



Office of Civil Rights
Case Investigation and Resolution Manual

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Introduction

The Tennessee Department of Education Office for Civil Rights (TOCR) does its part to ensure equal access to education by enforcing compliance with civil rights laws that prohibit discrimination. It is TOCR's mission to ensure that no educational institution that receives federal funding engages in discrimination prohibited by law. As a condition of receiving federal funding, each Local Education Agency (LEA) must affirm that it will abide by federal law; TOCR confirms that compliance.

The Complaint Investigation and Resolution Manual outlines the procedures TOCR follows in order to carry out prompt and thorough investigation and resolution of complaints of discrimination.

Overview of the Complaint Investigation and Resolution Process

The following is a simple overview of TOCR's investigation and resolution process. Please read the rest of the manual (or referenced pages) for further information and instructions.

Step		For more Information, go to the listed section (and page) of this manual.
1	An Individual Files A Complaint: A Complaint informs TOCR of the allegedly discriminatory action, provides contact information, and serves as the basis for TOCR's investigation.	Section 101 (page 4)
2	TOCR Determines Whether to Investigate the Complaint and Begins its Investigation: The Office will determine whether or not it has the authority to investigate. If TOCR possesses jurisdiction, it will send letters informing the involved parties of its investigation.	Section 102 (pages 4-6)
3	The LEA or School District Responds: The institution or school district who allegedly acted in a discriminatory way will respond to the allegations.	Section 103 (page 6)
4	TOCR Investigates: TOCR will request information from both sides and interview individuals to investigate the alleged discrimination.	Section 201 (page 7)
5	TOCR Issues its Investigative Summary and Findings: TOCR will describe its investigation and conclusions in its Investigative Summary and Findings and submit a copy to both sides.	Section 203 (page 8)
optional	An Individual Submits a Request for Reconsideration: Either party may request that (a) the Office of General Counsel review the investigation and reissue the Investigative Summary and Findings or (b) request the United States Department of Education Office for Civil Rights review the allegations.	Section 205 (page 9)
6	The School District Creates a Resolution Agreement: If TOCR concludes the school district was noncompliant with civil rights laws, the school district will submit a Resolution Agreement outlining how it will address and correct all noncompliance.	Section 206 (page 9)
7	TOCR Monitors Compliance Efforts: After a conclusion of noncompliance and an executed Resolution Agreement, TOCR will monitor the LEA to ensure the LEA implements the required changes and achieves compliance.	Section 207 (page 10)

Part I. The Complaint

Section 101. Filing a Complaint

The Complaint is the written statement claiming discrimination or a violation of one of the civil rights statutes has occurred. TOCR has created a Complaint Form to facilitate the submission of complaints and ensure all necessary information is included. Use of this form is encouraged, but not required.

An individual who opts not to use the Complaint Form should include the following information in his/her Complaint and sign:

- Name and contact information (name, address, email, and phone number) of the Complainant (the person filing the complaint);
- Name of the person(s) or group injured by the alleged discrimination and applicable contact information (if available);
- Name of the person(s) or institution alleged to have discriminated and applicable contact information;
- A detailed explanation of what happened and the type of discrimination alleged;
- What (if any) other means have been used to address the circumstances at issue (such as agency intervention, internal grievance procedure, lawsuits, etc.);

Please remember that TOCR bases its investigation on the Complaint. Incomplete or inaccurate information will delay or prevent our intervention. Oral allegations, anonymous calls or letters, courtesy copies of correspondence or complaints sent to others, or simple inquiries that seek advice or information do not qualify as Complaints.

Complaint Forms may be obtained by contacting the office for civil rights and complaints may be filed by mail, fax, or email to:

Office for Civil Rights
Tennessee Department of Education
9th floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243

Phone: (615) 289-1887
Shaundraya.Hersey@tn.gov

If the Complainant files the Complaint on behalf of a minor, the Complainant should seek and receive written permission from the legal parent or guardian of that minor *prior* to filing the Complaint, so that that TOCR may speak with the minor regarding the allegations. Copies of written parental permission should be sent to TOCR with the Complaint.

Section 102. Acknowledgement and Decision Whether to Investigate

Within fifteen (15) calendar days of receipt of a Complaint, TOCR will assign the Complaint a number and send an Acknowledgement Letter to the Complainant and the Recipient (the person and/or institution that allegedly acted in a discriminatory manner). In this letter, TOCR will acknowledge the Complaint and either state whether TOCR will pursue an investigation or request further information to make that determination. TOCR is only authorized to investigate complaints when the office has *subject matter jurisdiction* and *personal jurisdiction*. Our office may also decline to investigate untimely complaints.

