



U.S. Department of Education
Office of Inspector General

The Office for Civil Rights' Processing of Web Accessibility Complaints

June 13, 2023
ED-OIG/F21DC0043

FLASH REPORT

NOTICE

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. The appropriate Department of Education officials will determine what corrective actions should be taken.

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**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL**

Audit Services

June 13, 2023

TO: Catherine E. Lhamon
Assistant Secretary for Civil Rights

FROM: Bryon S. Gordon /s/
Assistant Inspector General for Audit

SUBJECT: Final Flash Report, "The Office for Civil Rights' Processing of Web Accessibility Complaints," Control Number ED-OIG/F21DC0043

Attached is the subject final flash report that consolidates the results of our review of the Office for Civil Rights' processing of web accessibility complaints. We received your comments in response to our draft report.

U.S. Department of Education policy requires that you develop a final corrective action plan within 30 days of the issuance of this report. The corrective action plan should set forth the specific action items and targeted completion dates necessary to implement final corrective actions on the findings and recommendations contained in this final report. Corrective actions that your office proposes and implements will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on reviews that remain unresolved after 6 months from the date of issuance.

We appreciate your cooperation during this review. If you have any questions, please contact Michele Weaver-Dugan at (202) 245-6941 or Michele.Weaver-Dugan@ed.gov.

Attachment

Purpose

The purpose of this flash report is to share with the U.S. Department of Education (Department) observations made by the Office of Inspector General (OIG) regarding the Office for Civil Rights' (OCR) processing of web accessibility complaints in response to allegations received by the OIG Hotline. The allegations stated that OCR improperly closed web accessibility complaints that were previously dismissed and reopened as directed investigations and imposed unreasonable requirements on the filing of new web accessibility complaints to silence the complainant's efforts regarding access of federally funded websites.

What We Did

Our objectives were to review OCR's process for resolving web accessibility complaints that were previously dismissed and subsequently reopened as directed investigations¹ and OCR's approach to evaluating web accessibility complaints submitted after the November 2018 revision of its Case Processing Manual (CPM).

To accomplish our objectives, we reviewed resolution letters, resolution agreements, and letters of findings for web accessibility directed investigations to determine differences, if any, between the resolution of prior web accessibility complaints and those that were previously dismissed and then reopened as directed investigations. We also reviewed web accessibility complaints, including the types of evidence submitted by complainants, to determine how OCR is evaluating these complaints after the November 2018 revision to its CPM.

Introduction

Background

The mission of OCR is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights. OCR enforces several Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, or age in programs or activities that receive Federal financial assistance from the Department. Although OCR provides guidance to stakeholders to prevent civil rights violations and performs proactive compliance reviews that target specific issues of discrimination, most of its work is driven by public

¹ A directed investigation is an OCR-initiated process that may include offering technical assistance to the recipient, conducting an expedited investigation that may result in a resolution agreement to ensure recipients come into compliance with applicable requirements, or both.

complaints. The person or organization filing the complaint does not need to be a victim of the alleged discrimination but may file a complaint on behalf of another person or group.

Most of OCR's activities are conducted by its 12 enforcement offices throughout the country. Three Enforcement Directors in the office of the Assistant Secretary oversee their work. Management and staff in OCR's headquarters office in Washington, D.C. provide additional administrative support, coordination, policy development, and overall leadership.

OCR's primary procedures for processing discrimination complaints are prescribed in its CPM. The CPM outlines the procedures for promptly and effectively investigating and resolving complaints, compliance reviews, and directed investigations to ensure compliance with the civil rights laws and regulations enforced by OCR. Upon receipt of a complaint, OCR evaluates the written information to determine whether it is subject to further processing and, if so, OCR determines whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint.² The CPM further outlines the conditions under which OCR may dismiss an allegation, or, if appropriate, a complaint in its entirety. A complaint allegation can be dismissed during the evaluation stage of case processing or after the allegations have been opened for investigation.

In March 2018, OCR revised its CPM to include a new provision under which an allegation or complaint could be dismissed. Specifically, under section 108(t), OCR could dismiss an allegation or a complaint in its entirety that is (1) a continuation of a pattern of complaints previously filed with OCR by an individual or group against multiple recipients or (2) a complaint(s) filed for the first time against multiple recipients that, viewed as a whole, places an unreasonable burden on OCR's resources.

In November 2018, OCR revised its CPM again, reversing some of the changes made in the March 2018 version, to include eliminating section 108(t). In conjunction with the issuance of its November 2018 revised CPM, OCR indicated publicly that it planned to

² Complaints can include multiple allegations of discrimination.

open allegations previously dismissed under section 108(t), most of which related to web accessibility (84 percent), as directed investigations.³

OCR started opening these directed investigations in December 2018 by sending notification letters to the applicable recipients and original complainants. These letters stated that the directed investigations would be treated as investigations, meaning they would follow the normal procedures for investigating complaints as documented in the CPM. In June 2019, OCR created a National Digital Access Team to process web accessibility complaints, including those that had previously been dismissed under section 108(t) and subsequently reopened as directed investigations.

What We Found

OCR's Resolution of Web Accessibility Complaints Reopened as Directed Investigations Differed from Past Practice

We found that OCR's resolution of web accessibility complaints previously dismissed under section 108(t) and subsequently reopened as directed investigations differed from how these reviews were resolved in the past. Specifically, OCR was more frequently using a section of its CPM associated with insufficient evidence determinations to resolve these web accessibility complaints while following processes associated with a section of its CPM related to voluntary resolution agreements when conducting the reviews. OCR officials stated that the prior process followed was ineffective in getting the changes they were looking for in these types of reviews. We found that the web accessibility directed investigations resulted in different outcomes than past web accessibility reviews, specifically with regard to whether or not a compliance determination was made, and that determinations made were inappropriate based on the level of testing performed.

