



# The Essential Federal Guidance and Regulatory Update for School Leaders

AASA NATIONAL CONFERENCE ON  
EDUCATION

FEBRUARY 16, 2023

**Thompson  
& Horton** LLP

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# Your Speakers

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BECAUSE IT'S NOT JUST BUSINESS  
**IT'S PERSONAL**

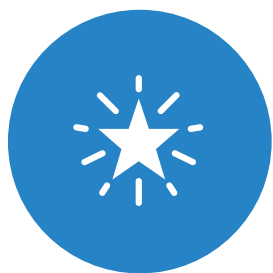
LEGAL REPRESENTATION FOR EDUCATION, GOVERNMENT, AND PRIVATE BUSINESS

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# Regulations, Guidance & More



SPECIAL  
EDUCATION



PERSONNEL  
ISSUES



TITLE IX  
REQUIREMENTS



OCR CPM



# Our Goal

ARMING YOU WITH THE  
KNOWLEDGE TO MAKE  
NECESSARY POLICY CHANGES  
NOW

PREPARING YOU FOR CHANGES  
THAT ARE TO COME







# SPECIAL EDUCATION



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# THE PLAYERS

- OFFICE OF CIVIL RIGHTS (OCR)
  
- OFFICE OF SPECIAL EDUCATION AND REHABILITATION SERVICES (OSERS)
  - OFFICE OF THE ASSISTANT SECRETARY FOR SPECIAL EDUCATION
  - TWO PROGRAM COMPONENTS:
    - OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP)
    - REHABILITATION SERVICES ADMINISTRATION (RSA)



# Discipline

OF SPECIAL EDUCATION  
STUDENTS





July 19,  
2022 (OCR)



**Supporting Students with Disabilities  
and Avoiding the Discriminatory Use of  
Student Discipline under Section 504 of  
the Rehabilitation Act of 1973**

**U.S. Department of Education  
Office for Civil Rights**

**July 2022**

[https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)



July 19,  
2022 (OSERS)



**QUESTIONS AND ANSWERS:  
ADDRESSING THE NEEDS OF  
CHILDREN WITH DISABILITIES AND  
IDEA'S DISCIPLINE PROVISIONS**

OSEP Q&A 22-02

**U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES**

JULY 19, 2022

[https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)





# OCR & OSERS Guidance:

## Discipline of Students with Disabilities

- Reassure schools they have the tools to deal with safety crises even involving students with disabilities
- Emphasize that outside of those extraordinary situations, schools must improve implementation of Section 504 and IDEA to address the overuse of discipline with students with disabilities





# OCR & OSERS Guidance:

## Discipline of Students with Disabilities

- Summarize procedural protections relating to discipline of students with disabilities, including when additional processes must be used before discipline can be imposed (manifestation determination reviews or MDRs)
- Emphasize importance of using positive behavior supports and other special education tools to address disability-based misconduct before turning to discipline
- Remind schools they must consider how discipline incidents may impact a student's receipt of a free and appropriate public education (FAPE)
- Warn against using "informal removals" not documented as suspensions and provide examples



# OCR Guidance:

## Discipline of Students with Disabilities

- OCR's guidance recognizes that schools can provide supportive measures to alleged victims of misconduct, including moving the alleged offender to a different class in the same educational placement, while completing processes required under Section 504 and the IDEA
- Section 504 may allow more flexibility for addressing misconduct by a student with a disability than the IDEA
- OCR will consider data regarding student discipline to ensure schools do not discipline students with disabilities more harshly than similarly situated students without disabilities



# OSERS Guidance:

## Discipline of Students with Disabilities

- An improper or unreasonable delay in identifying a student's disability could limit the school's ability to discipline the student
- In an effort to support and promote alternative strategies that schools can use in place of aversive practices or exclusionary discipline, OSERS also published the *Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders*.



