

Department of Education
OFFICE FOR CIVIL RIGHTS
Fiscal Year 2009 Budget Request

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OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, as authorized by section 203 of the Department of Education Organization Act, [~~\$91,205,000~~] \$101,040,000. (Department of Education Organization Act, 2008.)

OFFICE FOR CIVIL RIGHTS
Amounts Available for Obligation
(\$000s)

	2007	2008	2009
Discretionary appropriation:			
Appropriation	\$91,205	\$91,205	\$101,040
Across-the-board reduction	<u>0</u>	<u>-1,593</u>	<u>0</u>
Subtotal, appropriation	91,205	89,612	101,040
Unobligated balance expiring	<u>-285</u>	<u>0</u>	<u>0</u>
Total, direct obligations	90,920	89,612	101,040

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Obligations by Object Classification (\$000s)

Object Class		2007	2008	2009	CHANGE FROM 2008 to 2009
11.10	Full-time permanent	\$51,291	\$54,291	\$56,099	\$1,808
11.31	Full-time temporary	1,157	903	933	30
11.32	Part-time	1,711	1,626	1,680	54
11.33	Consultants	0	0	0	0
11.51	Overtime	7	18	18	0
11.52	Awards	502	300	1,000	700
11.80	Other Compensation	0	0	0	0
	Compensation subtotal	54,668	57,138	59,730	2,592
12.00	Benefits	13,307	14,706	15,334	628
13.10	Benefits for former personnel	0	0	0	0
	Comp/benefits subtotal	67,975	71,844	75,064	3,220
21.00	Travel	1,208	500	1,200	700
22.00	Transportation of things	6	4	4	0
23.10	Rental Payments to GSA	7,631	7,543	8,972	1,429
23.31	Communications	1,329	890	840	(50)
23.32	Postage/fees	105	36	36	0
	Subtotal 23	9,065	8,469	9,848	1,379
24.00	Printing & Reproduction	112	50	86	36
25.10	Advisory and Assistance Svcs	0	30	280	250
25.21	Other Services	1,848	1,138	4,193	3,055
25.22	Training/Tuition/Contracts	265	169	442	273
25.23	Field Readers	0	0	0	0
25.30	Goods/Services from Gov't	3,204	2,247	2,526	279
25.40	Operations/Maint of Facilities	0	1	1	0
25.50	Research & Development	0	0	0	0
25.71	Operations/Maint of Equipment	392	32	34	2
25.72	IT Services/Contracts	5,603	3,671	6,401	2,730
	Subtotal 25	11,312	7,288	13,877	6,589
26.00	Supplies	416	253	253	0
31.10	IT Equipment/Software	562	274	638	364
31.30	Other Equipment	252	644	20	(624)
	Subtotal 31	814	918	658	(260)
32.00	Building Alterations	11	286	50	(236)
41.10	Grants	0	0	0	0
41.23B	Admin Expense Allowance	0	0	0	0
43.10	Interest and Dividends	1	0	0	0
	Total	90,920	89,612	101,040	11,428

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Summary of Changes
(\$000s)

2008	\$89,612
2009	<u>101,040</u>
Net change	+11,428

	<u>2008 base</u>	<u>Change from base</u>
Increases:		
<u>Built in:</u>		
Increase in personnel compensation primarily for the enacted 3.5 percent 2008 and proposed 2.9 percent 2009 pay increases.	\$57,045	+\$2,117
Increase in benefits for OCR's share of health, retirement, and other benefits.	14,706	+628
<u>Program:</u>		
Increase in awards to reward and help retain high performing staff. FY 2008 is constrained due to funding level.	300	+700
Increase in travel to restore to a level necessary for investigating complaints, and compliance reviews. FY 2008 is constrained due to funding level.	500	+700
Increase in rent due to tax increases, relocations, and lease renewals.	7,543	+1,429
Increase in printing.	50	+36
Increase in Advisory and Assistance Services to restore cut made in FY 2008. Increase is needed to study and analyze high priority civil rights issues and to obtain help with complex case investigating.	30	+250
Increase in Other services mostly for the Civil Rights Data Collection (\$2.5M), the Homeland Security Presidential Directive 12 project (\$195K), legal and advisory services (\$293K) and EDpubs (\$50K).	1,138	+3,055

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Summary of Changes
(\$000s)

	<u>2008 base</u>	<u>Change from base</u>
Increases:		
<u>Program:</u>		
Increase in training to restore necessary training funds for headquarters and regional Employees. Training in FY 2008 is severely curtailed due to funding level.	\$169	+\$273
Increase in goods and services for overtime utilities, background investigations and guard services.	2,247	+279
Increase in Operations and Maintenance of Equipment.	32	+2
Increase in IT services and contracts primarily for OCR's share of network operations on the EDUCATE contract, EDWeb maintenance and the Case Activity Management System.	3,671	+2,730
Increase for IT equipment and software for the EDUCATE contract.	274	<u>+364</u>
Subtotal, increases		+12,563

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Summary of Changes
(\$000s)

	<u>2008 base</u>	<u>Change from base</u>
Decreases:		
<u>Program:</u>		
Decrease in personnel compensation due to one less paid day in 2009.	\$225	-\$225
Decrease in communications due to lower projected usage of local telephone services included in the EDUCATE contract.	890	-50
Decrease in other equipment due to fewer requirements for modifications of existing office space.	644	-624
Decrease in cost of building alterations due to the completion in FY 2009 of building alterations for relocation in Philadelphia and Boston.	286	<u>-236</u>
Subtotal, decreases		-1,135
Net change		+11,428

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Authorizing Legislation
(\$000s)

Activity	2008 Authorized	2008 Estimate	2009 Authorized	2009 Request
Civil rights (DEOA, Section 203)	Indefinite	\$89,612	Indefinite	\$101,040

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Appropriations History
(\$000s)

	Budget Estimate to Congress	House Allowance	Senate Allowance	Appropriation
2000	73,262	66,000	71,200	71,200
2001	76,000	71,200	73,244	75,822
2002	79,934	79,934	79,934	79,934
2002 Rescission				-268
2003	89,710	86,276	86,276	85,715
2004	91,275	91,275	77,884	88,305
2005	92,801	90,248	92,801	89,375
2006	91,526	91,526	91,526	90,611
2007	92,866	N/A ¹	N/A ¹	91,205 ¹
2008	93,771	93,771	93,771	89,612
2009	101,040			

¹ This account operated under a full-year continuing resolution (P.L. 110-5). House and Senate Allowance amounts are shown as N/A (Not Available) because neither body passed a separate appropriations bill.