Resolution Types and Frequencies

We found that OCR was more frequently using section 303(a) of the CPM to resolve web accessibility complaints previously dismissed under section 108(t) and subsequently reopened as directed investigations than it had been in the past, prior to the section 108(t) dismissals. Section 303(a) is used when OCR determines that there is insufficient evidence to support a conclusion of noncompliance. This section of the CPM states that

³ See our prior audit "The Office for Civil Rights' Complaint Dismissal Process," ED-OIG/A19T0002, May 11, 2021, for additional information pertaining to the dismissal of complaints under section 108(t) and subsequent reopening as directed investigations (<https://www2.ed.gov/about/offices/list/oig/auditreports/fy2021/a19t0002.pdf>).

when OCR determines that the preponderance of evidence does not support a conclusion that the recipient failed to comply with applicable statutes and regulations, OCR will issue a letter of findings to the parties explaining the reasons for its decision.

Prior to the directed investigations, we found that OCR was frequently using section 302 of the CPM to resolve web accessibility complaints. Section 302 states that allegations may be resolved at any time during the investigation when the recipient of the complaint expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. Under section 302, OCR issues a resolution letter addressing the allegations and includes a copy of the signed resolution agreement. It does not determine compliance or non-compliance regarding the allegations outlined in the complaint. OCR will then monitor the implementation of the agreement until the recipient has fulfilled its terms.

From November 2011 to December 2018, prior to the reopening of web accessibility complaints dismissed under section 108(t), we found that OCR had closed 449 web accessibility complaints. We found that 333 of the 449 complaints (74 percent) were resolved under section 302, while the remaining 116 complaints (26 percent) were resolved under section 303(a). From December 2018 to November 2021, we noted that OCR had reopened and closed 530 of the web accessibility complaints previously dismissed under section 108(t). We found that 94 of the complaints (18 percent) were resolved under section 302 while 436 (82 percent) were resolved under section 303(a), as shown in the table. The 436 included 21 directed investigations that were previously being resolved under section 302 and had negotiated resolution agreements in place prior to being dismissed under section 108(t).

Table. Comparison of OCR's Usage of Sections 302 and 303(a)

	November 2011– December 2018	December 2018– November 2021
Section 302 Resolution	333 (74 percent)	94 (18 percent)
Section 303(a) Resolution	116 (26 percent)	436 (82 percent)
Total	449	530

Changes to the Resolution Process

We noted changes to the resolution processes applied to the web accessibility directed investigations. While OCR appeared to be following processes associated with section 302 of its CPM during resolution, it was generally not issuing a formal resolution agreement and resolution letter as required. OCR was instead issuing a letter of findings

under section 303(a), citing “insufficient evidence of noncompliance,” even though the wording used in the letter specifically indicated that the recipient needed to take corrective actions to come into compliance with applicable laws.

We reviewed 25 of the 333 resolution letters issued by OCR related to web accessibility complaints investigated between November 2011 and December 2018. We found OCR applied section 302 when, during the investigation of a recipient’s website, it identified technological barriers to accessibility, the recipient expressed an interest in resolving the allegations, and OCR determined that it was appropriate to resolve them because the issues could be addressed through a resolution agreement. OCR subsequently issued a resolution letter after negotiating and signing a resolution agreement with the recipient that required the recipient to take applicable corrective actions addressing all of the allegations investigated.

We reviewed 25 of the 116 letters of findings related to web accessibility complaints issued during the same period. We found that OCR applied section 303(a) to resolve and close complaints not only when OCR found no evidence that a recipient’s website was inaccessible and noncompliant with Federal laws after completing its investigation of the recipient’s website, but also when a recipient initiated corrective action on its own during OCR’s investigation and OCR was able to complete its investigation of the recipient’s website and found no further evidence that the website was inaccessible and noncompliant with Federal laws.

We found that OCR changed how it applied sections 302 and 303(a), most notably the latter. Based on our review of 25 of the 94 resolution agreements issued by OCR under section 302 since December 2018, resolution agreements appeared more streamlined and also noted that OCR would provide technical assistance to the extent practicable, if requested, during implementation of the agreement.

Based upon a review of 25 of the 436 letters of findings issued by OCR under section 303(a) since December 2018, we noted that after completing its initial investigation, if technological barriers were identified, OCR held discussions with the recipient to inform them of any barriers identified, obtained the recipient’s interest in removing the barriers to come into compliance with the law, and held additional follow-up calls to discuss the remediation of the technological barriers identified during the investigation. OCR then conducted additional testing to confirm that the barriers were removed and that the recipient had developed a strategy to remain in compliance with the law. Although this process appeared very similar to the 302 process (see the figure), OCR did not utilize the 302 process and enter into a formal resolution agreement or issue a resolution letter as required under section 302. Instead, OCR issued an Insufficient Evidence Determination under section 303(a), stating that there was insufficient evidence to support a conclusion of noncompliance, even though the

resulting letter issued indicated that the recipient was in noncompliance prior to taking corrective action. These letters included the following language:

