Anyone who subscribes to this publication understands that OCR can come knocking on the door at any time in response to a student complaint. For most disability services directors and their staff, this is the fear that makes for sleepless nights. As we all know from working with students, sometimes the best way to alleviate anxiety is to know what to expect from a situation. It can be helpful to know how an OCR investigation might proceed.

First, you need to know how the process begins for the student. You may be surprised to know that a student does not have to go through a college’s internal grievance process before s/he files a complaint with OCR. The only requirement is that the complaint be filed within 180 days of the alleged act of discrimination (unless OCR grants an extension). If the student goes through the college’s process first, he or she has 60 days from the last act in the college’s process to file a complaint. To get started, the student completes a form describing the alleged act of discrimination, the basis for the discrimination (e.g. age, disability, etc.), information about the school he or she attends, and the name of the person alleged to have acted in a discriminatory way. Interestingly, the form actually asks the student what he or she would like for the college to do in response to the complaint. Once the student submits the form, OCR will look to see if:

- they have all of the information they need to proceed with an investigation
- the complaint is timely
- they have jurisdiction over the institution mentioned in the complaint

If all three of these conditions are met, OCR will generally assign a case number to the complaint. However, there are some reasons why OCR might not choose to pursue a student’s case. These reasons include, among others, that:

- another agency has investigated and the resolution meets OCR’s standards
- the complaint appears to be without merit because of a lack of detail or inconsistency in the student’s statements (or that the student has filed several such complaints)
- litigation has been filed surrounding the complaint

Whether or not they decide to investigate, OCR will generally contact the institution and the student to say what the complaint is about and when they will get in contact again. Howard Kallem, who worked in OCR’s D.C. regional office for 10 years and recently joined the Equity Office at George Mason University, says that service providers might be surprised to know how many complaints are rejected by the agency. Many of these cases are closed administratively for the reasons given above. Depending on the reason for the closure, the institution may not even be notified of such complaints. In other cases, OCR will conduct an investigation and often determine that there is insufficient evidence that a violation has occurred. Over the last several years, Mr. Kallem says, more than eighty percent of complaints were closed each year, either administratively or based on insufficient evidence.

If a student’s complaint isn’t closed in the first review, OCR may decide that Early Complaint Resolution (ECR) is an appropriate way to proceed if both parties are interested in such a process. Though ECR generally occurs in the early stages of the complaint process, a complaint may be closed through this approach at any point during the investigation if the student and the school are inclined to find a compromise. OCR’s position in this case is to facilitate an agreement between the student and the institution, but not to dictate the terms. If the process is successful, a copy of either the
agreement or a statement from the student stating that the complaint has been resolved (the student must sign whatever documentation is sent) gets sent to OCR, and this closes the complaint. At that point, OCR will inform the parties that a resolution has been reached, but they will not monitor the agreement. If an alleged breach occurs, the student can file a new complaint.

If ECR is not instituted or is not successful, OCR will proceed with an investigation. If they find that there is insufficient evidence that the institution was noncompliant, OCR will send the school and the student a letter of resolution (LOR) that will provide an explanation of the facts and how they arrived at their decision. At this point the case, for OCR’s purposes, is considered closed. However, the student may appeal the determination, first to the director of the OCR office that issued the LOR and then to the Deputy Assistant for Civil Rights in Washington.

If the institution is found to be noncompliant, it is expected that the school will enter into an agreement to resolve the complaint, creating a timeline for each step involved in coming into compliance. In this case, the service provider, the school’s attorney, and other relevant personnel will sign the agreement, and OCR will generate a LOR to the school and the student. In most cases, OCR will monitor the agreement, requiring reports from or making site visits to the college where necessary (as in the case of physical plant issues). Once OCR determines that the school has fully implemented the terms of the agreement, they will stop monitoring. In cases where the school refuses to enter into an agreement, OCR may either begin an administrative process to terminate the school’s federal funding or refer the case to the Department of Justice; Mr. Kallem reports that very few cases reach this point. OCR reports that over ninety percent of all cases – those closed administratively, those in which there was insufficient evidence of a violation, and those in which compliance concerns were identified – are closed within 180 days.

Once you understand the basic procedures, it may be helpful to hear from disability services providers who have actually been through the process. Professionals who volunteered to share their experiences reported that their end of the process took anywhere from a few hours to a week of their time to gather the requested information. Typically, what OCR requested was copies of any disability services records and notes, student documentation, grievance procedures, policy manuals, and department requirements. Mr. Kallem says that OCR is cognizant of the demands on disability services offices, and they will try to use college’s website to gather as much information as they can in order to avoid further burdening office staff. In most cases, the staff had to participate in interviews, which were either held in person or by phone, and ran between an hour and two hours in length. In most cases, the university’s general counsel was present for every interview. Additional staff who might participate in the investigation includes the university’s president, professors, and department heads, depending upon the nature of the complaint.

