



Sent Via Email to: EDFOIAManager@ed.gov

March 3, 2025

Attn: FOIA Public Liaison
U.S. Department of Education
Office of the Executive Secretariat
FOIA Service Center
400 Maryland Avenue, SW, LBJ 7W106A
Washington, DC 20202-4536

Re: Freedom of Information Act Request Regarding Office for Civil Rights Investigations for Disability, Access, and Special Education Cases

Dear FOIA Public Liaison,

The National Center for Youth Law and Council of Parent Attorneys and Advocates (“Requestors”) submit this letter to the FOIA Service Center at the U.S. Department of Education (“ED” or the “agency”) as a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq. We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E) and that we be granted a fee waiver. We also ask that you refer the requests contained in this letter to the Office for Civil Rights (“OCR”) and/or the Institute of Education Sciences (“IES”) as appropriate.

There have been a series of Executive Orders and Dear Colleague Letters from the Department of Education regarding the new approach being taken by the OCR as relating to various policies.¹ We seek to better understand how these new policies impact students with disabilities as they are identified by the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

We also have concerns about the ability to process the disability-related OCR claims raised by students across the United States in light of ProPublica’s reports that around 75 of 400

¹ See, e.g., ED OCR, Jan. 31, 2025 Dear Colleague Letter; Exec. Order No. 14190, 90 Fed. Reg. 8853 (Jan. 29, 2025); Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025); Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025).

OCR employees have been fired or placed on administrative leave.² As such, we are hereby submitting a Freedom of Information Act request and seek expedited processing and a waiver of fees.

Application for Expedited Processing

Requestors seek expedited processing of this request because: (1) there is an “urgency to inform the public about an actual or alleged Federal Government activity” by organizations, like the National Center for Youth Law and Council of Parent Attorneys and Advocates, “primarily engaged in disseminating information,” 5 U.S.C. § 552(a)(6)(E)(i) & (v)(II); (2) the request concerns “[t]he loss of substantial due process rights,” 6 C.F.R. § 5.5(e)(1)(iii); 5 U.S.C. § 552(a)(6)(E)(ii); and (3) the request concerns “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence,” 6 C.F.R. § 5.5(e)(1)(iv); 5 U.S.C. § 552(a)(6)(E)(ii).

As discussed above, reports about the Department of Education’s recent activity raise many complex questions about how the agency’s operations may be shifting under the Trump administration. Children, families, and stakeholders who advocate on their behalf need to understand these changes and how they might impact their rights and the services they are expecting to receive through their local schools and educational institutions. The requested records seek to inform the public about an urgent issue affecting children and families across the country.

Given the foregoing, the National Center for Youth Law and the Council of Parent Attorneys and Advocates have satisfied the requirements for expedited processing of this Request. We, therefore, ask that we receive a response within 20 days.

Application for Waiver or Limitation of Fees

The Requestors further ask that a waiver of document search, review, and duplication fees be granted on the grounds that disclosure of the requested records is in the public interest and is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The National Center for Youth Law is a not-for-profit organization that advocates on behalf of vulnerable children, and the Council of Parent Attorneys and Advocates is a not-for-profit organization that advocates for the rights of students with disabilities. Because of that work, the National Center for Youth Law and the Council of Parent Attorneys and Advocates are uniquely situated to be able to understand the information sought through this request. This information is not being sought for commercial purposes, and it is the intent of the National Center for Youth Law and the Council of Parent Attorneys and Advocates to distribute the information gleaned from the records sought from this request to other public interest groups and members of the public.

² Jennifer Smith Richards & Jodi S. Cohen, *“We’ve Been Essentially Muzzled”: Department of Education Halts Thousands of Civil Rights Investigations Under Trump*, ProPublica (Feb. 13, 2025), <https://www.propublica.org/article/department-of-education-civil-rights-office-investigations/>.

- A. *The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Requestors.*

As discussed above, there is a substantial public interest in understanding the actions and intentions of the government as it relates to the Executive Orders and Dear Colleague letters described above. Given the ongoing and widespread media attention to these Executive Orders and Dear Colleague letters, the receipt, review, and dissemination of the records sought will significantly contribute to public understanding of an issue of profound public importance.

- B. *The Requestors are representatives of the news media and the records are not sought for commercial use.*

The Requestors are also not filing this Request to further a commercial interest. As such, a waiver of search fees would be appropriate here since Requestors qualify as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The Requestors meet the statutory and regulatory definitions of “representative of the news media” because they gather information, exercise editorial discretion in selecting and organizing documents, and “distribute the resulting work to the public.” *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). The Requestors are therefore a “representative of the news media” for the same reasons they are “primarily engaged in [the] dissemination of information.” 5 U.S.C. § 552(a)(4)(A)(ii)(II), (6)(E)(v)(II).

Any information disclosed to its members and the public by the Requestors as a result of the responsive productions to this FOIA Request will be made available at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation marks omitted)).