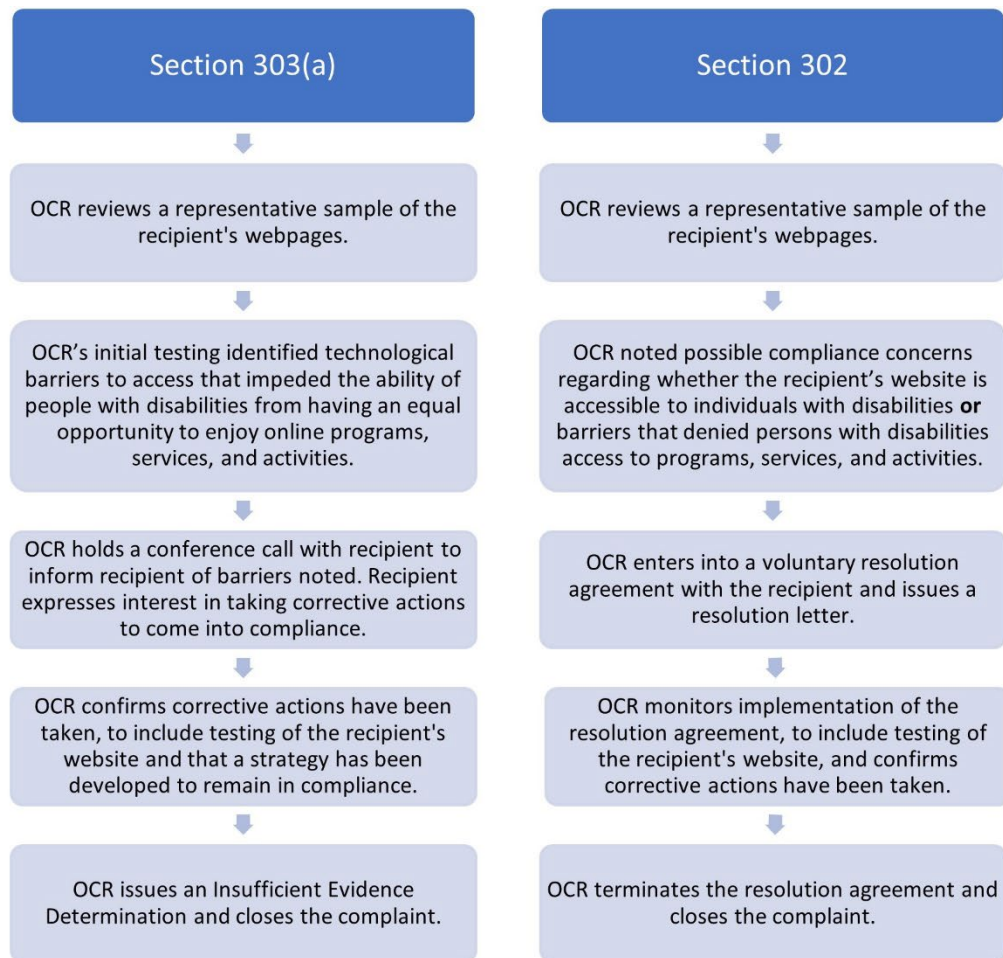
These are the pages on which OCR's initial testing identified technological barriers to access that impeded the ability of people with disabilities from having an equal opportunity to enjoy [the recipient's] online programs, services, and activities ...

[The recipient] expressed an interest in removing the identified barriers to come into compliance with section 504 and Title II ...

[OCR] confirmed the identified barriers had been removed and [the recipient] had developed a strategy to remain in compliance with the law, consistent with its expressed commitment.

Overall, our review of letters issued under both sections 302 and 303(a) since December 2018 indicated similarities in processes followed, issues noted, and corrective actions required, but resulted in different outcomes, specifically regarding a compliance determination. See the figure for a comparison of these processes.

Figure. Comparison of Processes for Web Accessibility Directed Investigations



OCR officials acknowledged that they were using section 303(a) more to resolve and close complaints that were previously dismissed under section 108(t) and subsequently reopened as directed investigations. They also acknowledged that the letters issued could be confusing the way they were written.

OCR officials stated that they were no longer using section 302 as frequently as in the past because they were using a new section 303(a) process. They stated that the section 302 resolution process was ineffective in getting the change they were looking for because the resolution agreements included requirements such as an internal or external audit, but that did not lead to systematic changes in the recipient's information technology environment. OCR stated that even after issuing the resolution agreements, it would frequently find during monitoring that there continued to be issues with the recipient's website. They noted that the technical assistance they were providing would get the needed results in a timelier manner. They stated that an "insufficient evidence" closure letter made clear that OCR had worked intensively with the recipient to make its online programs accessible promptly, meaning that people with disabilities could

immediately have equal opportunities to access the recipient's online programs, services, and activities without the delay involved in monitoring commitments made pursuant to a resolution agreement.

OCR stated that if the recipient was not able to resolve issues quickly, it was typically resolving the complaints through section 302 resolution agreements. OCR stated that this was more likely to occur when a recipient needed to overhaul its templates in a way that was not easy to do for technological reasons, needed to engage in broad-scale document remediation, or was working with a vendor who could not complete barrier remediation quickly.

Further, OCR stated that for it to determine that the recipient violated the law, OCR must find that

1. there were technological barriers that impeded the ability of people with disabilities to access online programs, services, and activities; and
2. the recipient failed to provide equally effective alternative ways for people with disabilities to access the impacted online programs, services, or activities.

OCR officials acknowledged that they did not complete the second part of this two-part test if the recipient took the corrective action OCR deemed necessary for the recipient's websites to be accessible to people with disabilities. They indicated that if the barriers identified could not be removed, they would then do part two of the test. OCR officials acknowledged that the use of the word "compliance" in the section 303(a) letters, as noted above, could be confusing since at no point during the investigation did OCR determine whether the recipient was in compliance.

We noted that some of the section 303(a) letters issued included additional details regarding OCR's rationale for its use of section 303(a) in line with this two-part test:

Technological barriers to access are not, by themselves, sufficient to establish a violation of the law. Even if OCR has determined the presence of technological barriers to access that impede the ability of a person with a disability to access a recipient's programs, services, or activities, OCR must inquire of the recipient whether equally effective alternate means of access were provided before finding a violation of Section 504. Where, as here, the [recipient] voluntarily eliminates the technological barriers to access and OCR confirms the elimination of those barriers, it is appropriate to resolve matters such as this one with findings of insufficient evidence, consistent with OCR's regulatory mandate to attempt resolution by voluntary means whenever possible. See e.g., 34 C.F.R. [section] 100.7(d). Therefore, OCR has determined

there is insufficient evidence to support a conclusion that the [recipient] is not in compliance with Section 504 and has closed this directed investigation.