# Key Takeaways for School Leaders

- Expect an uptick in complaints and investigations regarding discipline of students with disabilities
- Training school staff on new guidance is critical—think broadly beyond special education roles



# Key Takeaways for School Leaders

- Audit your discipline programs to identify concerns before complaints arise
- Don't just look at disability – consider disproportionality in discipline regarding race, color, national origin, and sex





# PERSONNEL ISSUES





# Teacher Shortage

- A February 11, 2023, ABC News article reports that more than three-quarters of U.S. states are experiencing a teacher shortage
- A Government Accountability Office (GAO) report issued in June 2022 found that public education lost about 7% of its teaching population between 2019 to 2021 (a loss of 233,000 educators)
- The article reports the hardest hit states include Idaho, Kentucky, and Indiana

<https://abcnews.go.com/US/map-shows-us-states-dealing-teaching-shortage-data/story?id=96752632>

March 28,  
2022 (ED)

U.S. Department of Education



**ARCHIVED INFORMATION**

## U.S. Education Secretary Miguel Cardona Calls on States, Districts, Higher Ed Institutions to Address Nationwide Teacher Shortage and Bolster Student Recovery with American Rescue Plan Funds

MARCH 28, 2022

Contact: Press Office, (202) 401-1576, [press@ed.gov](mailto:press@ed.gov)

Today, U.S. Secretary of Education Miguel Cardona will issue a nationwide call to action for states, higher education leaders, and schools to tap federal resources and work together to address the teacher shortage and aid student recovery. Today's announcement builds on President Biden's call in the State of the Union encouraging leaders to use American Rescue Plan funds to address this critical challenge schools and districts across the country are facing. The call to action coincides with Secretary Cardona's participation in the Carnegie Foundation for the Advancement of Teaching's Summit on Improvement in Education in San Diego.

<https://www.ed.gov/news/press-releases/us-education-secretary-miguel-cardona-calls-states-districts-higher-ed-institutions-address-nationwide-teacher-shortage-and-bolster-student-recovery-american-rescue-plan-funds>



# Fact Sheet: Teacher Shortage

- Provides concrete examples of how states, districts, and schools are using federal COVID dollars to:
  1. Strengthen the teacher pipeline
  2. Get more educators in the classroom, and
  3. Accelerate student recovery

<https://www.ed.gov/coronavirus/factsheets/teacher-shortage>



# Fact Sheet: Teacher Shortage

- Examples include school districts partnering with higher education institutions to:
  1. Create and expand residency programs
  2. Offer paraprofessional internships, and
  3. Get college students in the classroom more quickly

<https://www.ed.gov/coronavirus/factsheets/teacher-shortage>

# Fact Sheet: Teacher Shortage

- Specifically calls on public school districts to:
  1. Increase the number of partnerships between educator preparation programs (EPPs) and districts that support teaching residencies and schools. Teacher residents, as part of their clinical experience, can serve in schools as substitutes, paraprofessionals, or tutors as their academic schedules allow and as they complete requirements for teacher certification.

<https://www.ed.gov/coronavirus/factsheets/teacher-shortage>

# Fact Sheet: Teacher Shortage

- Specifically calls on public school districts to:
  2. Increase the availability of qualified teacher residents to support educators, students, and staff. Districts can partner with institutions of higher education to provide additional supports to educators and students through the use of teaching candidates.

<https://www.ed.gov/coronavirus/factsheets/teacher-shortage>



# Fact Sheet: Teacher Shortage

- Districts can use GEER and ESSER funds to make monthly payments on behalf of certain new teachers—with certain expectations
- Such use must:
  1. Be intended to prevent, prepare for, or respond to the COVID-19 pandemic, and
  2. Be permissible under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

<https://www.ed.gov/coronavirus/factsheets/teacher-shortage>





# Fact Sheet: Teacher Shortage

- Districts can clearly communicate with and advise graduates about the availability of other repayment options, including programs such as:
  1. Public Service Loan Forgiveness
  2. TEACH grant, and
  3. Teacher Loan Forgiveness

<https://www.ed.gov/coronavirus/factsheets/teacher-shortage>

October 4,  
2022 (OSEP)



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

October 4, 2022

Contact Person  
Name: Bryan Grigg  
(202) 245-8107

OSEP 22-01

MEMORANDUM

**TO:** State Directors of Special Education  
**FROM:** Valerie C. Williams  
Office of Special Education Programs (OSEP)  
**SUBJECT:** Personnel Qualifications under Part B of the Individuals with Disabilities  
Education Act (IDEA)

