



4000-01-U

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

[Docket ID ED-2017-OCR-0094]

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a modified system of records entitled "Complaint Files and Log" (18-08-01). The system contains information on individuals or groups of individuals who have made civil rights complaints to the Office for Civil Rights (OCR). The information maintained in the system will consist of one or more of the following: names, addresses, and telephone numbers of complainants, complaint allegations, and results of investigations; correspondence related to the complaint; investigator and attorney memoranda; interview notes or transcriptions and witness statements; documents gathered during an investigation and charts, prepared exhibits, or other analytical materials prepared by OCR staff or by consultants retained by OCR. The information that will form the modified system of records will be collected through complaint investigation files. The information

will be used to fulfill the requirement outlined in Federal law.

DATES: Submit your comments on this modified system of records notice on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

This modified system of records will become applicable upon publication in the *Federal Register* on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the modified system of records notice needs to be changed as a result of public comment. Significantly modified routine use (8) and newly proposed routine uses (9) and (10) in the paragraph entitled "ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES" will become applicable on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the modified system of records notice needs to be changed as a result of public comment. The Department will publish any significant changes resulting from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies,

please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the "Help" tab.

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about this modified system of records, address them to: Ms. Sandra Battle, Deputy Assistant Secretary for Enforcement, Office for Civil Rights, U.S. Department of Education, 400 Maryland Ave., SW., Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate accommodation or auxiliary aid, such as a reader or print magnifier, to an individual with a

disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Battle, Deputy Assistant Secretary for Enforcement, Office for Civil Rights, U.S. Department of Education, 400 Maryland Ave., SW., Washington, DC 20202. Telephone: (202) 453-5900.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Introduction:

The Department last published the Complaint Files and Log (18-08-01) system of records in the *Federal Register* on March 15, 2004 (69 FR 12248). The system of records notice is being modified to update the current system locations both in Washington D.C. and satellite offices. This system of records notice is also being modified to reflect the current categories of sources of the records and the retrievability of the records by any data element. The system of records notice is also being modified to include

updated information on the record retention and disposal policies for the records contained in this system.

The Department proposes to update, but not to significantly change, routine uses (4) "Litigation and Alternative Dispute Resolution (ADR) Disclosures," (5) "Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure," and (6) "Research Disclosure." The Department proposes to significantly modify routine use (8) "Contract Disclosure." The Department also proposes to add to this system of records notice new routine uses (9) entitled "Disclosure in the Course of Responding to a Breach of Data" and (10) entitled "Disclosure in Assisting another Agency in Responding to a Breach of Data." These will allow the Department to disclose records in this system in order to assist the Office for Civil Rights, the Department, or another Federal agency or entity in responding to a suspected or confirmed breach of data.

The Department also proposes to update the section entitled "Policies and Practices for Retention and Disposal of Records" to reflect the current Department records schedule, approved by the National Archives and Records Administration (NARA), which governs the retention and disposition of the records.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. Free internet access to the official edition of the *Federal Register* and the Code of Federal Regulations is available via the Federal Digital System at:

www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of the Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 19, 2018.

Candice Jackson,
Acting Assistant Secretary
for the Office for Civil
Rights.

For the reasons discussed in the preamble, the Acting Assistant Secretary for the Office for Civil Rights, U.S. Department of Education (Department), publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

Complaint Files and Log (18-08-01).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office for Civil Rights, U.S. Department of Education, 400 Maryland Ave., SW., Washington, DC 20202-1100.

See the Appendix at the end of this system notice for additional system locations.

SYSTEM MANAGER(S):

Deputy Assistant Secretary for Enforcement, Office for Civil Rights, U.S. Department of Education, 400 Maryland Ave., SW., Washington, DC 20202-1100.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*; Title

II of the Americans With Disabilities Act, 42 U.S.C. 12131, et seq.; and the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905.