We agree that the cited regulation above allows for compliance issues to be resolved by informal means whenever possible. That does not directly correlate to the issuance of an insufficient evidence of noncompliance determination (section 303(a)), especially when OCR never performed the second part of the two-part test to be able to definitively make a compliance determination.

In comparison, we noted that the explanation provided in a prior section 302 letter provides a rationale similar to that included in the section 303(a) letter cited above, however the resulting conclusion concerning a compliance determination differs:

Although the results of OCR's web accessibility assessment described above do not, without more, provide sufficient evidence for OCR to determine a violation of Section 504 or Title II, they raise compliance concerns regarding the accessibility of the website. Therefore, OCR determined that it is appropriate to resolve this complaint with an agreement. Accordingly, OCR is not making a finding with regard to the [recipient's] compliance with Section 504 or Title II in this letter.

As a result of OCR's changes to its procedures for processing web accessibility complaints dismissed under section 108(t) and reopened as directed investigations and the unclear way these changes were implemented, it could be difficult for people unfamiliar with OCR's process, including complainants and recipients, to understand OCR's procedures for processing these complaints. Further, a determination of insufficient evidence of noncompliance would be an inappropriate determination if OCR never completed all of the steps to actually make a compliance determination, and when OCR's letters of findings do suggest there were compliance concerns but allowed the recipients time to take corrective actions before finalizing the review. Because these formerly dismissed complaints were reopened and conducted as directed investigations, the former complainants do not have rights to appeal the outcomes of these insufficient evidence determinations if they believe an appeal is warranted.

In written comments provided in July 2022, after the conclusion of our fieldwork, OCR stated that the Assistant Secretary for Civil Rights directed OCR's National Digital Access Team to resolve directed investigations with resolution agreements following

section 302 or section 303(b)⁴ of the CPM. Additionally, the Assistant Secretary for Civil Rights approved a new sample agreement for modification, as appropriate, that OCR indicated will clearly reflect the work it performed and provide greater clarity. In a subsequent discussion in March 2023, an OCR official confirmed that this is the new process being followed and that the use of section 303(a) in the manner noted in this finding has been discontinued.

OCR's actions, if implemented as described, appear to address the issues identified above. As a result, we have no recommendations at this time.

Office for Civil Rights Comments

We provided a draft of this report to OCR for comment. OCR did not state whether it agreed or disagreed with the finding. OCR noted that the use of the present tense throughout most of the finding gives the mistaken impression that OCR continues to resolve complaints with determinations of insufficient evidence and that the draft report makes no reference to the discontinuation of this approach until the last paragraph of this section. OCR also stated that wording used in some conclusionary statements in the finding suggests that OCR only recently undertook these actions and that they have not yet been fully implemented, which OCR states is not true.

The full text of OCR's comments is provided at the end of the report.

OIG Response

The purpose of this flash report was to share observations made by OIG regarding OCR's processing of web accessibility complaints in response to specific allegations received by the OIG Hotline. As such, the primary focus was on documenting those observations. The finding includes information related to changes in processes communicated by OCR officials during our discussion of the preliminary findings and recommendations at the exit conference in July 2022 and as documented by OCR in written comments provided shortly thereafter. We did not confirm that the changes noted by OCR were implemented as described or when OCR implemented the changes as this was outside the scope of our review.

⁴ Section 303(b) of the CPM provides that when OCR determines that the preponderance of the evidence supports a conclusion that the recipient failed to comply with applicable statutes and regulations, OCR will prepare a letter of findings and a proposed resolution agreement.

We did not make substantive changes to the finding but did make minor edits for clarity, including changes to reflect past tense and adding the date when OCR noted it had changed its processes.

OCR's Approach to Evaluating New Web Accessibility Complaints Changed

We found that OCR changed its approach to evaluating new web accessibility complaints beginning in December 2018, after removal of its section 108(t) dismissal code from its CPM. Specifically, OCR more frequently applied a section of its CPM to dismiss allegations and complaints for insufficient evidence even though the evidence provided by complainants before and after December 2018 was similar. We found the percentage of web accessibility complaints dismissed for this reason increased from less than 1 percent for approximately 6 years preceding December 2018 to 73 percent for approximately 2.5 years since December 2018. OCR changed its approach because officials believed it was doing more than necessary when evaluating web accessibility complaints, to include performing its own preliminary reviews of the websites in question. OCR had not disseminated information to assist complainants in successfully submitting web accessibility complaints given its changed approach and had not updated its CPM to reflect its process changes.

Changes to the Evaluation Process

We found that OCR was more frequently using section 108(b) to dismiss new web accessibility complaints since the removal of its section 108(t) dismissal code from its CPM in November 2018. Under section 108(b) of the CPM, OCR would dismiss an allegation or complaint in its entirety when it lacked sufficient factual detail (e.g., who, what, where, when, how), or was so speculative, conclusory, or incoherent that OCR could not infer that discrimination or retaliation may have occurred or may be occurring. The "conclusory" provision applied when the complaint allegation (including any additional information provided by the complainant) did not provide sufficient information to raise the allegation above the level of speculation. The complaint must provide more than bare conclusions of alleged violations of the laws and regulations enforced by OCR.

Before dismissing an allegation under CPM section 108(b), OCR would contact the complainant either by telephone or in writing (letter or email) to (1) explain the information necessary for OCR to open an investigation of the allegation; (2) request that the information be received within 14 calendar days of the date of the telephone contact, letter, or email; and (3) advise the complainant that the allegation will be dismissed if the information is not received by that date. OCR would dismiss the allegation if the requested information was not received within 14 calendar days of the

date of the request unless the complainant requested additional time to provide the information.

We found that between August 2012 and December 2018, OCR dismissed 15 web accessibility complaints under section 108(b) out of 2,432 (less than 1 percent) web accessibility complaints received during that period. However, between December 2018 and August 2021, OCR dismissed 204 web accessibility complaints under section 108(b) out of 280 (73 percent) total web accessibility complaints received during that period.