The U.S. Department of Education's (Department) Office of Special Education Programs (OSEP) is committed to supporting States in the provision of a free appropriate public education (FAPE) to all children with disabilities. FAPE includes the provision of special education and related services that meet the requirements of IDEA Part B, which includes ensuring that special education teachers and related services providers are appropriately and adequately prepared and

<https://sites.ed.gov/idea/files/OSEP-Memo-22-01-Personnel-Qualifications-under-IDEA-10-04-2022.pdf>





# OSEP Guidance: Teacher Shortage

- Office of Special Education Programs (OSEP) guidance
- Reminder that the Individuals with Disabilities Education Act (IDEA) requires special education teachers to be properly certified, even if State Educational Agencies (SEAs) waive certification on an emergency or temporary basis.
- There is one approved exception if a teacher is actively participating in an alternate route to special education certification that meets certain requirements



# OSEP Guidance: Teacher Shortage

- This OSEP guidance appears to negate any other state alternatives to conventional certification that do not require the prospective teacher to be in a certification program.
- Districts should continue to be creative about identifying, recruiting, retaining, and utilizing certified special education personnel, but focus on how to provide students their IEP services in a way calculated to enable students to make progress appropriate in light of their individual circumstances.



# Key Takeaways for School Leaders

- Work with counsel to think creatively about how to use federal resources to grow your workforce
- Remember that you will be held responsible for certain federal requirements even if there is a shortage of qualified employees

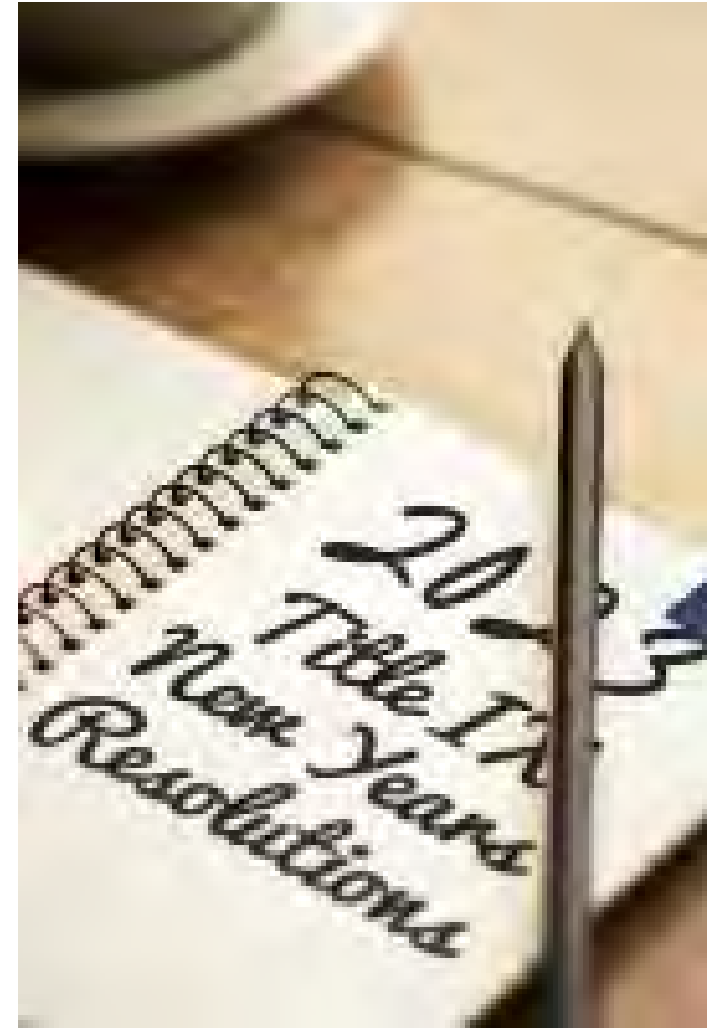




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# TITLE IX

# Title IX History



# Why Are We Here?

- Current rules: Betsy DeVos & Donald Trump's 2020 Title IX Rules
- Effective August 14, 2020
- Address "sexual harassment" under Title IX with very prescriptive rules





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- Current rules: Betsy DeVos & Donald Trump's 2020 Title IX Rules
- Effective August 14, 2020
- Address "sexual harassment" under Title IX with very prescriptive rules
- New proposed rules: Catherine Lhamon & Joe Biden's proposed Title IX rules
- Proposed June 23, 2022 on the 50th anniversary of Title IX
- Will address "sex-based discrimination"
- Expected to become final in May 2023