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Office for Civil Rights

(DEOA, section 203)

FY 2009 Authorization (\$000s): Indefinite

Budget Authority (\$000s):

	<u>2008</u>	<u>2009</u>	<u>Change</u>
Personnel	\$71,844	\$75,064	+\$3,220
Non-Personnel	<u>17,768</u>	<u>25,976</u>	<u>+ 8,208</u>
Total	\$89,612	\$101,040	+\$11,428
FTE Level	629	629	0

PROGRAM DESCRIPTION

The Office for Civil Rights (OCR) enforces Federal civil rights laws and implements regulations that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in all programs and institutions that receive financial assistance from the Department. These laws are:

- Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination);
- Title IX of the Education Amendments of 1972 (prohibiting sex discrimination);
- Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination);
- Age Discrimination Act of 1975 (prohibiting age discrimination); and
- Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination in State and local government services — whether or not programs receive Federal financial assistance).

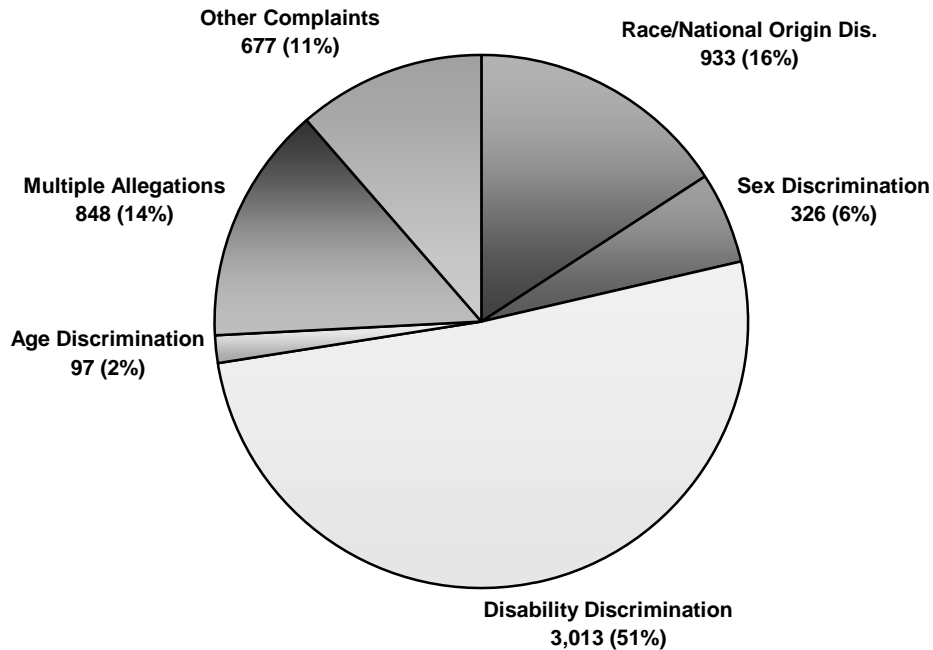
In addition, as of January 8, 2002, OCR has enforced the Boy Scouts of America Equal Access Act. Under the Act, no public elementary school, public secondary school, or State educational agency or local educational agency that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school hours shall deny equal access or a fair opportunity to meet, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed as a patriotic society in Title 36 of the United States Code.

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OCR is also charged with carrying out civil rights provisions in Title V, Part A, of the Elementary and Secondary Education Act (the Magnet Schools Assistance program), and providing technical assistance to Federal award recipients and beneficiaries, the public, and other organizations in order to obtain voluntary compliance with civil rights laws.

These civil rights laws extend to a wide range of Federal recipients, including: all State educational agencies; approximately 15,000 local educational agencies; nearly 10,000 postsecondary institutions, including proprietary schools and community colleges; 82 State rehabilitation agencies and their subrecipients; as well as other institutions that receive U. S. Department of Education financial assistance, such as libraries, museums, and correctional institutions. More than 69 million individuals are beneficiaries of the financial assistance these institutions and agencies receive from the Department.

OCR provides information to the public on its activities, including assistance on how to file complaints. In 2007, over half of the complaints filed with OCR alleged discrimination on the basis of disability, as shown in the chart below.



Total Complaints - 5,894

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Funding levels for the past 5 fiscal years were:

	(\$000s)
2004.....	\$88,305
2005.....	89,375
2006.....	90,611
2007.....	91,205
2008.....	89,612

FY 2009 BUDGET REQUEST

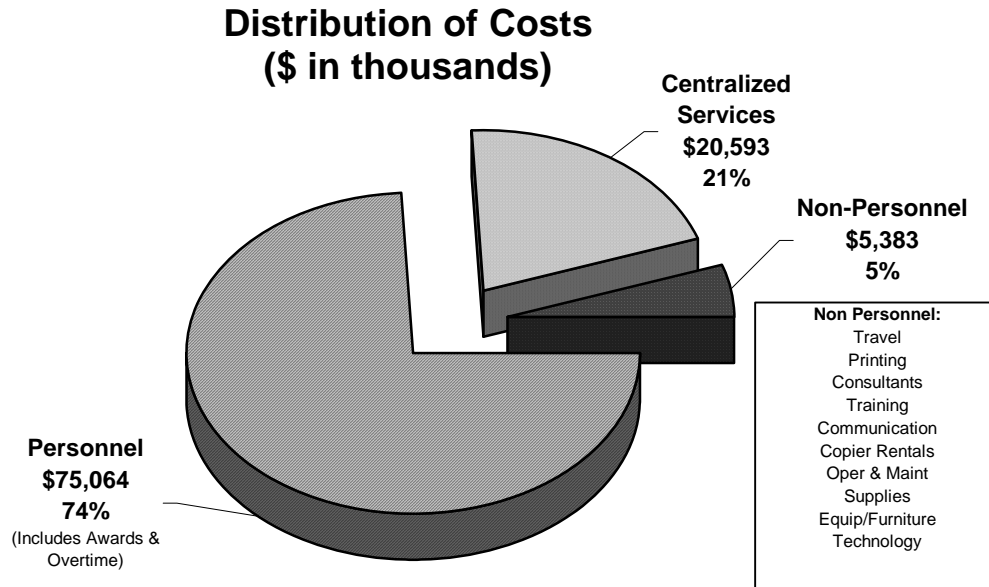
The total FY 2009 request is \$101.040 million, a net increase of \$11.428 million or 12.8 percent over 2008, with the same level of 629 full-time equivalent (FTE) staff.

- Personnel will increase \$3.220 million. The increase is for the proposed 2.9 percent pay raise in 2009 (\$2.492 million), awards (\$700,000), and transit subsidy (\$28,000).
- OCR's share of the Department's centralized services, or overhead, will increase \$4.205 million primarily for rent, security background investigations, guard services, and the Education Department Utility for Communications, Applications and Technical Environment (EDUCATE) contract. Over half of this increase is attributable to contract costs that were accelerated from 2008 to 2007, representing one-time budget savings in 2008.
- Non-Personnel costs, excluding centralized services, will increase \$4.003 million, primarily for travel, training, expert consultants, legal services, and the Civil Rights Data Collection.