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the Requestors’ to be “representative[s] of the news media” as well. Requestor National Center for Youth Law, for example, in 2014 published a two-part series in its former journal “Youth Law News” called “Achieving Equal Educational Opportunities for Native American Youth: Lessons from Communities Working for Change” and “Equal Educational Opportunities for Native American Youth” that relied, in part, upon information obtained from an OCR FOIA about the resolution of complaints filed by Indigenous students and families. Requestor Council of Parent Attorneys and Advocates, for example, published *The Crisis of Trauma and Abuse in Our nation’s Schools* (2020), which relied on OCR data on restraint and seclusion of students with disabilities, and *Keeping Students safe in School: Redirecting School Police Funding to Benefit Students by Supporting Social, Emotional and Behavioral Needs* (2021), which relied upon OCR Data Collection. *Cf. Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).

On account of these factors, fees associated with responding to FOIA requests should be waived for the Requestors as “representative[s] of the news media.”

Request for Information

The Requestors request disclosure of the following records³ that were prepared, received, transmitted, collected and/or maintained by the agency, including but not limited to, OCR and IES:

1. Any and all records created on or after January 20, 2025, related to efforts to open, close, delay, and/or pause OCR investigations for cases that reference “disabilit!,” “504 Plan,” “autism,” “ADHD,” “learning disability,” “speech and language impairment,” “IEP” or “Individualized Education Plan,” “specialized academic instruction,” “special education,” “emotional disturbance,” “other health impairment,” “transition,” “preschool,” “behavior,” “discipline,” “suspension,” “expulsion,” including, but not limited to:
 - a. Records reflecting the number of open investigations as of January 20, 2025;
 - b. Records reflecting the number of new investigations opened on or after January 20, 2025;
 - c. Records reflecting the number of investigations closed on or after January 20, 2025;
 - d. Records reflecting any efforts to delay, pause, slow down, slow walk, reassign, or close any investigations pending as of January 19, 2025, including but not limited to, meetings and/or mediation sessions that have been cancelled or postponed, closing letters sent to complainants or respondents, or any letters declining to open investigations; and
 - e. E-mail communications among, between, or cc’ing OCR personnel at Headquarters and/or Regional Offices sent or received on or after January 20, 2025, containing any of the following words or terms: “disabilit!,” “504 Plan,” “autism,” “ADHD,” “learning disability,” “speech and language impairment,” “IEP” or “Individualized Education Plan,” “specialized academic instruction,” “special education,” “emotional disturbance,” “other health impairment,” “transition,” “preschool,” “behavior,” “discipline,” “suspension,” “expulsion,”⁴

³ The term “records” includes all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, legal and policy memoranda, minutes or notes of meetings and phone calls, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, text communications between phones or other electronic devices (including, but not limited to, communications sent via SMA or other text, BlackBerry Messenger, iMessage, WhatsApp, Signal, Gchat, Microsoft Teams, Slack, or Twitter direct message), training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

⁴ The “!” character is intended to capture any combination of letters that complete the partial word provided. If it is not possible to perform searches with Boolean logic, please use similar terms and search procedures.

2. Any and all records that would indicate changes in staffing in the Department of Education Office for Civil Rights (OCR) from January 1, 2025, through the date of this request:
 - f. A list of probationary employees, including job title, who were employed by OCR prior to January 20, 2025;
 - g. A list of probationary employees, including job title, who are currently employed by OCR;
 - h. A list of probationary employees, including job title, who were employed by OCR as of January 20, 2025, and who were terminated on or after January 20, 2025;
 - i. Any and all written communications sent on or after January 20, 2025 by any staff at the Department of Education, the Office of Management and Budget, or the Department of Governmental Efficiency, to probationary employees who were formerly part of OCR as of January 20, 2025, and who were terminated on or after January 20, 2025; and
 - j. Any and all written communications sent on or after January 20, 2025 by any staff at the Department of Education, the Office of Management and Budget, or the Department of Governmental Efficiency, to probationary employees who are currently working in OCR.

* * *

To the extent to which these records may reference confidential or personally identifiable information, we ask that the records be redacted and produced with a privilege log.

Requestors ask that you search all records regarding agency business, including files or emails in the personal custody of agent officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016).

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the Requestors request that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the Requestors request that the records be provided electronically in a text searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

Pursuant to applicable statutes and regulations, the Requestors expect a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii).

If the Request is denied in whole or in part, the Requestors ask that you justify all deletions by reference to specific FOIA exemptions. The Requestors expect the release of all segregable portions of otherwise exempt material. The Requestors reserve the right to appeal a decision to withhold any information or deny a waiver of fees.

Additionally, in order to avoid delays in receiving records, the Requestors request that records be produced seriatim as they become available. Due to the exigent circumstances surrounding this request, the Requestors are amenable to narrowing the request if it would accelerate production. Please provide all responses, requests for narrowing or clarification, or other answers in writing.

Thank you for your prompt attention to this matter. Where possible, please provide responsive records in electronic format by email to jsmith@youthlaw.org. Please furnish any responsive records being sent by mail to:

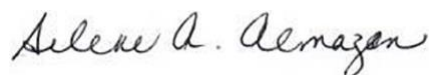
Johnathan Smith
National Center for Youth Law
818 Connecticut Avenue NW
Suite 425
Washington, DC 20006

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Sincerely,



Johnathan Smith
Chief of Staff and General Counsel
National Center for Youth Law



Selene Almazan
Legal Director
Council of Parent Attorneys and Advocates