



Overlap Between OCR and DOJ: Their Shared Mission To Enforce the Civil Rights of ELLs

A Presentation to the State Title III Directors
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Office for Civil Rights U.S. Department of Education



This presentation provides general information and does not represent a complete recitation of the applicable law and OCR policy in this area. It does not address specific issues of compliance because determinations of compliance depend on specific facts on a case-by-case basis. The language used in these slides is approved for the purposes of this presentation only and should not be used for other purposes.

Educational Opportunities Section U.S. Department of Justice



This presentation provides general information about the Educational Opportunities Section's enforcement of federal statutes that protect the civil rights of English Language Learners. This presentation does not cover all aspects of the Section's enforcement efforts, nor does this presentation answer specific compliance questions because their answers are fact-dependent.



- **Common Missions, Statutes, and Goals**
- **Similarities and Differences Between OCR and DOJ Enforcement**
- **Examples of OCR-DOJ Collaborations**

Common Missions



The shared mission of OCR and the Educational Opportunities Section of DOJ is to enforce federal civil rights laws that prohibit discrimination in educational institutions and ensure that all students have equal educational opportunities without regard to race, color, national origin, sex, disability, and – only in the case of DOJ – religion.

Federal Statutes Enforced by ED and DOJ-EOS



- **Title VI of the 1964 Civil Rights Act**
- **Title IX of the Education Amendments of 1972**
- **Title II of the Americans with Disabilities Act***
- **Section 504 of the Rehabilitation Act**
- **The Individuals with Disabilities Education Act**

* **DOJ enforces Title III of the Americans with Disabilities Act**

Federal Statutes That DOJ-EOS Enforces



- **Title IV of the 1964 Civil Rights Act, 42 U.S.C. § 2000c-6**
 - Prohibits public school boards, colleges, and universities from discriminating on the basis of race, color, national origin, sex, and religion.
- **The Equal Educational Opportunities Act of 1974 (EEOA), 20 U.S.C. § 1701 et seq.**
 - Prohibits state and local educational agencies from denying an individual an equal educational opportunity on the basis of race, color, sex, and national origin in several ways, including failing to take appropriate action to overcome language barriers that impede students' equal participation in instructional programs.
 - 20 U.S.C. § 1703(f).

Our Common Goals



- Ensuring that ELLs receive a quality education
- Protecting ELLs' civil rights so that they are not the victims of discrimination and harassment
- Promoting a more tolerant educational culture that values inclusion of students of different linguistic and ethnic backgrounds
- Working collaboratively to achieve common goals

Similarities and Differences Between OCR and DOJ



- **OCR Addresses Discrimination Against ELLs under Title VI of the 1964 Civil Rights Act**
- **DOJ Shares Enforcement Authority for Title VI**
- **DOJ and Private Plaintiffs Enforce the EEOA**
- **Title VI is a funding-based civil rights statute**
- **EEOA is not a funding-based civil rights law**

Similarities Between OCR and DOJ



- **Investigate ELL-based complaints**
- **Initiate Compliance Reviews**
- **Request Data and Documents**
- **Conduct Interviews and Onsite Visits**

Similarities and Differences Between OCR and DOJ



- **OCR's Early Complaint Resolution Process**
- **OCR and DOJ Determine if Recipients of Federal Funds are Complying with Title VI**
- **DOJ Determine if SEAs and LEAs are Complying with the EEOA**

DOJ and OCR Apply *Castañeda's* Three-Part Test In Compliance Determinations



- First, is the ELL program informed by sound educational theory?
- Second, are the agency's "practices, resources and personnel" reasonably calculated to implement the ELL program "effectively"?
- Third, do the ELL program results show that language barriers are "actually being overcome" within a reasonable period of time?
 - *Castañeda*, 648 F.2d at 1009-1010.

Similarities and Differences Between OCR and DOJ



What happens when a voluntary resolution cannot be reached with a state or school district?

- **OCR's Administrative Enforcement Process**
- **OCR Referral of Title VI Complaint to DOJ for Litigation**
- **DOJ Can Sue Under the EEOA and Title VI**
- **DOJ Can Intervene in an EEOA or Title VI Case**

Similarities and Differences Between OCR and DOJ



- **Regulations and Guidance**
 - **ED's Title VI Regulations**
 - **DOJ's Title VI Regulations**
 - **DOJ's Coordination Authority Under Title VI**
 - **OCR's 1970, 1985, and 1991 Policy Memoranda**
 - **EEOA and Title VI Case Law**

Similarities Between OCR and DOJ



- **Work collaboratively with**
 - state and local education agencies
 - national and local advocacy organizations
 - other stakeholders (Title III, individuals, experts, education organizations, U.S. Attorneys Offices, and other agencies)
- **Work collaboratively with each other**
 - joint investigations and compliance reviews
 - joint letters regarding noncompliance
 - joint monitoring of agreements

Example of a Joint OCR-DOJ Review



- March 2010 – DOJ and OCR announce joint compliance review of Boston Public Schools (BPS)
- October 1, 2010 – DOJ, OCR, and BPS sign settlement agreement to address initial findings
- September 2011 – DOJ and OCR notify BPS of findings from comprehensive compliance review
- April 2012 – DOJ, OCR, and BPS sign Successor Agreement, which DOJ and OCR are monitoring

Final Thoughts on Overlap ...



- OCR and DOJ Enforce ELLs' Civil Rights In Very Similar Ways Under the EEOA and Title VI
- Title VI of the 1964 Civil Rights Act and Title III of ESEA Are Funding Statutes, while the EEOA is not.
- When SEAs implement and monitor ELL programs or take other ELL-related action, SEAs should consider not only the Title III implications of their conduct but also SEAs' and LEAs' civil rights obligations under Title VI and the EEOA
- Together Title III Directors, ED, and DOJ Can Help ELLs Have Equal Opportunities and Succeed

Thank you for attending!



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