We found that, prior to dismissal, OCR issued a 14-day letter to the applicable complainant requesting additional information, including

- for each identified page, a description of the specific barriers to access on the page and how and to what extent each of the barriers denies access to the recipient's programs, services, or activities. This includes the specific information you or someone else was trying to access, or the specific processes you or someone else was attempting to complete when encountering a barrier, as well as the date on which you or someone else experienced an inability to access the recipient's program, service, or activity;
- a description of the testing processes, including any manual testing protocols, as well as software, hardware, and browser configurations;
- information related to anyone known to have experienced a barrier on the basis of disability, to include name, contact information, disability, and relationship to the recipient; and
- specific information regarding whether the recipient provided or failed to provide equally effective alternate access to the desired information or processes, including for anyone identified above.

We noted that at least one complainant expressed their concerns to OCR regarding the volume of information requested in these letters and the amount of time required to compile it, specifically stating that the request placed an undue burden on a complainant to prove the violations. OCR's stated criteria for what it needs to determine that a recipient violated the law consists of finding that there were technological barriers that impeded the ability of people with disabilities to access online programs, services, and activities, and that the recipient failed to provide equally effective alternative ways for people with disabilities to access the impacted online programs, services, or activities, which is everything that was being requested in the 14-day letters, as listed above. Under section 108(b) complainants are only required to provide evidence that a violation may have occurred or may be occurring.

Based upon a review of the types of evidence submitted for 25 web accessibility complaints that were opened for investigation prior to December 2018 and 25 web accessibility complaints that were submitted since December 2018 and were subsequently dismissed under section 108(b), it appears that the evidence submitted in the complaints was very similar. Specifically, for all 50 complaints, we noted that the evidence submitted by the complainants consisted of web accessibility reports from web accessibility evaluation software tools. No additional evidence was requested for the complaints submitted prior to December 2018 before they were opened for investigation.

OCR officials indicated that in the past they were doing more than was necessary during the evaluation stage for web accessibility complaints. Specifically, upon receipt of a web accessibility complaint that was based solely upon web accessibility evaluation software tool reports, OCR stated that it conducted additional reviews on its own before deciding whether to open an investigation. OCR officials stated that this review consisted of conducting automated and manual tests of the recipient's webpages. As such, these complaints were not being opened based upon the complainant's information alone, but rather on work also completed by OCR. OCR officials stated that they were treating web accessibility software reports similar to how they treat statistical data.

Section 102(d) of the CPM states that statistical data can serve to support the opening of an investigation when presented in conjunction with other facts and circumstances.

We reviewed the websites of some of the web accessibility evaluation tool software providers noted in the complaints and found varying statements regarding whether these tools would be reliable sources of evidence on their own:

- One provider stated that its software cannot tell if web content is accessible. Only a human can determine true accessibility. However, it also indicated that if you see a red icon, your page almost certainly has an accessibility issue.
- Another provider indicated that some accessibility issues require human judgment and cannot be tested automatically.
- The provider of one other solution indicated that its full, paid version of its software provides full coverage as required by regulatory authorities and is the most comprehensive fully automated solution for compliance.

During our discussion, OCR officials also specifically noted that web accessibility evaluation tool reports did not provide evidence of technological barriers to access that impeded the ability of people with disabilities from having an equal opportunity to enjoy the recipient's online programs, services, and activities. As such, OCR issued a 14-day letter to obtain the additional information from the complainants as described above.

However, we note that in prior letters issued by OCR related to web accessibility complaints, OCR did believe that web accessibility evaluation tool reports can be indicative of compliance concerns in need of resolution. OCR's letters specifically stated that it used a web accessibility evaluation tool to do a preliminary review of the web pages cited in complaints and that it found accessibility alerts that raised possible compliance concerns as to whether the pages are accessible to individuals with disabilities. The letters also noted that although the results of the web accessibility assessment do not, without more, provide sufficient evidence for OCR to determine a violation of section 504 or Title II, they raise compliance concerns regarding the accessibility of the website. Therefore, OCR determined that it was appropriate to resolve the complaints with a resolution agreement.

Lastly, although OCR expressed concerns with the information being submitted in web accessibility complaints and was subsequently dismissing many of them for insufficient information, we found no evidence that OCR sought to provide additional information via its website, including on its Frequently Asked Questions webpage related to its complaint process,⁵ to assist complainants in successfully submitting web accessibility complaints.

By not being transparent regarding what OCR considers necessary evidence when submitting a web accessibility complaint, OCR may be making it very difficult for complainants to successfully submit a web accessibility complaint that will be opened for investigation. This is especially important since OCR seemingly changed the level of evidence needed from complainants and contradicted statements about web accessibility tool reports OCR made during the conduct of previous web accessibility investigations. OCR may create confusion and distrust among complainants and the public without clearly disclosing evidence requirements before issuing a 14-day letter to complainants and explaining why evidence requirements have changed.

Additionally, making the process too cumbersome may discourage complainants from filing complaints and allow noncompliance to go unchecked. It may also be placing an undue burden on complainants by requiring evidence that noncompliance actually did occur versus evidence that noncompliance may have occurred.

In written comments provided in July 2022, after the conclusion of our fieldwork, OCR stated that it had revised the CPM as of July 18, 2022, including eliminating language in subsection 108(b) in the previous CPM that required OCR to dismiss complaints that were "so speculative, conclusory, or incoherent that OCR cannot infer that

⁵ <https://www2.ed.gov/about/offices/list/ocr/qa-complaints.html>

discrimination or retaliation may have occurred or may be occurring.” OCR stated that this clause in former subsection 108(b) resulted in the dismissal of the web accessibility complaints submitted after the removal of subsection 108(t) of the CPM. OCR’s July 2022 comments noted that going forward, it would open web accessibility complaints for investigation and notify the complainant whose web accessibility complaints had been previously dismissed that they may re-file the complaints and that OCR’s revised CPM supports opening for investigation such newly filed complaints. During an additional discussion in March 2023, an OCR official confirmed that web accessibility complaints are being opened in accordance with the revised procedures as of the issuance of the July 18, 2022, CPM.