(a) Subject Matter and Personal Jurisdiction

Similar to the court system, TOCR only has jurisdiction – or authority – over certain *subject matter* and *persons* or institutions. If a Complaint alleges an area or subject matter over which TOCR does not jurisdiction, TOCR must decline to investigate it. Similarly, TOCR may not investigate if the law does not grant authority over the involved individuals or institutions. If unable to assist, TOCR will refer the Complainant to another agency that has the authority to investigate and intervene.

Discrimination Based on Race (Title VI of the Civil Rights Law of 1964)

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. Under Title VI, discrimination includes disparate impact (disproportional *effect*), disparate treatment (intentional, different treatment), and hostile environment discrimination. TOCR only investigates school districts or educational institutions that receive federal funding.

Title VI applies to discrimination in employment only if employment is the primary purpose of the federal funds received. If the funding has a purpose other than employment, the funding's primary beneficiaries must be impacted by the discriminatory employment practices to qualify for Title VI's anti-discriminatory protection. As applied to schools, the primary purpose of funding is education, not employment. Therefore, it is necessary to show the discrimination's impact on students (the funding's intended beneficiaries) before TOCR would be able to investigate employment discrimination. If a Complainant cannot show a direct impact on students, TOCR will refer the Complainant to the Tennessee Human Rights Commission (THRC) or the Equal Employment Opportunity Commission (EEOC).

Discrimination Based on Sex (Title IX of the Education Amendments of 1972)

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination based on sex in educational programs or activities that receive federal funding. Title IX covers sexual harassment (including same gender harassment), pregnancy discrimination, athletics, and any discrimination with a basis in the differences between the genders. Title IX also covers employment discrimination on the basis of gender in educational programs or activities that receive federal funding. TOCR will investigate allegations of sex discrimination at any school district or educational institution that receives federal funding.

Discrimination Based on Disability: Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973

Title II of the Americans with Disabilities Act (ADA) prohibits disability discrimination in the benefits of services, programs, or activities of a public entity. TOCR only entertains allegations from schools run directly by the Tennessee Department of Education (TDOE). TOCR will refer all other ADA complaints to the United States Department of Education Office for Civil Rights (OCR).

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. TDOE's Division of Special Populations will offer technical assistance and answer general inquiries about Section 504. The Division of Special Populations will retain and resolve any portion of the complaint regarding the Individuals with Disabilities Education Act (IDEA) and then will also refer formal complaints and requests for further intervention regarding Section 504 to OCR.

Discrimination Based on Age: The Age Discrimination in Employment Act and the Age Discrimination Act of 1975

The Age Discrimination Act of 1975 prohibits discrimination based on age in all programs and activities that receive federal financial assistance. However, the Age Discrimination Act does not forbid:

- (1) An age distinction contained in a federal, state, or local statute or ordinance adopted by a 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.*)

The Age Discrimination in Employment Act prohibits employment discrimination based on age.

TOCR will only provide general assistance regarding age discrimination. Complainants alleging age discrimination in programs and services will be referred to OCR. Complainants of age discrimination in employment will be referred to the EEOC and THRC.

Retaliation

Most of the above mentioned laws contain provisions prohibiting retaliation. TOCR will investigate any retaliation by students or adults based on efforts to claim or enforce any rights protected by Title IV and Title IX. Other retaliation claims will be referred to OCR, EEOC, or THRC as appropriate.

(b) Timeliness Requirement

TOCR will only investigate allegations that have been filed within one hundred eighty (180) days of the most recent discriminatory act. If the Complaint alleges discrimination of an ongoing or continuous nature, TOCR will include older events in its investigation as long as the most recent event on the ongoing discrimination occurred within one hundred eighty (180) days of submitting the Complaint. TOCR may grant waivers of timeliness in select circumstances and when legitimate excuse for the delay exists.

(c) Coherency Requirement and the Request for Information

If the type of discrimination alleged to have occurred or the described circumstances are unclear, TOCR may contact the Complainant to request further information before TOCR decides whether or not to investigate the claim.

Section 103. Recipient Response

If TOCR decides to investigate, the Recipient has fifteen (15) calendar days from the date of the Acknowledgement Letter to respond to the Complaint. The Recipient's response should include the information requested by TOCR and any relevant documentation and witness information the Recipient believes will aid the Office of Civil Rights in properly investigating and resolving the allegations. TOCR will determine within fifteen (15) calendar days of receipt whether or not additional information will be requested of the Complainant or Recipient and will notify Complainant and Recipient of that request. Failure of the Complainant or Recipient 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, respectively.