PURPOSE(S) OF THE SYSTEM:

The Office for Civil Rights (OCR) uses this system for the following purposes:

(1) To determine and to document whether there was discrimination against the complainant or others;

(2) To record the steps taken to resolve a case, which may include investigation and monitoring;

(3) To store materials gathered, developed, or received during the processing, investigation, and monitoring of a case;

(4) To document the steps taken to resolve a case;

(5) To report the status of individual complaints to OCR managers and staff for tracking the progress of individual cases and to provide information used to prepare summaries of case processing activities; and

(6) To report to Congress, other agencies, and the public to explain or document the work that has been accomplished.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on individuals or groups of individuals who have made civil rights complaints to the Office for Civil Rights.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records relating to complaints to the Office for Civil Rights including:

(1) Names, addresses, and telephone numbers of complainants, complaint allegations, and results of investigations;

(2) Correspondence related to the complaint, which may include copies of correspondence sent by OCR to others, correspondence received by OCR, records of telephone conversations, copies of e-mail, or other written communications;

(3) Investigator and attorney memoranda;

(4) Interview notes or transcriptions and witness statements;

(5) Documents gathered during an investigation, including photographs of persons or things, portions of a recipient institution's records, and complainants' or other individuals' educational, medical, or employment records;
and

(6) Charts, prepared exhibits, or other analytical materials prepared by OCR staff or by consultants retained by OCR.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from individuals, K-12 schools, postsecondary institutions, and other entities as applicable. The information is collected from the stated sources via oral interviews, paper forms, web pages, and electronic files. Information may also be obtained from other individuals or entities from which data is obtained under routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Disclosure to Congress, Other Agencies, or the Public.* The Department may disclose summary information

derived from this system of records to Congress, other agencies, and the public to describe the kinds of work that OCR has done or to document the work that OCR has accomplished.

(2) *Disclosure to Recipients of Federal Financial Assistance, Witnesses, or Consultants.* The Department will release information contained in this system of records to recipients of Federal financial assistance, witnesses, or consultants if it determines that the release would assist OCR in resolving a civil rights complaint or in obtaining additional information or expert advice relevant to the investigation.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulations, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulations, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution*

(ADR) Disclosures.

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department or one of its components determines that disclosure of certain records to an adjudicative body before which the Department or one of its components is authorized to appear or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Parties, Counsels, Representatives, and Witnesses.* If the Department or one of its components determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR, the Department or its component may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or the Office of Management and Budget if the Department determines that disclosure is desirable or

necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(6) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher must agree to maintain safeguards to protect the security and confidentiality with respect to the disclosed records.

(7) *Congressional Member Disclosure.* The Department may disclose information to a Member of Congress from the record of an individual in response to an inquiry from the Member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(8) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose

the records to those employees. As part of such a contract, the Department shall require the contractor to agree to maintain safeguards to protect the security and confidentiality of the records in the system.

(9) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(10) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity (1)

responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records in this system are contained in digital storage media and in file folders.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records in this system are indexed by and retrievable by any data element in any populated data field, including the name of the complainant, the complaint number, the name of the entity against which the complaint was filed, the basis for the alleged discrimination, and the stage of case processing.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with Department Records Schedule 026: Education Discrimination Case Files (N1-441-08-6).

Administratively closed education discrimination case files shall be destroyed/deleted 6 years after cutoff. Cut

off for these files occurs at the end of the fiscal year in which the case is closed or, if a Request for Reconsideration (RFR) is received, when the review of the RFR is completed.

All other education discrimination case files shall be destroyed/deleted 20 years after cutoff. Cut off for these files occurs at the end of the fiscal year in which the case is closed and monitoring is complete or, if a RFR is received, when the review of the RFR is completed.

Education discrimination appeals case files shall be destroyed/deleted 20 years after cutoff. Cut off for these files occurs at the end of the fiscal year in which the appeal is closed.

Case Management System (CMS) Master Data Files are destroyed/deleted 20 years after cutoff. Cut off for these files occurs at the end of the fiscal year in which the case is closed and monitoring is complete or, if a RFR is received, when the review of the RFR is completed.

