



Sent Via Email to: EDFOIAManager@ed.gov

March 3, 2025

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

Re: Freedom of Information Act Request Regarding Office for Civil Rights Investigations

Dear FOIA Public Liaison,

The National Center for Youth Law (“Requestor”) submits 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.

Over the past month, President Donald Trump has issued a series of executive orders impacting the lives of students and families across the country. On January 20, 2025, President Trump issued Executive Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, which does nothing to “defend women” and instead directs the federal government to regulate, control, and police gender.¹

On January 29, President Donald Trump issued Executive Order 14190, Ending Radical Indoctrination in K-12 Schooling (“Executive Order”), which allegedly aims to address concerns about the “indoctrination” of students with ideologies deemed “radical” and “anti-American,” and attempts to restrict any discussions on race, gender, and LGBTQ+ issues in school.² On January 31, 2025, OCR issued a Dear Colleague letter stating that it would no longer interpret Title IX to protect students from discrimination on the basis of gender identity.³ On February 5,

¹ Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

² Exec. Order No. 14190, 90 Fed. Reg. 8853 (Jan. 29, 2025).

³ ED OCR, Jan. 31, 2025 Dear Colleague Letter.

President Trump issued Executive Order 14201, Keeping Men Out of Women’s Sports, banning transgender girls from participating in sports at school.⁴

On February 14, 2025, OCR issued another Dear Colleague letter, identifying alleged harm to white students and accusing schools of using diversity, equity, and inclusion (DEI) as a justification for “smuggling racial stereotypes and explicit race-consciousness into everyday training, programming, and discipline.”⁵ This is highly misleading, and seeks to erase the historical and ongoing realities of racial discrimination while weaponizing the language of “equal treatment” to undermine policies designed to address systemic inequities. It is fundamentally an attack on racial justice and the equal protection owed to all in our country.

While the nominee for Secretary of Education testified that it would take an act of Congress to dismantle ED, President Trump campaigned, and has repeatedly threatened, to shut down or significantly diminish ED.⁶ On February 13, 2025, ProPublica reported that, in the days and weeks after President Trump took office, investigations by OCR “have ground to a halt” and that there has been “a dramatic drop in the number of new cases opened.”⁷ ProPublica reports that an OCR employee said that there is “a complete disruption of the services we provide” and that “members of the public are suffering with these disruptions.”⁸ The very few cases that OCR attorneys have been directed to investigate have been ordered by the Trump administration rather than opened in response to the public, and reflect the priorities outlined in Trump’s Executive Orders: getting rid of gender-neutral bathrooms, banning transgender athletes from participating in women’s sport and alleged discrimination against white students.⁹ ProPublica reports that around 75 of OCR’s 400 employees have been fired or placed on administrative leave.¹⁰

On February 20, 2025, ProPublica reported that ED was lifting its freeze on investigating discrimination claims, but only as to claims alleging solely disability discrimination.¹¹ Thousands of ongoing investigations regarding complaints that allege race or gender discrimination, or race or gender and disability discrimination, are still on pause.¹² Most recently, ED OCR announced the launch of EndDEI.Ed.Gov, a public portal that allows parents and other

⁴ Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025).

⁵ ED OCR, Feb. 14, 2025 Dear Colleague Letter, <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>

⁶ Corey Turner & Jonaki Mehta, *At McMahon’s confirmation hearing, it was the Education Department on trial*, NPR All Things Considered (Feb. 13, 2025), <https://www.npr.org/2025/02/13/nx-s1-5258255/trump-cabinet-picks-linda-mcmahon-confirmation-hearing>; Dana Goldstein, *Could Trump Shut Down the Department of Education?*, N.Y. Times (Nov. 13, 2024), <https://www.nytimes.com/2024/11/13/us/trump-close-department-of-education.html>.

⁷ 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/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Jennifer Smith Richards & Jodi S. Cohen, *Education Department “Lifting the Pause” on Some Civil Rights Probes, but Not for Race or Gender Cases*, ProPublica (Feb. 20, 2025), <https://www.propublica.org/article/department-education-civil-rights-investigations-disability-gender-race-discrimination>.

¹² *Id.*

individuals to submit complaints regarding “concerning practices” and “reports of discrimination.”⁶

In light of these developments, Requestor is hereby serving a Freedom of Information Act Request as outlined below.

Application for Expedited Processing

Requestor seeks 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, “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 has 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 Requestor further asks 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. Because of that work, the National Center for Youth Law is 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 to distribute the information gleaned from the records sought from this request to other public interest groups and members of the public.

- 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 Requestor.*

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 this issue, the receipt, review, and dissemination of the records sought will significantly contribute to public understanding of an issue of profound public importance.

B. The Requestor is a representative of the news media and the records are not sought for commercial use.

The Requestor is also not filing this Request to further a commercial interest. As such, a waiver of search fees would be appropriate here since Requestor qualifies 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 Requestor meets the statutory and regulatory definitions of “representative of the news media” because it gathers information, exercises editorial discretion in selecting and organizing documents, and “distribute[s] 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 Requestor is therefore a “representative of the news media” for the same reasons it is “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 Requestor 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 Requestor’s 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. *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 requestor as a “representative of the news media.”

Request for Information

The Requestor requests disclosure of the following records¹³ 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, including, but not limited to:
 - a. Records reflecting the number of new investigations opened on or after January 20, 2025;
 - b. Records reflecting the number of investigations closed on or after January 20, 2025;
 - c. 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;
 - d. Records reflecting any efforts to treat the processing and/or investigation of complaints alleging disability discrimination differently from any other complaints, including complaints alleging discrimination based on race or sex; 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: "rac!," "gender!," "disabil!," "gender-neutral," "biological sex," "gender identit!" "bathroom," "trans!," "transgender athletes," "discrimination against white students," "antisemitism," or "discriminatory equity ideology."¹⁴
2. Any and all records created on or after January 20, 2025, related to changes to the Case Processing Manual.
3. Any and all records pertaining to submissions received via the EndDEI.Ed.Gov portal, including, but not limited to:

¹³ 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.

¹⁴ 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.

- a. The total number of submissions received;
 - b. The total number of submissions received alleging race-based and/or sex-based discrimination;
 - c. The total number of submissions received based upon which OCR initiated investigations;
 - d. The total number of submissions received alleging race-based and/or sex-based discrimination based upon which OCR initiated investigations;
 - e. A copy of all submissions received via the EndDEI.Ed.Gov portal based upon which OCR initiated investigations;
 - f. A copy of all submissions received via the EndDEI.Ed.Gov portal based upon which OCR did not initiate investigations; and
 - g. All correspondences from OCR to individuals who made submissions to the EndDEI.Ed.Gov portal which gave rise to OCR investigations.
4. Any and all records that would indicate changes in staffing in OCR from January 1, 2025, through the date of this request:
- a. A list of probationary employees, including job title, who were employed by OCR prior to January 20, 2025;
 - b. A list of probationary employees, including job title, who are currently employed by OCR;
 - c. 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;
 - d. 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
 - e. 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.

* * *

Requestor asks 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 Requestor requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the Requestor requests 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 Requestor expects 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 Requestor asks that you justify all deletions by reference to specific FOIA exemptions. The Requestor expects the release of all segregable portions of otherwise exempt material. The Requestor reserves 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 Requestor requests that records be produced seriatim as they become available. Due to the exigent circumstances surrounding this request, the Requestor is 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,

A handwritten signature in black ink, appearing to read "Johnathan Smith", with a stylized flourish at the end.

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