Most of the people who offered to share their experiences found the process to be positive and productive. Denise Giarrusso, director of Disability Services at Florida Community College at Jacksonville said that OCR has a “good process” and says that they even offered the college “guidance on how to improve.” Deborah McCune of the University of Montevallo felt that OCR came in with a neutral position. This was “simply an investigation of the facts” she said, not a situation where OCR was trying to find a problem. June Reinert, director of Disability Resource Services at the University of Wisconsin – Lacrosse, found the OCR staff to be very professional and felt that they were there simply to “uncover” what had happened with a particular student, not to find a problem. Stacey A. Rey craft, director of the Office of Student Disability Services at The University of Mississippi, found OCR so helpful that she has actually contacted them for guidance on some situations. Though the majority of the interactions people had with OCR were viewed as positive and productive, not everyone interviewed for this piece enjoyed such an experience. Dr. Arlene Darr, director of the Disability Resource Center for Arizona State University’s West Campus, reports quite a different kind of interaction with OCR staff than the others reported here, and she feels that fears regarding OCR investigations are warranted.

Mr. Kallem reminds us that OCR’s job is to investigate complaints, and though he could not speak to Dr. Darr’s experience, he states that the agency’s staff does not pre-judge the situations. He also advises schools not to create an
adversarial atmosphere between themselves and OCR. He suggests that schools comply with OCR’s requests for data and ask for extensions in situations where timelines create great difficulties. As he says, schools will “get cooperation if they show willingness to cooperate” (none of his comments are related to Arizona State’s investigation).

According to Mr. Kallem, OCR often finds that there has been a misunderstanding, either on the part of the student or the school. Students often don’t understand what they have been asked to do in order to get access to accommodations (e.g. completing forms or providing copies of updated documentation). When the misunderstanding is on the part of the college, it is typically that the service provider didn’t understand what the student’s request was. Mr. Kallem states that OCR is looking to give schools an opportunity to fix problems, not to find them in violation. What OCR wants to see, he says, is that there is a deliberative, interactive process. OCR does not like to hear that a school “never” grants notetakers, double time for exams, etc. Rather, OCR wants to see that the school considered the request individually and found the school followed its own guidelines in deciding that the request was not supported by the documentation. He advises schools to avoid blanket policies regarding accommodations and to try to engage students in the accommodation process.

Advice from those who shared their experiences follows a common thread – document, document, document! Ms. McCune suggested taking accurate notes on how an accommodation decision was reached and discussing the decision with administration if it seems likely that a student will complain. Ms. Reinert advises schools to make sure that all procedures are in writing, and are easily accessed by students (either on paper or the school’s website), and to make sure that staff and faculty are actually following them. Once she was informed that OCR was conducting an investigation, Ms. Reycraft found it helpful to create a detailed timeline that included all communications to the student. Clearly, keeping careful notes at the time of your conversations with students will help you to recall details at a later time.

Dr. Darr suggests that schools may be able to see certain complaints coming. She says that the problem students will be the ones that schools “can’t satisfy,” who make request after request and are never happy with what has been granted. Dr. Darr recommends making copies of all communication between the office and the student, including notes about conversations and emails. The other professionals echoed Dr. Darr’s sentiment about knowing who would be the source of a grievance. They shared similar experiences regarding students who kept making more and more demands and eventually complained to OCR. Mr. Kallem’s reminder to solicit feedback from students regarding their accommodations may seem moot when dealing students who continually complain, but the message is to make sure that you not just hear the complaints, but also ask the student what he or she thinks would be helpful. Schools may not find students’ requests reasonable or supported, but documenting such an interactive process may help to avoid problems if OCR does decide to investigate.

Knowing that there are some students who cannot be satisfied, best practice indicates the need to create detailed records and notes of interactions with all students all of the time, rather than in response to a complaint. In addition, it may be helpful to look over your school’s policies and procedures to make sure that they are compliant with the laws. What can be the most difficult piece is making sure that your faculty and staff know the school’s policies and adhere to them. Being proactive in this way may help to prevent future grievances. But for those who will face and OCR investigation regardless of their efforts, it may be helpful to know that most of the professionals interviewed for this article found them to be fair and helpful. For more information about OCR and its policies, see http://www.ed.gov/about/offices/list/ocr/index.html.