If the 2009 budget request is not fully funded, OCR will be unable to initiate compliance reviews, and it might need to forgo the 2008/2009 Civil Rights Data Collection. OCR cannot sustain cuts in FTE or in the non-personnel funding necessary to support its statutorily mandated law enforcement program without jeopardizing students' rights to equal access to education.

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The distribution of the requested funds for 2009 is shown below.



Personnel Costs

Approximately 74 percent, or \$75.064 million, of the total FY 2009 request is for personnel compensation and benefits (PC&B) to support a staffing level of 629 FTE, the same as in 2008. OCR plans to operate at this staffing level by strategically aligning and aggressively managing its human capital. For example, over the past decade complaint receipts have risen 20 percent, although OCR's staffing level has decreased 18 percent. Given OCR's recent rate of retirements and separations, OCR can ill afford to lose more institutional knowledge.

The PC&B request represents an increase of \$3.220 million over the 2008 level. The increase covers the Governmentwide pay raise of 3.5 percent in 2008 and proposed pay raise of 2.9 percent in 2009 and historically based increases for benefits of \$2.492 million, an increase in awards of \$700,000, and an increase in transit benefits of \$28,000.

Awards & Overtime

In FY 2009, OCR is requesting \$1,000,000 for awards and overtime, an increase of \$700,000. OCR's 2008 awards budget was significantly reduced from the 2007 level to cover sizeable increases in overhead costs and to help cover the 3.5 percent pay raise. This increase will enable OCR to provide appropriate recognition for high performance and will compensate those who work additional hours to complete work in tight deadlines, consistent with Departmental policy. If this increase in awards is not funded, it will significantly diminish morale, and will negatively impact OCR's ability to foster an environment of accountability.

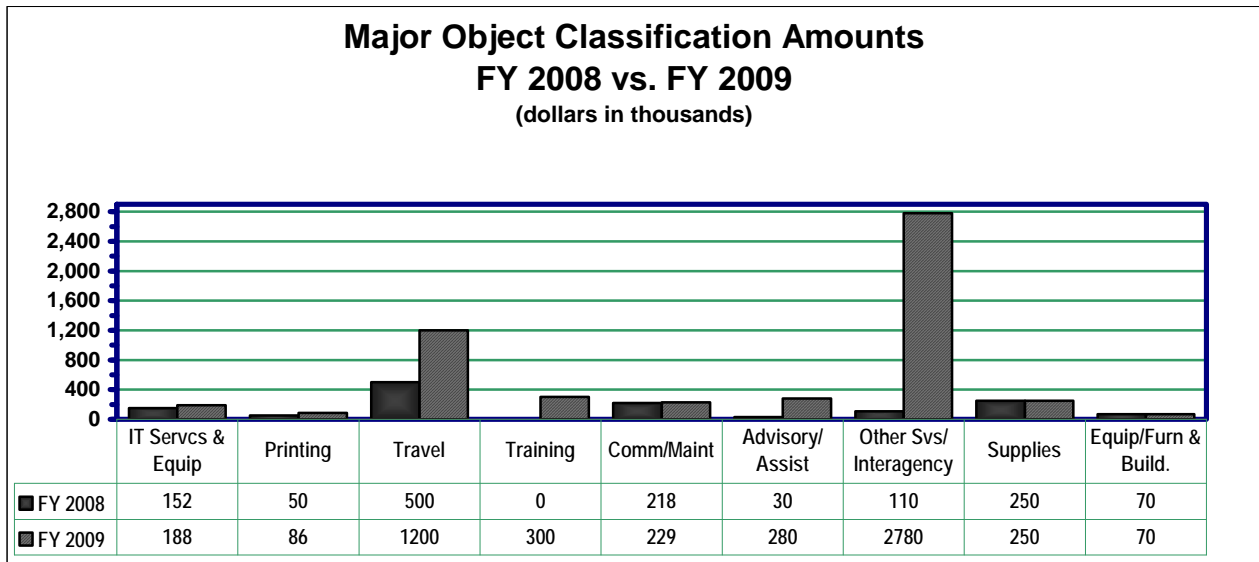
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Non-Personnel Costs

Non-personnel costs are critical to ensure that OCR staff has the resources needed to accomplish its mission of civil rights enforcement. The total request for non-personnel activities in FY 2009, excluding Departmental centralized services, is \$5.383 million, which is \$4.003 million higher than the 2008 level of \$1.380 million. The majority of the increases are in Travel (\$700,000); Training (\$300,000); Civil Rights Data Collection and other contractual services (\$2.670 million); Printing (\$36,000); OCR's Case Activities Management System (CAMS) (\$78,000) which was offset by a decrease of \$42,000 in IT Equipment for a total increase of \$36,000; Advisory and Assistance services (\$250,000); and Communication/ Copier Rentals and Operations and Maintenance of Equipment (\$11,000).

The requested non-personnel funds provide essential program support to resolve complaints of discrimination filed by the public and to ensure that institutions receiving Federal financial assistance are in compliance with the civil rights laws enforced by OCR. The request provides resources for CAMS, travel for case investigation, monitoring activities, technical assistance and training, Civil Rights Data Collection analysis, printing of new materials and updated publications, civil rights studies and analysis in high priority areas, staff training, maintenance of equipment, and supplies.

The 2009 request for non-personnel activities, other than Departmental centralized services, provides funding as shown below:



Information Technology Services/Contracts and Equipment — OCR is requesting an increase of \$36,000, \$78,000 for CAMS offset by a decrease of \$42,000 for IT Equipment*. These funds provide: (a) technical support to operate and maintain the OCR core systems, including

*Funding for IT Equipment will be part of the Education Department Utility for Communications, Applications and Technical Environment (EDUCATE) contract; therefore, no funding is being requested in FY 2009.

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Case Management System (CMS), Document Management System (DMS), and Activity Management System (AMS); (b) enhancement to apply business process changes and to improve the usage of these core systems; (c) software subscription services to maintain version upgrades and technical phone support on the Open Text Document Management portion.

CAMS includes Case Management, Activity Management, and Document Management modules and provides users the ability to:

- Maintain, manage, and track individual case and activity records and, through database functions, perform a variety of tasks associated with accessing, creating, and updating case and activity records.
- Maintain and retrieve real-time status information, as well as enable field office users to electronically collaborate and store all case-related or activity-related documents, thereby providing end-to-end electronic processing of complaints, compliance reviews, deliverables, and tracking of OCR's daily activities.
- House an updated central repository for documents on OCR policy and compliance standards, casework tools, technical assistance tools, and training materials.

Printing — OCR is requesting \$86,000 for printing, an increase of \$36,000 from FY 2008. The funds are for printing regulations, policy guidance, pamphlets, Dear Colleague letters, and the Annual Report to Congress; updating previously published documents to include the new Department of Education mission statement; restocking OCR's publications inventory; and printing personnel recruitment advertisements.

