



# LAW UPDATE

## SPECIAL EDUCATION

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### *DEPARTMENT OF EDUCATION SIGNALS CHANGE WITH REVISIONS TO OFFICE FOR CIVIL RIGHTS MANUAL*

The United States Department of Education's Office for Civil Rights ("OCR") issued a revised Case Processing Manual that went into effect on March 5, 2018. This marks the first revision under Department of Education Secretary DeVos. The Case Processing Manual is the agency's handbook, which outlines the methods that OCR will use in investigating and resolving a complaint made to the agency. OCR investigates complaints made under Titles II & IX of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 concerning individual or systemic claims of discrimination.

The last time that the manual was revised was in 2015 under the Obama Administration. The 2015 revision was significant in that the manual indicated that OCR would continue and expand investigations "where the investigation raises systemic issues that warrant continuing the investigation." Additionally, the 2015 manual provided that resolution agreements signed by school districts had to contain "action steps that, when implemented, will remedy both the individual discrimination at issue as well as any systemic discrimination." The 2018 revision has done away with this requirement.

In comparison to the 2015 manual, the revised 2018 manual makes no reference to investigations of possible systemic violations raised in complaints. It is unclear at this point in time what the current Administration intends by removing reference to "systemic issues" from the Case Processing Manual. The Education Department has indicated that changes were made to improve the management of investigations. Speaking on behalf of Secretary DeVos, Liz Hill, a representative of the Education Department, indicated that "OCR will absolutely undertake a systemic investigation when the facts of the case warrant one." Despite this reassurance, many attorneys representing students have voiced concern that OCR is signaling a diminished focus on systemic claims of discrimination.

In addition to removing references to systemic issues, the new manual, likewise, deletes all reference to a complainant's right to administratively appeal agency decisions. In the 2015 version of the manual, if a complainant was unsatisfied with the results of the OCR investigation, they could appeal that decision to a supervisor within OCR. Based on the 2018 version, that right no longer exists and a complainant unhappy with the result of the OCR investigation will be required to file a lawsuit in the Federal District Court.

What impact these changes to the Case Processing Manual will ultimately have on OCR investigations is uncertain, but the general consensus among education attorneys representing school districts is that OCR investigations are more likely to be dismissed, less likely to expand into systemic investigations, and will resolve faster. Schools Legal Service will continue to monitor the situation and is happy to answer any questions that our clients may have.

If you need any further assistance or advice, please feel free to contact our office.

*– KYLE W. HOLMES*

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