

OCR, DOJ Heads Clarify Plans to Reorient Approach

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With all of the issues the Trump administration is attending to as the nation's transition continues, smaller -- but still-important -- issues aren't getting much attention.

But in late June, high-ranking federal officials devoted more than an hour responding to questions from education attorneys to outline how the new administration will enforce the civil rights guaranteed to the nation's students.

Candice E. Jackson, acting assistant secretary for the Office of Civil Rights ([OCR](#)), and Thomas E. Wheeler, acting assistant attorney general at the U.S. Department of Justice, both gave updates on how their offices will handle civil liberties in the education system:

OCR as neutral, impartial investigative agency

Both Wheeler and Jackson stressed the need for a more cooperative and collaborative approach to addressing civil rights complaints. Both noted the desire to shift away from what they claim was an overly confrontational approach employed by the prior administration. Jackson commented that her office has "fallen into a pattern and practice of overreaching, of setting out to punish and embarrass institutions rather than appreciate their good faith and genuine desire to correct legitimate civil rights problems." Jackson stressed that many investigations have turned into "fishing expeditions" where field officers have been instructed to "keep searching until you find a violation" rather than going where the evidence leads them. Jackson appears committed to ending the practice of publicly identifying institutions under investigation by OCR that was initiated in 2014, criticizing the practice as creating a "list of shame" designed to threaten and punish institutions.

Processing of civil rights complaints

Both spent considerable time addressing the backlog and delay in processing complaints under the prior administration. Jackson indicated that her office will actively pursue alternative options for closing out cases and broaden the utilization of early complaint resolution options. All investigations will be handled equally, regardless of the amount of resources that need to be expended. The focus will be on clearing case backlogs and resolving complaints within a reasonable time frame.

Reversal of prior "Dear Colleague" letters & new approach to guidance

Jackson noted that guidance will look very different under the new administration. In addition to the [withdrawal of the U.S. Department of Education's transgender guidance](#), it is anticipated that additional guidance documents will be revisited and potentially withdrawn. In particular, Jackson referenced the potential for negotiated rulemaking to revisit the [2011 guidance addressing Title IX and sexual violence](#). She

also said the requirement for a preponderance of evidence in Title IX investigations is "actively under consideration."

Web-accessibility enforcement

Wheeler acknowledged the "tremendous burden" placed on educational institutions in web accessibility mandates. He noted the new administration's push for a cost-benefit analysis in regulatory review could result in a movement away from the current standards imposed by the prior administration.

Finally, both Wheeler and Jackson stressed that the administration is fully committed to enforcing civil rights laws. Jackson stated that her office is not scaling back or retreating from its charge, but said enforcement and oversight will look very different moving forward.

This update is provided in follow-up to the [Barley Snyder alert issued June 22](#). If you have more specific questions regarding the material in this alert, or if we can provide any additional assistance as you review your existing policies and procedures, please do not hesitate to contact any of the attorneys in [Barley Snyder's Education Law group](#).