Significant education discrimination case files shall not be destroyed/deleted by the Department. With respect to these files, the Department shall transfer non-electronic records to the National Archives and Records Administration (NARA) 10 years after cutoff and electronic

records to NARA every 5 years, with any related documentation and external finding aids, as specified in 36 CFR 1228.70 or standards applicable at the time. Cut off for these files occurs at the end of the fiscal year in which the case is closed and monitoring is complete.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The system is maintained on secure computer servers located in one or more secure Department of Education network server facilities. OCR staff access information in the system through use of personal computers located in OCR offices. Data are transmitted among offices on secure servers through the Department of Education's Secure Wide Area Network. The Department of Education maintains the servers on which the records are stored in secure locations with controlled access. Access to OCR offices is controlled and available only to OCR staff and authorized visitors. Authorized OCR staff access the information system using individual user identifiers and passwords. The system also limits data access by type of user and controls users' ability to alter records within the system. File folders containing non-digital information in the system are kept in locked storage rooms. Access to offices in which storage rooms are located is restricted to OCR staff and authorized visitors.

RECORD ACCESS PROCEDURES:

This system is exempted from 5 U.S.C. 552a(e) (4) (H) pursuant to 34 CFR 5b.11(c) (2) (iii).

CONTESTING RECORD PROCEDURES:

This system is exempted from 5 U.S.C. 552a(e) (4) (H) pursuant to 34 CFR 5b.11(c) (2) (iii).

NOTIFICATION PROCEDURES:

This system is exempted from 5 U.S.C. 552a(e) (4) (G) pursuant to 34 CFR 5b.11(c) (2) (iii).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Education has exempted by regulations the Complaint Files and Log record system, which is also exempt from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552(k) (2) (civil enforcement):

(1) 5 U.S.C. 552a(c) (3), regarding access to an accounting of disclosures of records.

(2) 5 U.S.C. 552a(d) (1) through (4) and (f), regarding notification of and access to records and correction or amendment of records.

(3) 5 U.S.C. 552a(e) (4) (G) and (H) regarding inclusion of information in the system notice about procedures for notification, access, and correction of records.

These exemptions are stated in 34 CFR 5b.11. As indicated in 34 CFR 5b.11, individuals will be provided

with information from a record in this system if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of that material, except when in accordance with the following provisions of 5 U.S.C.

552a(k) (2) :

(1) Disclosure of the information would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

(2) If information was obtained prior to September 28, 1975, disclosure of the information would reveal the identity of the source under an implied promise that the identity of the source would be held in confidence.

HISTORY:

The Complaint Files and Log (18-08-02) system of records notice was published in the *Federal Register* on June 4, 1999 (64 FR 30106, 30145-30146). This system of records was merged and consolidated with the system of records entitled "Case Information System" (18-08-01) (64 FR 30106, 30143-30145) on March 15, 2004 (69 FR 12248-12251), and the system was renamed "Complaint Files and Log (18-08-01)."

Appendix to 18-08-01

ADDITIONAL SYSTEM LOCATIONS:

OCR, Boston Office, 5 Post Office Square, Boston, MA
02109.

OCR, New York Office, 32 Old Slip, New York, NY 10005.

OCR, Philadelphia Office, The Wanamaker Building, 100
Penn Square East, Philadelphia, PA 19107.

OCR, Chicago Office, Citigroup Center, 500 W.
Madison Street, Chicago, IL 60661.

OCR, Cleveland Office, 1350 Euclid Avenue, Cleveland,
OH 44115.

OCR, Atlanta Office, 61 Forsyth St. SW., Atlanta, GA
30303.

OCR, Dallas Office, 1999 Bryan Street, Dallas, TX
75201.

OCR, Kansas City Office, 1010 Walnut Street, Kansas
City, MO 64106.

OCR, Denver Office, Cesar E. Chavez Memorial Building,
1244 Speer Boulevard, Denver, CO 80204.

OCR, San Francisco Office, 50 Beale Street, San
Francisco, CA 94105.

OCR, Seattle Office, 915 Second Avenue, Seattle, WA
98174.

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