Travel — In FY 2009, OCR is requesting a travel budget of \$1.2 million, an increase of \$700,000 above the 2008 level. OCR's 2008 travel budget was significantly reduced to cover sizeable increases in overhead costs and to help cover the 3.5 percent pay raise. The funds requested will restore travel to its customary and necessary level to cover anticipated inflationary costs of traveling, an increasing complaint caseload that requires full onsite investigations for resolution, and proactive activities such as compliance reviews and technical assistance. The majority of OCR's travel funds is directly associated with investigating complaints, conducting compliance reviews, monitoring corrective action plans, providing technical assistance, and conducting other compliance activities. Complaint investigations and compliance reviews often require staff to go onsite to gather data and conduct interviews to determine if civil rights laws have been violated. Travel costs are also associated with training, conference attendance, workshops, invitational speakers, and OCR-wide management meetings in central locations. If funds are not provided at the requested level, it will greatly diminish OCR's ability to conduct full onsite investigations, proactive activities, and training of enforcement offices, thus negatively impacting OCR's law enforcement program.

Training — In FY 2009, OCR is requesting a training budget of \$300,000, an increase of \$300,000 above the 2008 level. OCR's direct share of its 2008 training budget was zeroed out to cover sizeable increases in overhead costs and to help cover the 3.5 percent pay raise.

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(OCR also pays a share of the Departmentwide training budget). A significant number of OCR staff will be eligible for retirement by 2008, and will be replaced by those with less experience. The requested funds will enable OCR to fully implement its national training and development strategy by ensuring that OCR employees receive adequate programmatic and professional development to keep pace with the changing work environment and the investigative approach to case processing. The strategy includes internal and external training on leadership and development, supervision; policy and civil rights case law; innovative investigative techniques; nationwide quality, consistency and efficiency in case processing; and the expanded use of electronic systems for case management. If training is not funded, learning opportunities for staff addressing core skills needed by the organization will be limited. This lack of training will have a negative impact on OCR's ability to conduct its civil rights law enforcement program.

Communication/Copier Rentals and Operations and Maintenance of Equipment — OCR is requesting a total of \$229,000, an increase of \$11,000 above the FY 2008 level, to cover inflationary costs. The funds are needed for rental agreements, telecommunication services for blackberries and cell phones, and maintenance contracts necessary for the upkeep of office equipment, e.g., copiers, and facsimile machines.

Advisory and Assistant Services — In FY 2009, OCR is requesting an advisory and assistant services budget of \$280,000, an increase of \$250,000 above the 2008 level. OCR's 2008 advisory and assistant services budget was significantly reduced to cover sizeable increases in overhead costs and to help cover the 3.5 percent pay raise. These funds will be used to study and analyze high priority civil rights issues and to contract with experts and subject matter consultants to assist with complex case investigations. OCR plans to acquire the services of an architect with expertise in physical accessibility to provide additional technical assistance to school districts with respect to the physical accessibility of their programs. If this project is not funded, assistance with monitoring higher education desegregation agreements and implementing the quality review program will not take place. The effective monitoring and resolution of OCR's higher education desegregation initiatives are of very high interest to the Congress and the Secretary.

Other Services/Interagency — OCR is requesting a total of \$2.780 million for services discussed below. This is \$2.670 million above the revised FY 2008 level for the Civil Rights Data Collection, legal services, ED Pubs, and the Integrated Postsecondary Education Data System (IPEDS) Fall Staffing and Completions Surveys. The latter is completed in odd years only, and is partially offset by a decrease of \$25,000 for the IPEDS Fall Enrollment Report, which is completed in even years.

- Civil Rights Data Collection and Analysis (\$2.505 million) — This increase will enable OCR to work with the Department's Office of Planning, Evaluation and Policy Development (OPEPD) to transition from collecting the data from school districts, using a Web-based tool, to having States provide school and district level civil rights data through the Department's Education Data Exchange Network (EDEN) Submission System. Of the increase, \$2.4 million is for the 2008/2009 collection of the data from school districts, the final year before full transition to EDEN. In addition to collection, there is an ongoing need for statistical analysis of civil rights data (\$105,000). OCR will continue the development of

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State and national projections, all related analytical activities, and documentation of all data items in the Civil Rights Data Collection data file.

- **IPEDS Completions and Fall Staffing Surveys (\$40,000)** — These surveys are conducted in collaboration with the National Center for Education Statistics for postsecondary institutions that award undergraduate, graduate, and professional degrees. For the IPEDS completions survey (\$20,000), data are collected on student enrollment by race, ethnicity, and sex in postsecondary educational institutions. For the IPEDS fall staffing survey (\$20,000), data are collected by race, ethnicity and sex on professional teaching staff, administrative personnel, and general employees employed by postsecondary education institutions.
- **Legal Research Services (\$100,000)** — In FY 2009, OCR is requesting \$100,000, an increase of \$100,000 above the 2008 level. This project was completely zeroed out of the 2008 budget to cover significant increases in overhead costs and to help cover the 3.5 percent pay raise. This contract provides an automated full-text legal information system that offers online access to continuously updated and archived Federal and State case law, statutes of all 50 States, legal publications, and law reports. If this project is not funded, it would completely eliminate the ability for attorneys to conduct desktop legal research and would necessitate their spending valuable time out of the office conducting legal research.
- **All Other Services/Interagency (\$135,000)** — This includes ED Pubs (\$50,000); conference space rentals (\$36,000); retiring files to the records center (\$4,000); interagency services for General Services Administration (GSA) leased vehicles and equipment (\$44,000); and repairs made to office buildings and facilities (\$1,000) not included in centralized services. The FY 2008 ED Pubs project was completely zeroed out in the 2008 budget to cover sizeable increases in the overhead costs and to help cover the 3.5 percent pay raise. In 2009, OCR is requesting \$50,000 for the ED Pubs project. If this project is not funded, customers without access to the Internet will be negatively impacted if OCR is unable to reproduce publications.

Supplies — OCR is requesting \$250,000, level funded with FY 2008. Office supplies are used on a daily basis by a staff level of 629 FTE. The majority is used for items such as subscriptions to education journals, updated materials for OCR's law libraries, and paper and toner cartridges for copier machines and printers.

Equipment/Furniture and Building Alterations — OCR is requesting \$70,000 for furniture/equipment and building alterations, which is level funded with FY 2008. The equipment/furniture will be used for unusual and special orders. Funding for building alterations includes additions and modifications made to the building structure such as expanding office space, improving the lighting, and other associated costs to improve employees' working conditions.

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Departmental Centralized Services

Almost 80 percent of the total non-personnel budget requested is to cover OCR's share of the Department's centralized services. The FY 2009 request is \$20.593 million, an increase of \$4.205 million or 25.6 percent over the 2008 level. These costs cover services such as rent; GSA mandated relocations; training; records information management support services; and interagency agreements for administrative services provided by other Federal agencies, such as payroll processing, overtime utilities, and training coordinator and career counseling; and the EDUCATE contract that covers telecommunications, IT processing services, network support, end-user support, maintenance, and improvements.