OCR’s actions, if fully implemented as described, appear to partially address the issues identified in this finding. OCR’s response does not clarify what types of evidence a complainant needs to submit for OCR to open a web accessibility complaint, which is important since the evidence requirements seem to have changed over time, as noted in the finding. By updating its website, OCR could clearly identify the information it needs from complainants, (e.g., manual tests; web accessibility evaluation tool reports—to include the types of exceptions that the reports need to show, if applicable; both types of evidence) to assist with the successful filing of a complaint.

Further, OCR’s statement that complainants can re-file complaints that were dismissed under section 108(b) to have them opened seems to place an unreasonable burden on the complainant. OCR should already have the dismissed complaints and could reopen them without any further action by the complainant, similar to how complaints were reopened after having been dismissed under section 108(t).

What We Recommend

We recommend that the Assistant Secretary for Civil Rights—

- 2.1 Update OCR’s website, as necessary, to clearly communicate evidence requirements that will assist a complainant in understanding what information is needed to support the filing of a successful web accessibility complaint.
- 2.2 Determine whether the web accessibility complaints dismissed under section 108(b) since December 2018 should be reopened and reviewed in accordance with procedures in OCR’s July 2022 revision to its CPM, without the complainant needing to re-file those complaints.

Office for Civil Rights Comments

OCR did not specifically agree or disagree with the finding. OCR expressed concerns that the use of the present tense in this section of the report creates the mistaken

impression that OCR's evaluation process has not changed since the initiation of OIG's evaluation and receipt of OIG's recommendations. OCR also expressed concern with a statement that it feels incorrectly implies that OCR has not evaluated complaints under the provisions of the revised CPM, dated July 18, 2022, but will do so "going forward."

OCR disagreed with Recommendations 2.1 and 2.2. For Recommendation 2.1, OCR noted that the principle of neutrality would be compromised or undermined if OCR were to publish guidance for complainants that would detail evidence requirements in specific areas within the scope of OCR's jurisdiction. OCR noted that if it were to provide such guidance, recipients would be understandably concerned that OCR's case processes were unfairly skewed in favor of complainants. OCR also stated that because OCR does not provide such guidance to complainants in any of the areas of its jurisdiction, it would be inappropriate to do so for web accessibility complaints. OCR added that as a result of the July 2022 CPM revisions, the requirements a complainant must meet in order for OCR to open an investigation are minimal and result in OCR's opening of most web accessibility complaints.

For Recommendation 2.2, OCR stated that it did not agree that informing complainants they may re-file complaints that were dismissed under subsection 108(b) of the former CPM places an unreasonable burden on them. OCR noted that the vast majority of those complaints were filed electronically and re-filing those complaints electronically is a relatively simple process.

As part of its comments on the draft report, OCR also noted that the report provides very little information about the National Digital Access Team's work to improve access to education for individuals with disabilities, including outreach activities within the Department and the community. OCR noted that the very positive impacts and results of the team should be recognized to some degree in the report to provide a more accurate perspective on the work OCR does in this important area.

OIG Response

We did not make substantive changes to the finding but did make minor edits for clarity, including changes to reflect past tense. We did not confirm that the changes noted by OCR were implemented as described or when OCR implemented the changes as this was outside the scope of our review.

With regard to Recommendation 2.1, the intent of the recommendation was specific to the situation documented here, where OCR suddenly changed its evidence requirements from what had previously been deemed acceptable for opening a complaint, causing confusion and frustration for complainants. Web accessibility is likely unique from other areas in that there are software tools like those mentioned in this report that can provide information regarding the accessibility of a website.

Circumstances where a significant change in evidence requirements occurs, such as the use of web accessibility evaluation tool software, should be transparent and disclosed in an applicable place on OCR's public-facing website, whether via a notation on OCR's complaint form, its "How to File A Complaint" pamphlet, or even an item placed in its publicly accessible CPM similar to what OCR currently includes on how it views statistical data (see page 13 of this report). This would not equate to providing detailed evidence requirements. While we agree that OCR's current requirements appear to be minimal for opening these types of complaints, that does not mean that requirements may not change again in the future. We did not revise the recommendation and note that it provides OCR with the discretion to communicate this information as it deems necessary.

With regard to Recommendation 2.2, OCR's response that refiling electronic complaints is a relatively simple process and would not be an unreasonable burden on the complainant, indicates that it also would not be an unreasonable burden for OCR to reopen them. Since OCR already has this information, requiring complainants to resubmit it would be unnecessary additional work for the complainant, may be less efficient for OCR process-wise to re-receive and create new cases, and would be inconsistent with past practice associated with complaints that were previously dismissed under section 108(t). We did not revise the recommendation.

With regard to OCR's comments specific to recognition of the National Digital Access Team's efforts, given the purpose of this review and the resulting conclusions, the noted recognition would be a bit misplaced. However, this information is now incorporated by way of the full text of OCR's comments included as an attachment to this report.

Scope and Methodology

To answer our objectives, we gained an understanding of OCR's process for resolving dismissed web accessibility complaints that were subsequently reopened as directed investigations, and its process for reviewing web accessibility complaints submitted since the November 2018 revision to its CPM. We reviewed applicable laws and Department policies and procedures. In addition, we conducted interviews with an OCR official and staff responsible for resolving the web accessibility directed investigations and reviewing web accessibility complaints.

To determine OCR's process for resolving complaints that were dismissed and subsequently reopened as directed investigations, we identified directed investigations that were resolved under section 302 or section 303(a) from a spreadsheet OCR used to track the directed investigations. We also used OCR's Case Management System to identify web accessibility complaints that were resolved under section 302 or section 303(a) between November 2011 and December 2018. We reviewed a

nonstatistical sample of resolution letters, resolution agreements, and letters of findings to identify and compare OCR processes related to these complaints and directed investigations.