Part II. Investigation, Resolution, and Issuance of Letters of Findings

TOCR will ensure that investigations are legally sufficient and 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 provide a response to the parties' substantive letters and emails in a timely manner.

Section 201. Investigation

In its initial letter to Recipient, TOCR will submit in writing a description of all documents and information requested for its investigation. The Recipient is expected to respond by the date indicated in the letter.

TOCR will interview the Complainant, the minor child (if applicable), the Recipient, and the Recipient's representatives, but will do so separately, in order to encourage all parties to speak freely and without fear of retaliation. (TOCR will either obtain written consent from a parent or guardian prior to interviewing minors or individuals adjudicated legally incompetent or invite the parent/guardian to be present during the interview.) All parties may provide TOCR with additional relevant documentation during an interview. After conducting these interviews and reviewing all provided information, TOCR may choose to interview other witnesses.

TOCR's Authority to View Confidential Information

In order to ensure the full and proper investigation of civil rights allegations, the regulations implementing Title VI and Title IX require that a recipient of federal financial assistance make available all information that may be pertinent to reach a compliance determination. See 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii). TOCR also has 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. This includes access to both oral information from a Recipient's employees and non-written information, such as electronic storage media, microfilming, retrieval systems, and photocopies maintained by the Recipient. TOCR, not the Recipient, decides what information is relevant to a determination of compliance.

As provided by federal regulations, TOCR may also view and receive information that would otherwise be held confidential by schools. [See 34 C.F.R. §§99.31 and 99.35, which exempts school districts from obtaining prior written consent for certain state agencies under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.] TOCR will preserve the confidentiality of student records protected by 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.) Even so, TOCR will not reveal the name or other identifying information about a Complainant to anyone other than the Recipient or its representatives, unless such information is formally requested to be disclosed under the Tennessee Public Records Act.

Section 202. Agreement Reached During an Investigation

A Recipient may ask to resolve the Complaint with a Resolution Agreement before TOCR completes its investigation. In the Resolution Agreement, Recipient must still admit that it has either acted as alleged by the Complainant or as the investigation thus far has indicated. The admission need not be made in writing, but any oral admission will be noted in the case file. The provisions of the Resolution Agreement will be aligned with the Complaint or investigation and will be consistent with applicable regulations. (See Section 206 of this manual for additional information on Resolution Agreements.)

Section 203. Investigative Summary and Findings

At the conclusion of an investigation, TOCR will determine that there is either sufficient or insufficient evidence to support a conclusion of noncompliance.

In its Investigative Summary and Findings, TOCR will include:

- (1) a statement of the issues raised by the Complainant;
- (2) a statement of TOCR's jurisdiction over the Complaint;
- (3) our determination of sufficient or insufficient evidence to conclude noncompliance, and
- (4) a clear explanation of the pertinent legal standard and factual analysis, referencing the evidence relied upon in making the determination.

If the evidence supports a conclusion of noncompliance, TOCR will negotiate a Resolution Agreement with the Recipient after issuing its Investigative Summary and Findings.

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. Request for Reconsideration

(a) Review by TDOE's Office of General Counsel (OGC)

The Complainant and Recipient may send a written Request for Reconsideration to the Department of Education's Office of General Counsel (OGC) within fifteen (15) calendar days of the date of the Investigative Summary and Findings. There is no form required for this appeal, other than it be in writing. The Request for Reconsideration should 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 will not be sufficient.

Contacting the TOCR Director neither tolls the fifteen-day timeline nor is a prerequisite for filing a Request for Reconsideration with the OGC.

Each party is expected to submit any Request for Reconsideration within fifteen (15) calendar days of the Investigative Summary and Findings. The Office of General Counsel may, however, grant a waiver of the fifteen-day timeframe where:

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

In its review, the OGC will 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 Recipient. It may also be necessary to reinterview certain witnesses if records do not reflect clear responses to the alleged violations of law. The OGC will not, however, consider issues or concerns that were not raised during the initial investigation. The Investigative Summary and Findings issued by the OGC constitutes TDOE's decision on the case.