Organizational Structure and Staffing

The Office for Civil Rights has a staff of 629 FTE located in 13 offices across the Nation. Eighty-six percent of OCR's staff is allocated to its 12 enforcement offices. Within the Office of the Assistant Secretary, a Deputy Assistant Secretary for Enforcement and two Enforcement Directors are responsible for providing leadership and coordination of compliance activities and for directing and coordinating the program operations and resources of the 12 enforcement offices. The Enforcement Directors report directly to the Deputy Assistant Secretary for Enforcement.

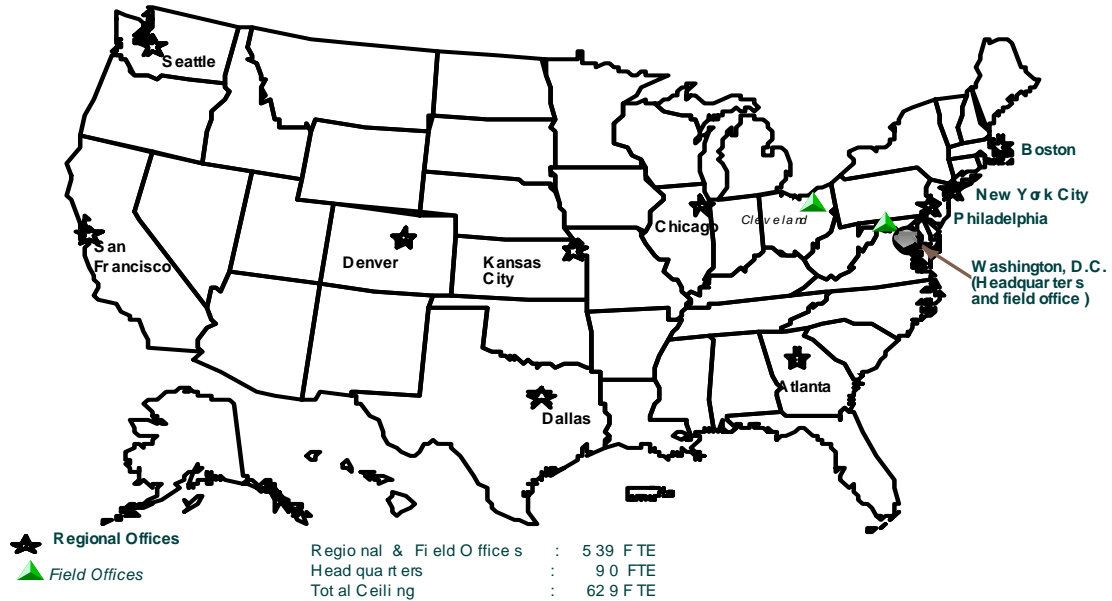
As shown on the following map, OCR has a headquarters office located in Washington, DC, 12 enforcement offices located in the 10 regional centers and 2 field locations throughout the Nation: Boston, New York, Philadelphia, Washington, DC, Atlanta, Dallas, Cleveland, Chicago, Kansas City, Denver, San Francisco, and Seattle. Compliance activity teams in the field offices, composed mainly of attorneys and investigators, are the organizational units responsible for investigating discrimination complaints, undertaking compliance reviews, and providing technical assistance to recipients, parents, and other stakeholders.

Within headquarters, the Office of the Assistant Secretary is supported by a Deputy Assistant Secretary for Policy who supervises a Program Legal Group that provides a range of legal services including: developing policy guidance on civil rights issues, developing technical assistance materials, and consulting on cases from the enforcement divisions. This Group also consults with other Department offices on the Civil Rights Data Collection, oversees the data analysis and dissemination, and helps ensure that civil rights issues are appropriately addressed within Department programs and initiatives and among Federal agencies. A Resource Management Group supports the agency in the areas of customer service, information technology, budget, and the management of human capital and also reports to the Deputy Assistant Secretary for Policy.

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FY 2009 Headquarters/Regional Staff



PROGRAM OUTPUT MEASURES

OCR is a civil rights law enforcement agency whose core business is resolving complaints alleging discrimination in federally funded educational programs and activities. As evidenced in the performance measures below, OCR is committed to resolving discrimination complaints within 180 days of receipt. Denying equal educational access to students for longer than 6 months can have a negative impact not only on their education, but possibly on their lives. To achieve a greater efficiency in complaint resolution, in FY 2006, OCR changed the measurement that tracks complaint investigations to include its entire complaint workload. Rather than tracking only resolved complaints, the measure now tracks new complaint receipts that OCR has committed to resolve in 180 days. In addition, OCR established a performance target that limits the number of complaints over 180 days to no more than 25 percent of OCR's pending complaint workload.

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Current performance measures for complaint workload:

Fiscal Year	Number of Complaints with Due Dates in FY 2007	Number of Complaints Resolved Within 180 Days of Receipt	Percentage of Complaints Resolved Within 180 Days
2006	5,692	5,201	91%
2007*	5,882	5,497	93%

*Data as of October 17, 2007; Complaints received April 1, 2006 through March 31, 2007 have due dates in FY 2007.

Fiscal Year	Number of Pending Complaints	Number of Pending Complaints over 180 Days	Percentage of Pending Complaints over 180 Days
2006	1,458	308	21%
2007	1,617	285	18%

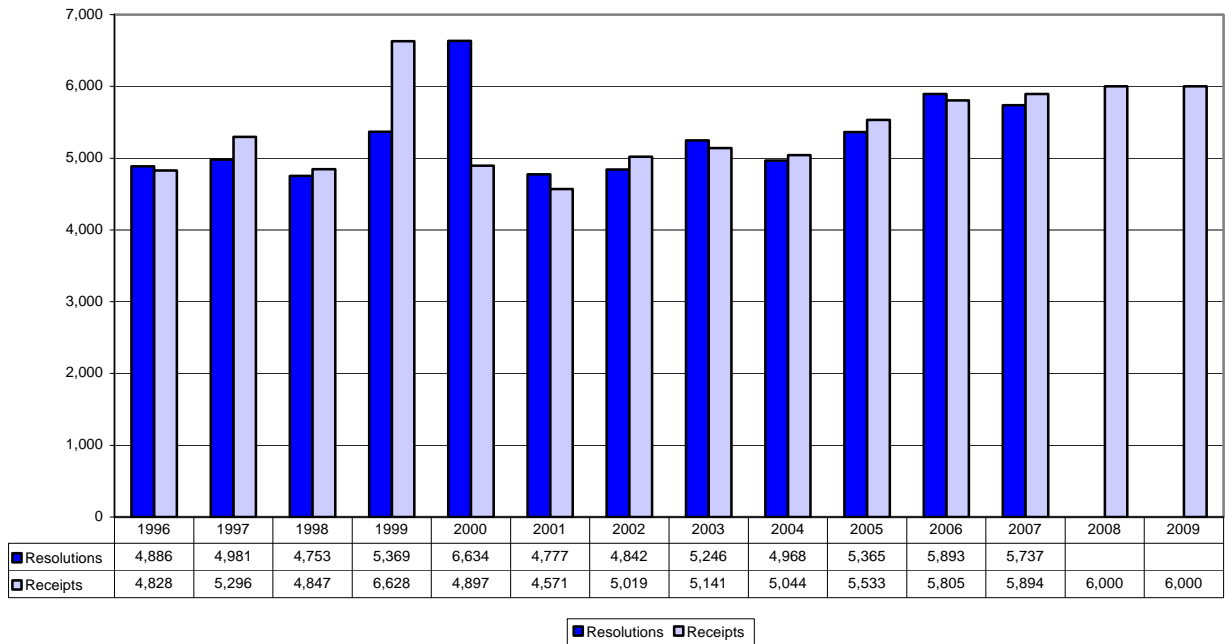
Historical performance measure for complaint workload:

Fiscal Year	Number of Complaints Resolved	Number of Complaints Resolved Within 180 Days	Percentage of Complaints Resolved Within 180 Days
2002	4,842	4,301	89%
2003	5,246	4,737	91%
2004	4,968	4,539	92%
2005	5,365	4,924	92%

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The following chart shows the number of complaint receipts and resolutions since 1996. Actual data are shown for FYs 1996-2007 and estimates are shown for FYs 2008-2009.

Complaint Receipts and Resolutions
FYs 1996 – 2009



PROGRAM PERFORMANCE INFORMATION

OCR's mission of ensuring equal access to education and promoting educational excellence throughout the Nation by the vigorous enforcement of civil rights advances the Department's mission to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. OCR ensures equal access to educational programs and activities through civil rights law enforcement, a multi-faceted activity that requires a sufficient number of well-educated and highly trained staff. OCR's knowledge workers are its greatest resource. Approximately 74 percent of OCR's budget is spent on staff salaries, 21 percent on centralized services, and 5 percent on discretionary costs. OCR's law enforcement program includes policy development, proactive initiatives, administrative enforcement, and other activities. Resolving complaints alleging discrimination is the core work of the agency.

PERFORMANCE MEASURES

OCR's performance measures are designed to assess the efficiency and accessibility of the complaint resolution process. The first performance measure has two targets encompassing

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OCR's entire complaint workload: 80 percent of complaints with due dates in the relevant fiscal year are resolved in 180 days and no more than 25 percent of OCR's pending complaint workload is over 180 days old. Together, the two targets hold OCR accountable for efficient case resolution, resulting in students' timely access to equal educational opportunity.

OCR's second performance measure looks at customer satisfaction through a customer service survey that is distributed after case resolution to both complainants and recipients. The survey measures courteous and considerate treatment of customers, prompt written and oral communication, clear and responsive oral and written communication, and whether the customer was kept informed about his or her case. Based on responses to the survey in FY 2005, OCR's customer satisfaction performance baseline was established at 3.66, on a scale of 1 through 5, with 5 being the highest score possible. OCR's 2006 score was 3.84 and 2007 score was 3.96.

Civil Rights Compliance and Enforcement

OCR has consistently met or exceeded its GPRA performance targets, while its staff level has steadily declined. Approximately 10 percent of OCR's workforce left the agency in both FY 2006 and 2007. Because of OCR's aging workforce, this trend is expected to continue in 2008 and beyond. Experienced staff are retiring from OCR, taking institutional knowledge with them. To offset the loss, OCR's Assistant Secretary completed a comprehensive staffing and workload needs assessment. As a result of the assessment's findings, in addition to the training and knowledge-sharing initiatives discussed below, OCR has identified critical positions that need to be filled throughout the agency. Based on the loss of staff, an aggressive plan was implemented in 2006, and resulted in the authorization to replace 30 staff in critical agency positions. Due to subsequent vacancies, the Assistant Secretary authorized an additional 30 staff hires for 2007 and OCR expects to fill additional critical positions as vacancies occur. OCR will continue this approach to filling critical positions in fiscal years 2008/2009.

Over the past decade, from FY 1996 to 2006, OCR's complaint receipts have risen 20 percent, from 4,828 to 5,805. While OCR's appropriation has gradually increased over the past decade due to inflation and the rising costs of centralized services, OCR's FTE ceiling has decreased 18 percent, from 763 in 1996 to 629 in 2007. With an all-time staffing low of 629 FTE in 2009 and a rising workload, OCR is challenged in its ability to execute its law enforcement activities.

In FY 2007, OCR received 5,894 complaints, an almost 2 percent increase over 2006, and resolved 5,737. Eight hundred and eighty cases were in monitoring. Because of a 2004 change in the Case Resolution and Investigation Manual notifying complainants that there is a formal two-tiered process for requesting reconsideration of OCR's investigative case findings, an increased number of requests for reconsideration has added to OCR's workload both in the field and in headquarters. In 2006, 375 first level requests for reconsideration were received in the field and approximately 100 second level requests in headquarters. The numbers are growing. In 2007, 465 first level requests for reconsideration were received in the field and approximately 108 second level requests were received in headquarters. Approximately 144 second level requests were pending in headquarters at the end of the fiscal year. Because there are fewer staff to accomplish more work, timelines for monitoring resolution agreements

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and responding to requests for reconsideration of case investigations are increasing. In addition, OCR's capacity to deliver proactive technical assistance, which is labor intensive but the best means of preventing civil rights violations, is at risk.

Complaint investigation is a labor-intensive activity. A variety of techniques are used to resolve complaints. Under some circumstances, a voluntary resolution is facilitated between the parties. More typically, however, once a complaint has been evaluated and the allegations are found to be within OCR's jurisdiction, a full investigation is conducted. Agreements are negotiated with recipients when compliance concerns are established. Once an agreement is reached, OCR monitors the agreement's implementation until the recipient completes all necessary action. If the recipient does not agree to remedy the civil rights concern, OCR issues a violation Letter of Findings. The recipient is then given another opportunity to negotiate a remedy before OCR initiates and conducts enforcement proceedings through an administrative hearing or refers the case to the Department of Justice.

Policy development, promulgating regulations implementing civil rights legislation, outreach and technical assistance, staff training and development, and administrative enforcement are activities necessary to support OCR's investigative core function. Proactive activities targeted by the Assistant Secretary complete OCR's civil rights compliance and enforcement program.

Over the last decade, more than 50 percent of OCR's complaint receipts have alleged disability discrimination. OCR intends to maximize the impact of resources spent on these investigations by expanding its proactive compliance and technical assistance activities under Section 504 and Title II. OCR's National Enforcement Strategy includes proactive activities in the area of disability, addressing such issues as: equal access to education for disabled veterans; overrepresentation of minorities in special education; misidentification of language minority students in special education; physical accessibility to postsecondary education programs and facilities; and the transition of students with disabilities from high school to college.