To determine OCR's process for reviewing web accessibility complaints, we identified all web accessibility complaints dismissed by OCR under section 108(b) since the November 2018 revision to the CPM through August 2021. We reviewed the types of evidence submitted by the complainants along with related 14-day letters and dismissal letters for a nonstatistical sample of complaints. We also reviewed types of evidence submitted for a nonstatistical sample of web accessibility complaints that were opened prior to the November 2018 revision to the CPM. Lastly, we reviewed information available on the public-facing websites of web accessibility evaluation tool software providers to determine what was stated concerning the reliability of evidence provided by the software tools.

Use of Computer-Processed Data

Use of computer-processed data for this review was limited to reports from OCR's Case Management System that identified the universe of web accessibility complaints that were resolved under sections 302 or 303(a) between November 2011 and December 2018 and the universe of web accessibility complaints that were dismissed under section 108(b) between August 2012 and August 2021. We did not assess the reliability of the computer processed data. We used this data for informational purposes only.

We conducted fieldwork for this review from August 2021 through July 2022. We provided our results to OCR officials during an exit conference conducted on July 12, 2022, and obtained updates from OCR related to its web accessibility complaint processes in March 2023.

Compliance with Standards

We conducted our work in accordance with the Office of Inspector General's quality control standards and the Council of the Inspectors General on Integrity and Efficiency's "Quality Standards for Federal Offices of Inspector General," which require that we conduct our work with integrity, objectivity, and independence. We believe that the information obtained provides a reasonable basis for the conclusions and recommendations contained in this report.

Appendix A. Acronyms and Abbreviations

CPM	Case Processing Manual
Department	U.S. Department of Education
OCR	Office for Civil Rights
OIG	Office of Inspector General

Office for Civil Rights Comments



UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Statement in Response to the Preliminary Recommendations of the Office of Inspector General Regarding “The Office for Civil Rights’ Processing of Web Accessibility Complaints”

ED-OIG/F21DC0043

OCR appreciates the work of the Office of Inspector General (OIG) on this matter and welcomes the opportunity to respond to the recommendations OIG set forth in the draft flash report: **(1) OCR’s Resolution of Web Accessibility Complaints Reopened as Directed Investigations Differs from Past Practice**; and **(2) OCR’s Approach to Evaluating New Web Accessibility Complaints Has Changed**. As reflected below, OCR had, before receiving these recommendations, updated its complaint investigation and resolution process for web accessibility complaints and updated its public-facing *Complaint Processing Manual (CPM)*, including with respect to provisions relevant to this draft flash report.¹ OCR expects these changes effectively to address the recommendations here and appreciates OIG’s careful review.

Analysis and Response

1. OCR’s Resolution of Web Accessibility Complaints Reopened as Directed Investigations Differs from Past Practice

SUMMARY OF FINDINGS

We found that OCR’s resolution of web accessibility complaints previously dismissed under section 108(t) and subsequently reopened as directed investigations differs from how these reviews were resolved in the past. Specifically, OCR is more frequently using a section of its *CPM* associated with insufficient evidence determinations to resolve these web accessibility complaints while following processes associated with a section of its *CPM* related to voluntary resolution agreements when conducting the reviews. OCR officials stated that the prior process followed was ineffective in getting the changes they were looking for in these types of reviews.

¹ There were three *CPMs* (2018, 2020, 2022) that existed during the pendency of this OIG investigation. The draft flash report refers to provisions in the 2018 *CPM* that have been superseded and updated as of July 2022.

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The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

We found that the web accessibility directed investigations have resulted in different outcomes than past web accessibility reviews, specifically with regard to whether or not a compliance determination is made, and that determinations made are inappropriate based on the level of testing performed.

RECOMMENDATIONS

OCR's actions appear to address the issues identified above. As a result, we have no recommendations at this time.

OCR'S RESPONSE

OIG's use of the present tense throughout most of this section of the draft report gives the reader the mistaken impression that OCR continues to resolve complaints with determinations of insufficient evidence. The draft report makes no reference to the discontinuation of this approach to the resolution of web accessibility complaints until the last paragraph of this section and does not indicate that in June 2022 the Assistant Secretary for Civil Rights directed the National Digital Access Team (NDAT) to resolve cases with resolution agreements under subsection 302 or subsection 303(b) of OCR's *CPM* and approved a sample resolution agreement for use by NDAT. Furthermore, the paragraph concludes with the statement that, ". . . in March 2023, an OCR official confirmed that this is the new process being followed and that the use of section 303(a) in the manner noted in this finding has been discontinued." This statement suggests that OCR recently undertook these actions and implemented them in response to OIG's investigation, neither of which is true. Finally, OIG concludes that "OCR's actions, *if fully implemented as described* [emphasis added], appear to address the issues identified above." The conditional phrasing suggests that OCR's actions have not yet been fully implemented, which is also not true. The actions have been in place and fully implemented since June 2022.

OCR urges OIG to revise the narrative in this section of the draft report to indicate clearly that in June 2022, OCR discontinued the case resolution approach at issue in this investigation and directed the NDAT to resolve cases with resolution agreements.

2. OCR's Approach to Evaluating New Web Accessibility Complaints Has Changed.

SUMMARY OF FINDINGS

We found that OCR changed its approach to evaluating new web accessibility complaints beginning in December 2018, after removal of its section 108(t) dismissal code from its *CPM*. Specifically, OCR more frequently applied a section of its *CPM* to dismiss allegations and complaints for insufficient evidence even though the evidence provided by complainants before and after December 2018 was similar. We found the percentage of web accessibility complaints dismissed for this reason increased from less than 1 percent for approximately 6 years preceding

December 2018 to 73 percent for approximately 2.5 years since December 2018. OCR changed its approach because officials believed it was doing more than necessary when evaluating web accessibility complaints, to include performing its own preliminary reviews of the websites in question. OCR had not disseminated information to assist complainants in successfully submitting web accessibility complaints given its changed approach and had not updated its *CPM* to reflect its process changes.