Please send your Request for Reconsideration by OGC to:

Christy Ballard, General Counsel
Tennessee Department of Education
9th floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243

Fax (615) 253-5705
Christy.Ballard@tn.gov

(b) Review by OCR

All TOCR decisions are subject to review by OCR. Either party has a right to contact OCR and request a review after the initial or second Investigative Summary and Findings. Please contact that office regarding their process for additional review:

U.S. Department of Education Office for Civil Rights
61 Forsyth Street S.W., Suite 19T10
Atlanta, GA 30303-8927

Telephone: (404) 974-9406
Facsimile: (404) 974-9471
Email: OCR.Atlanta@ed.gov

Section 206: Guidelines for Resolution Agreements

If TOCR determines that the evidence supports a conclusion that the Recipient failed to comply with applicable regulations, the Recipient will be required to take action to cure the noncompliance. Most often, the Recipient will be required to create a Resolution Agreement and submit it to TOCR for approval. The Resolution Agreement must state the Recipient's willingness to correct the inappropriate behavior and its agreement to future compliance.

Each Resolution Agreement:

- (1) must be approved by the Recipient's board or staff attorney and signed by a person with authority to bind the Recipient;
- (2) must be approved by TOCR Director or a person specifically designated as acting on his/her behalf;
- (3) must acknowledge the Recipient's noncompliance, state the Recipient's willingness to correct the inappropriate behavior, and commit Recipient to achieve and maintain compliance in the future; and
- (4) must include a Corrective Action Plan, which provides:
 - a. the purpose of the submitted plan,
 - b. specific acts or steps the Recipient will take to resolve compliance issues;
 - c. dates for implementing each act or step and anticipated completion, and
 - d. dates for submission of reports and documentation verifying implementation.

The Resolution Agreement and Corrective Action Plan should be submitted to TOCR for approval within fifteen (15) calendar days of either TOCR's Investigative Summary and Findings or the OGC's Investigative Summary and Findings (if either party requested additional review). An approved version (with any required changes) must be executed by the Recipient and the TOCR Director no later than

twenty-five (25) calendar days of the Investigative Summary and Findings. If the Recipient declines to submit a Corrective Action Plan, TOCR will create one and mandate the Recipient's implementation.

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 duration of Resolution Agreement implementation and monitoring rarely exceeds two (2) years after its issuance. However, construction of, or major modification to, a recipient's facilities; actions required by a legislative body; or the collection and analysis of data lasting more than one school year are examples of circumstances requiring monitoring exceeding two years.

A copy of the Resolution Agreement will be sent to the Complainant.

Section 207: Monitoring of Post-Investigation Resolution Agreement

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

(a) 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 Agreement. If verification of remedial actions cannot be accomplished by careful review of reports, documentation, and other information submitted by Recipient, a site visit will be conducted to verify actions taken by the Recipient.

(b) Responding to Monitoring Reports

TOCR will periodically require the Recipient to submit written reports and documentation that provides evidence of Recipient's continued compliance with the Resolution Agreement. TOCR will acknowledge receipt, evaluate, and issue a decision as promptly as possible.

(c) Changed Circumstances Affecting Agreements

Mootness or Change in Controlling Law or Policy

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. TOCR will also modify the Resolution Agreement or Corrective Action Plan in response to changes in controlling case law, statutes, regulations, or agency policy.

New Compliance Issues

Compliance issues identified for the first time during monitoring may be addressed by either providing technical assistance or initiating a new investigation. If related to the current compliance issues, the newly identified issues may be incorporated into the Resolution Agreement and Corrective Action Plan.

Implementation Deficiencies

TOCR will promptly provide written notice to the Recipient of any deficiencies in implementation and will request immediate and appropriate action to address those deficiencies. When necessary, TOCR shall require additions to the Resolution Agreement to address the failure of the Recipient to fully implement commitments in the original agreement.

Approval of Modifications

Modification of any Resolution Agreement provision will be granted on a case-by-case basis. The Complainant will be notified, in writing, of significant modifications to the Resolution Agreement.

Section 208: Conclusion of Monitoring

TOCR will conclude the monitoring of a case when it determines that the Recipient has fully implemented the terms of the Resolution Agreement. The Recipient and Complainant will be promptly notified, in writing, of the conclusion of monitoring.

Part III. Initiating Enforcement Action

If TOCR is unable to negotiate or is forced to terminate a Resolution Agreement, TOCR will initiate enforcement action. TOCR will: (1) initiate administrative proceedings to suspend or terminate state financial assistance made available through TDOE to the Recipient; (2) refer the case to OCR for enforcement of the Resolution Agreement, and/or (3) refer the case to the United States Department of Justice for judicial proceedings to enforce any rights of the United States.

Part IV. Compliance Reviews

If during the course of an investigation, TOCR identifies concerns unrelated to the issues raised in the Complaint, TOCR may initiate a compliance review. In a compliance review, OCR will follow the same procedural process outlined herein, with notice of the new, unrelated concerns effectively serving as the Complaint.