Major activities supporting and enhancing OCR's complaint investigations are discussed below. These activities support the Department's three strategic goals, as well as its commitment to excellent management practices. The goals in the Strategic Plan are to:

- 1) Improve student achievement, with a focus on bringing all students to grade level in reading and math by 2014.
- 2) Increase the academic achievement of all high school students.
- 3) Ensure the accessibility, affordability, and accountability of higher education, and better prepare students and adults for employment and future learning.

Initiatives Supporting the Department's Strategic Plan

Boy Scouts of America Equal Access Act

OCR published final regulations on March 24, 2006. OCR is in the process of developing training and technical assistance materials to aid staff in enforcing the Boy Scouts Act and its implementing regulations. The materials will also help staff to inform recipients of their responsibilities, and parents and students of their rights under the law. In addition, the Boy Scouts Act regulation requires public elementary and secondary schools, local educational

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agencies (LEAs), and State educational agencies (SEAs) that receive funds made available through the Department to submit an assurance of compliance with the law.

Following OMB approval, OCR revised OCR's assurance of compliance form to include the Boy Scouts Act and sent all LEAs and SEAs (approximately 17,000 recipients) the revised assurance of compliance form along with a Dear Colleague letter from the Assistant Secretary that describes the new form and its purpose. OMB information collection approval for the revised civil rights assurances form expires February 28, 2009. By that date, OCR will have to obtain new OMB approval to continue to distribute assurance forms to recipients as needed. OCR will also devise, as necessary, technical assistance information for recipients regarding the assurance of compliance form and the obligation to comply with the Boy Scouts Act.

Enforcement of NCLB Reporting Requirements Regarding Disabled Students

Consistent with the Department's strategic priorities, OCR will implement activities to support the No Child Left Behind Act (NCLB). Examples of potential civil rights issues include: denying admission; clustering or dispersing members of subgroups; counseling lower-performing students to drop out of high school; reclassifying members of subgroups, such as altering LEP exit criteria; denying test-taking accommodations for disabled students; and different treatment based on test results, which may provide a proxy for race and ethnicity. OCR will initiate efforts to assess and address NCLB-related civil rights issues by conducting compliance reviews, facilitating research and analysis, developing materials, and delivering technical assistance.

Single Sex Classes and Schools: Title IX

On October 25, 2006, OCR published in the Federal Register amendments to the Title IX regulations on single-sex classes and schools; these regulations took effect on November 24, 2006. As appropriate, OCR will resolve cases in which a violation of these new regulations is alleged, develop guidance on related issues that are not specifically addressed by the new regulations, provide training and technical assistance, and develop technical assistance materials regarding rights and responsibilities under the new regulations.

Outreach to LEP Parents and the Misidentification of LEP Students in Special Education

OCR will continue its proactive initiative to increase proper communications with LEP parents and to avoid misidentification of LEP students in special education. While special education programs are essential to ensure that students with disabilities receive an appropriate education, studies have documented discrepancies in the rates of referral and placement of LEP students in special education. OCR's compliance reviews, focusing on school districts with a disproportionately high percentage of LEP students in special education, will determine whether national-origin minority students have been subjected to discrimination on the basis of their limited English proficiency in the referral, evaluation and placement in special education programs. If compliance issues are found, OCR's activities will include technical assistance and outreach to parents of LEP students so that they can actively participate in their children's education.

Overrepresentation of Minorities in Special Education

OCR will continue conducting its compliance reviews, begun in FY 2003, focusing upon inappropriate placement of minority students in special education. Where investigations have revealed that school districts were not in compliance, OCR has been negotiating agreements with the school districts to remedy violations.

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Sexual Harassment Initiative

As articulated in the January 2006, Dear Colleague Letter issued by the Assistant Secretary for Civil Rights, OCR is committed to addressing issues of sexual harassment in the Nation's schools. OCR will conduct compliance reviews related to sexual harassment in schools to ensure that students have a safe and secure educational environment that affords them equal educational opportunities, regardless of their sex.

Use of Race in Admission to Educational Institutions

On December 4, 2006, the United States Supreme Court heard oral arguments in two cases involving school districts' consideration of students' race in elementary and secondary school admissions, in order to reduce racial isolation and secure the educational benefits of diversity. After the Supreme Court's decisions in these cases are handed down in 2007, OCR will develop and issue policy or technical assistance documents to provide guidance in this area to public school districts. OCR will also develop and disseminate policy or technical assistance guidance to postsecondary institutions regarding the appropriate, narrowly tailored use of race as a factor, as well as the use of race-neutral factors in college admission decisions, consistent with current Supreme Court jurisprudence.

Physical Accessibility Reviews

OCR will expand this nationwide enforcement initiative under Section 504/Title II focused on eliminating barriers for students with physical disabilities. OCR has created a comprehensive national plan to conduct these reviews at both public and private postsecondary and elementary and secondary institutions. Begun in FY 2004, these compliance reviews may include, but are not limited to: accessibility of residence halls; academic buildings; classrooms; and athletics and parking facilities. OCR plans to acquire the services of an architect with expertise in physical accessibility to provide additional technical assistance to school districts with respect to the physical accessibility of their programs.

Transition of Disabled Students from High School to College

OCR continues to expand its technical assistance effort to assist students with disabilities making the transition from high school to college. OCR issued three documents: a Dear Colleague letter, a Dear Parent letter, and a document entitled *Transition of Students With Disabilities To Postsecondary Education: A Guide for High School Educators*, which provided information about the legal rights and responsibilities of students with disabilities as they transition from high school to institutions of postsecondary education. OCR broadly distributed these documents as well as a revised version of OCR's technical assistance pamphlet, *Students with Disabilities Preparing for Postsecondary Education*. Begun in FY 2004, "Transition" activities address the need for accurate information about the different obligations of public secondary school districts and postsecondary institutions and the specific rights of students with disabilities at the postsecondary level.

Activities Supporting Departmental Priority Initiatives

Compliance with OMB's Bulletin on Good Guidance Practices

OMB has issued new requirements for Federal agencies to follow in developing and distributing new significant guidance documents and in posting existing significant guidance documents on agency websites. These requirements address drafting and language use, agency clearance, OMB notification and review, posting on agency websites, and public input through public

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comment and the filing of public complaints. OCR is working with OGC and other offices in the Department to implement these requirements, which took effect on July 24, 2007 (August 23, 2007 for existing significant guidance documents). Complying with Department procedures established because of these requirements will result in an increased use of OCR staff resources. Some aspects of the OMB requirements, for example, notification to and possible review of documents by OMB, and public complaint procedures regarding compliance with OMB requirements, will require OCR to undertake new responsibilities.

Title IX Compliance Initiative

OCR will continue to conduct its initiative to train recipients on all aspects of Title IX compliance. OCR will provide recipients with technical assistance and self-evaluation tools to help them come into compliance, as well as give presentations on the subject at regional conferences, with particular emphasis on the requirements of compliance.