RECOMMENDATIONS

2.1 Update OCR's website, as necessary, to clearly communicate evidence requirements that will assist a complainant in understanding what information is needed to support the filing of a successful web accessibility complaint.

2.2 Determine whether the web accessibility complaints dismissed under section 108(b) since December 2018 should be reopened and reviewed in accordance with procedures in OCR's July 2022 revision to its *CPM*, without the complainant needing to re-file those complaints.

OCR'S RESPONSE

OCR also has concerns about OIG's use of the present tense in this section of the draft report, which creates the mistaken impression that OCR's evaluation process has not changed since the initiation of OIG's evaluation and receipt of OIG's recommendations. . For example, the draft report states,

We found that OCR *is more frequently using section 108(b) to dismiss new web accessibility complaints* [emphasis added] . . . Under section 108(b) of the *CPM*, OCR will dismiss an allegation or complaint in its entirety when it lacks sufficient factual detail (e.g., who what, where, when, how), or is so speculative, conclusory or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring.

Going forward, OCR noted that it will open web accessibility complaints for investigation [emphasis added] and notify the complainant whose web accessibility complaints had been previously dismissed that they may re-file the complaints and that OCR's revised *CPM* supports opening for investigation such newly filed complaints.

OCR revised the *CPM* on July 18, 2022 (July 2022 *CPM*), eliminating the provision that requires dismissal of complaints as "speculative, conclusory, or incoherent." Under this revision of the *CPM*, the burden a complainant must meet to satisfy the requirements for opening an investigation is very light, resulting in the opening of nearly all web accessibility complaints filed or re-filed since that date. The second statement incorrectly implies that OCR has not

evaluated complaints under the provisions of the July 2022 *CPM*, but will do so “going forward.” OCR has applied the provisions of the July 2022 *CPM* to web accessibility complaints and, as appropriate, opened them for investigation since July 18, 2022.

OCR urges OIG to revise the narrative in this section of the draft report to accurately reflect OCR’s approach, since the implementation of the revised *CPM* on July 18, 2022, to the evaluation of web accessibility cases.

With regard to *Recommendation 2.1*:

Neutrality is a long-standing and central principle informing OCR’s role in the evaluation, investigation, and resolution of complaints. Subsection 109 of the July 2022 *CPM* requires OCR to state that it is a “neutral factfinder” in letters notifying the complainant and recipient that it is opening an investigation. The principle of neutrality would be compromised or undermined if OCR were to publish guidance for complainants that would detail evidence requirements in specific areas within the scope of OCR’s jurisdiction. If OCR were to provide such guidance, recipients would be understandably concerned that OCR’s case processes were unfairly skewed in favor of complainants. Furthermore, in light of the fact that OCR does not provide such guidance to complainants in any of the areas of its jurisdiction, it would be inappropriate to do so for web accessibility complaints. In addition, as noted above, the July 2022 *CPM* requirements a complainant must meet in order for OCR to open an investigation are minimal, resulting in OCR’s opening of most web accessibility complaints. This has worked very well, and these practices should be continued.

For those reasons, OCR disagrees strongly with Recommendation 2.1.

With regard to *Recommendation 2.2*:

OCR does not agree that informing complainants they may re-file complaints that were dismissed under subsection 108(b) of the former *CPM* places an unreasonable burden on them. The vast majority of those complaints were filed electronically; re-filing those complaints electronically is a relatively simple process. Once refiled, the current *CPM* supports opening the complaints for investigation provided they fall within OCR’s jurisdiction.

For those reasons, OCR disagrees strongly with Recommendation 2.2.

THE WORK OF OCR’S NATIONAL DIGITAL ACCESS TEAM

The draft flash report provides very little information about the NDAT’s work to improve access to education for individuals with disabilities. Since its inception in June 2019, the NDAT has focused exclusively on enforcement and technical assistance efforts to implement Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act in the area of digital

accessibility. The NDAT investigators have developed and maintained a high degree of technical expertise that has proven invaluable, not just to complainants and recipients, but also to other Federal agencies and throughout the educational community, including vendors who serve multiple recipients.

In addition to the resolution of hundreds of complaints and directed investigations, the NDAT offers recipients comprehensive technical assistance to assist them to remediate technological barriers to access for individual with disabilities. NDAT members have made presentations to the National Federation of the Blind, the National Association of College and University Attorneys, the accessibility subgroup of EDUCAUSE, and at the Accessing Higher Ground Annual Conference, the Digital Learning Annual Conference, and the Oklahoma Tech Access Conference. NDAT members have supported the South Carolina Department of Education through a series of presentations made available to all elementary and secondary recipients throughout the state and participated in a similar ongoing initiative with North Carolina community colleges. NDAT members have also provided informal technical assistance on website accessibility to groups like the Council of Parent Attorneys and Advocates.

In May 2022, OCR released a [series of 20 videos on digital accessibility produced by the NDAT](#), including topics such as “Three Points About the Law,” “How Some People with Disabilities Use Technology,” “Recommended Practices and Tips for Digital Accessibility,” “The Importance of Manual Testing,” “What to Do If You Experience a Barrier.”

Within the Department, the NDAT has consulted with the Office of Special Education Programs and the Office on Educational Technology in the development of technical assistance materials to complement OCR’s video series, and other initiatives. Beyond the Department, the NDAT has consulted with other Federal agencies, including the Department of Justice’s Civil Rights Division, the Department of Health and Human Services and its Centers for Disease Control (HHS/CDC), the Access Board, the Federal Aviation Administration (FAA), and the General Services Administration (GSA).

While we do not expect OIG to include all of this information in its report, these very positive impacts and results should be recognized to some degree in the report to provide a more accurate perspective on the work of OCR in this important area of the law.

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Catherine E. Lhamon
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