

***Arming Your District Against OCR:  
Proactive Measures Your District Can Take Now***

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On February 1, 2010, Mickes Goldman O'Toole celebrated its two year anniversary. And in the past two years alone, our special education department has handled approximately sixty OCR complaints against districts across the state of Missouri, each alleging discrimination on the basis of disability. In addition, our office continues to handle numerous OCR complaints with respect to other protected classes, including race and gender.

The substance of the disability related complaints has run the gamut, from our infamous "warm pizza" case, in which a parent alleged disability discrimination because the district in question refused to continue its daily practice of microwaving frozen pizza for her son, to the more typical allegations of failure to implement a student's Individualized Education Program ("IEP") or Section 504 Plan, or failure to identify and/or evaluate a student under the Individuals with Disabilities Education Act ("IDEA") and/or Section 504 of the Rehabilitation Act of 1973 ("Section 504").

The majority of the disability related OCR complaints filed against our school district clients have resulted in "insufficient findings", which is essentially OCR's way of stating that the district in question did nothing wrong. Still, a significant number of the complaints have unfortunately resulted in negative findings. In those instances, the district in question is asked to sign a "Resolution Agreement" to remedy the deficiencies. OCR has also recently begun offering "302 Agreements" in which the District may affirmatively request a resolution agreement prior to the conclusion of OCR's investigation.

In almost every Resolution Agreement or 302 Agreement this firm has been involved with, OCR has requested that the district change some aspect of an existing policy or procedure, make assurances that the district will actually *follow* its written policy and/or procedure, and/or train its staff regarding the policy and procedure.

The difference between policy and procedure (also called "regulation") is often confused by school district patrons and even school district staff. Such confusion can cause difficulty when responding to an OCR complaint or attempting to close an OCR complaint via a Resolution Agreement. A policy should represent a general statement of a school board's position regarding a specific issue. Policies **should be** board approved. In contrast, this firm

strongly recommends that procedures **should not be** board approved. This approach allows school districts the flexibility to modify their procedures on an as-needed basis, and often in response to the quickly changing area of school law.

Another issue that has arisen lately in our office is that districts have multiple policies and procedures that address the same issue, but are internally inconsistent. For example, many districts are utilizing a private company's written Section 504 Procedures. Some of those same districts are also using policies and procedures drafted by one of several "policy service" agencies. We have discovered that, at times, the set of 504 procedures may be inconsistent or incompatible with the applicable policy and/or procedure issued by the policy service agencies.

Also, OCR has regularly required districts to modify their Notice of Non-Discrimination and post the notice in more prominent locations, such as student and personnel handbooks and district websites. OCR has a Sample Notice posted on its website at <http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>. We encourage school districts to utilize the Sample Notice without variation and review your posting sites to ensure that the notice is clearly visible and accessible.

In summary, school districts should take the following proactive measures now, in order to put your district in the best possible position if an OCR complaint *is* filed. Taking the following proactive measures may even prevent some complaints from ever reaching OCR's door.

1. Annually review your district's policies and procedures to check for the following:
  - a. Are my policies and procedures consistent with relevant law?
  - b. Are my policies and procedures internally consistent?
  - c. Can my district's administrators live with these policies and procedures and do they work for *my* district?
2. Make sure that the policies and procedures your district utilizes are implemented as written. Too often we have seen school districts have a specific policy or procedure "on the books" but in practice the districts' administrators do things differently from what the policies or procedures dictate. To this end, staff must be trained on existing policies and procedures and informed when changes are made.
3. Ensure that your Notice of Non-Discrimination is consistent with OCR's sample notice and that your notice is posted in prominent locations.