Civil Rights Data Collection

Historically, the Civil Rights Data Collection (CRDC) has collected school and district level civil rights data directly from school districts. Currently, OCR is working with the Department's Office for Planning, Evaluation, and Policy Development to transition fully from collecting the data from school districts, using a Web-based tool, to having all States provide school and district level civil rights data through the Department's EDEN Submission System (ESS). The transition plan provides for the 2008/2009 CRDC to be the last time that data are collected directly from school districts. For 2010, States will be expected to provide all district and school level civil rights data through the ESS. OCR will continue to be responsible for the cost of funding the CRDC for the 2008/2009 data collection.

Since FY 2003, OCR has supported the Department's centralized data collection efforts with staff and fiscal resources. In 2003, OCR transferred \$2.1 million to the Department to build a civil rights survey tool. In 2005, OCR transferred \$658,000 to the Department for the 2004/2005 school year CRDC. In 2006, OCR transferred \$2.8 million to the Department to fund the 2006/2007 school year CRDC. In 2007, \$705,731 was transferred for the CRDC. The anticipated cost of the 2008/2009 CRDC is \$2.4 million.

Civil Rights Data Review and Analyses

OCR has continuing responsibility for the analysis and reporting functions related to the CRDC. This includes the development of State and national projections for the 2008/2009 CRDC. Consistent with its authorizing legislation, OCR will also study and analyze high priority civil rights issues such as racial isolation in elementary and secondary schools and the underrepresentation of certain groups in Advanced Placement courses. The information gained through these studies and analyses will help OCR develop legal theories and approaches for conducting reviews in those areas. In addition, OCR will continue to support the development of analytic tools available through the ED*Facts* reporting system and make data from the CRDC available to the public through the Internet.

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Management Tools and Activities Supporting Civil Rights Enforcement

Case Resolution and Investigation Manual

The Case Resolution and Investigation Manual (CRIM) is OCR's roadmap for conducting and resolving complaint investigations. It stresses full investigation of complaints prior to making a determination of compliance. The CRIM undergoes continuous review, evaluation, and revision to promote quality control and efficient case processing. The last revision was made in May 2005. Based on input from OCR staff, the Assistant Secretary has requested that a cross-functional committee make recommendations for new CRIM revisions.

Quality Review Program

Initiated in June 2005, OCR's Quality Review Program was established to identify best investigative practices and facilitate measurable reduction of errors in case processing. Cases are reviewed to identify the best practice approaches to case investigation, and analytical models are shared among all enforcement offices to enhance the quality, efficiency, and consistency of OCR's investigative work nationwide. In FY 2007, OCR convened a team to identify, review and improve current case processing procedures. In 2008, the team will establish case processing quality indicators and measurement benchmarks to be tracked and reported in a quality improvement database. In addition, the team will identify specific policy areas in need of review and/or in which staff need substantive training. OCR expects the quality review program to be fully implemented by 2009.

National Enforcement Strategy

OCR's National Enforcement Strategy contains proactive activities in the area of disability to address the issues of: overrepresentation of minorities in special education; misidentification of language minority students in special education; physical accessibility to postsecondary and elementary and secondary education programs and facilities; and the transition of students with disabilities from high school to college, including Dear Colleague letters informing students and parents of their rights and responsibilities. Other significant proactive activities in the Enforcement Strategy include: a training initiative on Title IX compliance; comprehensive procedural and policy reviews under Title VI, Title IX, and Section 504/Title II; and studies and/or analyses of several high priority civil rights issues such as the underrepresentation of certain groups in Advanced Placement courses. In addition to starting new compliance reviews and numerous technical assistance activities, OCR will continue resolving open reviews and monitoring resolution agreements.

National Training and Development Strategy

In FY 2008, OCR will continue to implement its national training and developmental strategy, ensuring that OCR employees receive adequate programmatic and professional development. Staff training and development is part of OCR's succession planning strategy and provides opportunities for staff to participate in leadership programs, supervisory training, management retreats, policy conferences, college-level courses, and continuing legal education. It also incorporates training on the expanded use of electronic systems for case and document management and FOIA requests and appeals, development of OCR-specific Web-based training modules, and ongoing training on use of the CRIM to promote consistent application of OCR's case management process.

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Web-Based Training Modules

As part of the national training strategy, OCR has invested in the development of two Web-based training modules: one on general investigative procedures and a second on investigating allegations of sexual harassment. While Web-based training will not replace classroom training, it will be available to the staff at their desks and at minimal cost to the agency. The first of the courses is completed and will be available to staff at their desks in early 2008.

Electronic Government Initiatives

Case and Activities Management System

OCR's Case and Activities Management System (CAMS) tracks both OCR's case-related and non-case related activities. CAMS also includes an electronic document management (DMS) function for document management, storage, and retrieval. OCR provides staff CAMS training on the System's functionality to increase productivity and is expanding the use of CAMS within OCR components. Software upgrades and maintenance are performed annually.

Electronic Policy Library

The Electronic Policy Library will expand upon the foundation established by the electronic Policy Repository, which currently offers a single, reliable, searchable user-friendly electronic document storage and retrieval system for current OCR policy documents. In the next phase of development, a comprehensive Web-based library reference tool is being developed that will enable OCR staff to gain a quick understanding of unfamiliar areas of law and policy. When it is complete, the Library will contain succinct narrative explanations of OCR's statutory jurisdictions with annotated references to current policy and key case law incorporated in an easy-to-use reference manual. The final phases of the Electronic Policy Library will be completed in FY 2008. Retention of this information in an accessible electronic format leverages technology to simplify the management and distribution of knowledge throughout OCR. When completed, this knowledge management activity will increase OCR's ability to share information, build program expertise, reduce research time, and strengthen the integrity of information used to support OCR decisions.

Automated Freedom of Information Act and Privacy Act Case Management

The President's recent Executive Order 13392 and the Secretary's emphasis on Freedom of Information Act (FOIA) legal requirements have resulted in increased Department responsibility in this area. OCR is committed to producing tangible and measurable improvements in FOIA processing. In FY 2006, OCR successfully piloted FOIAXpress, the Department's Web-based solution for FOIA and Privacy Act case management, in two field offices. As of October 5, 2007, FOIAXpress was implemented in all OCR field offices.

Electronic Records Management

In FY 2007, OCR awarded a contract for software and services to combine CAMS, DMS and FOIA into an integrated electronic records management system. In 2007 and continuing into 2008, policies and procedures will be developed pertaining to storing and sharing documents created or received in OCR. Full implementation of electronic case files will begin by storing all existing electronic case-related documents in the DMS. In addition, a pilot project is being conducted in one field office to convert all case-related documents as they are

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received into an electronic format. After the pilot project is evaluated, a plan will be developed for agency-wide implementation of fully electronic case files throughout OCR. Once successfully implemented, FOIAXpress will be integrated with the DMS. In addition, OCR's electronic policy library will continue to be developed and stored in the DMS.