department's Position

“We strongly encourage public agencies to respect parents’ reasonable choice to use the State complaint process rather than a due process complaint hearing. Likewise, before pursuing a due process hearing, a public agency should attempt to engage parents in mediation or other informal dispute resolution procedures, as appropriate.”

A Reminder on Legal Fees

- A court may choose to award a parent who is the prevailing party in a due process hearing brought by a public agency reasonable attorney's fees to be paid by the public agency
- Funds under Part B of IDEA may not be used to pay those attorney's fees

Questions & Answers





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