# Why Are We Here?

- Current rules: Betsy DeVos & Donald Trump's 2020 Title IX Rules
- Effective August 14, 2020
- Address "sexual harassment" under Title IX with very prescriptive rules
- New proposed rules: Catherine Lhamon & Joe Biden's proposed Title IX rules
- Proposed June 23, 2022 on the 50th anniversary of Title IX
- Will address "sex-based discrimination," not just "sexual harassment" but with somewhat less prescriptive rules
- No one wants to do the "summer scramble" again
- Need to come up with a practical action plan for preparing for the rules.
- Should begin now!

# THIS IS YOUR ACTION PLAN



Step 1: Orient Yourself



Step 2: Leadership Buy-In



Step 3: Scheduling Training



Step 4: Policies & Procedures



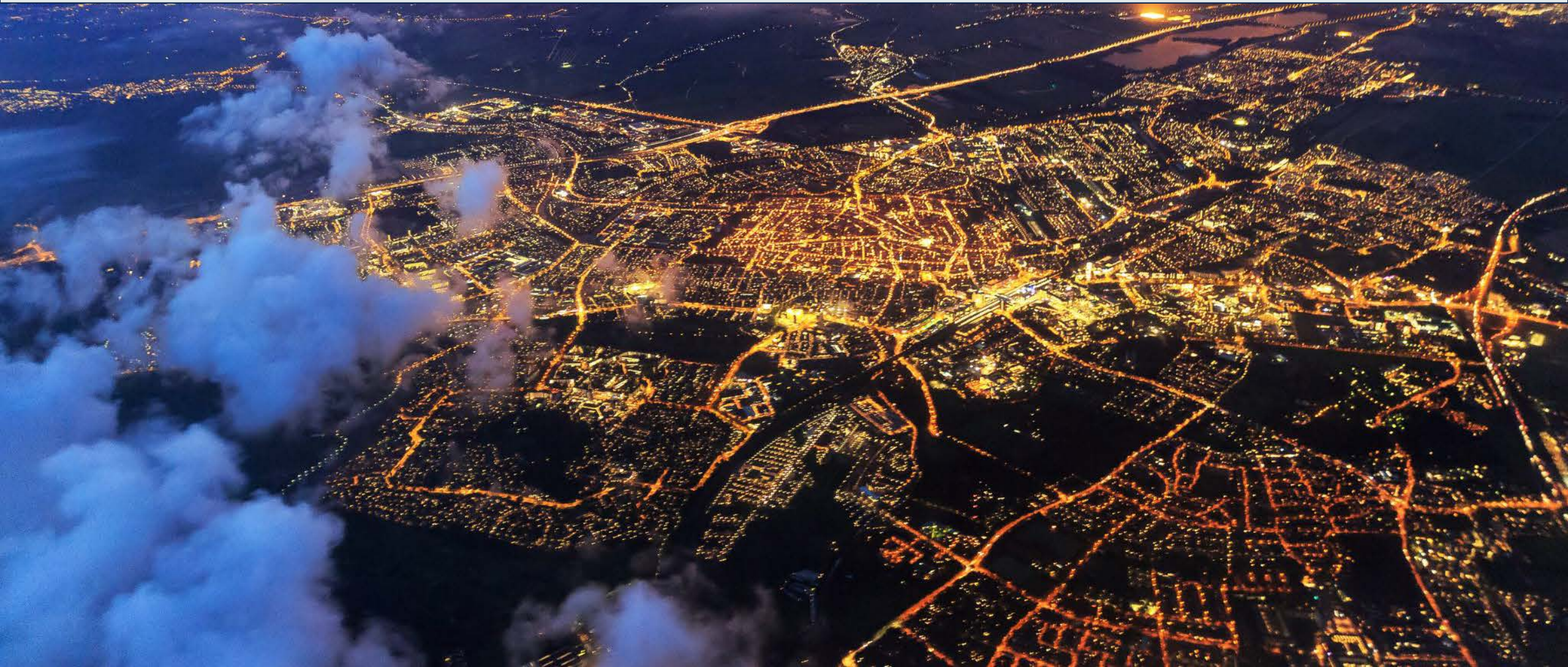
Step 5: Templates





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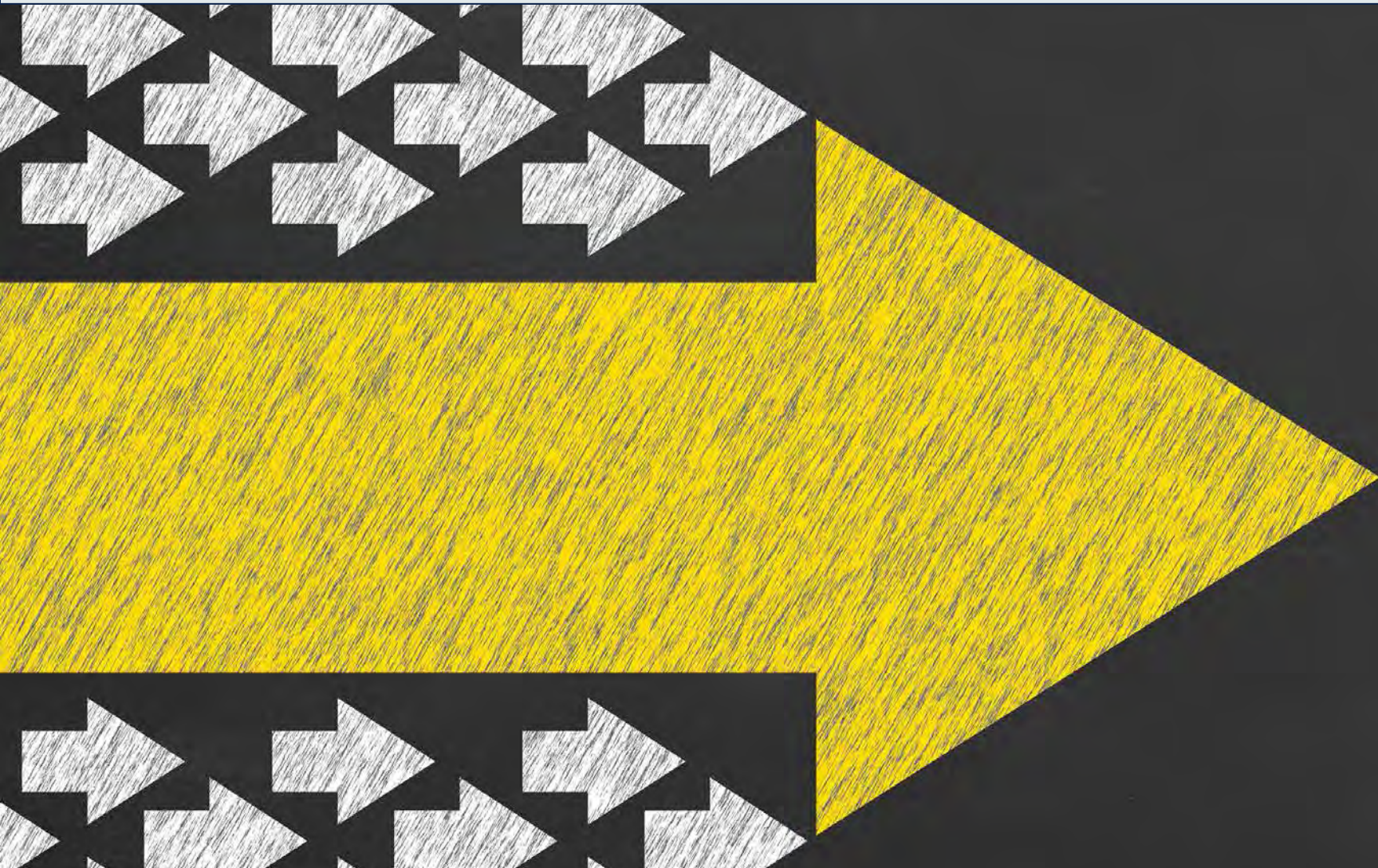
# Step One: Orient Yourself







# Step Two: Leadership







# 3

## Step Three: Training





# 4

## Step Four: Policies & Procedures





# 5

## Step Five: Templates





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# OCR CASE PROCESSING





# Why Are We Here?

- On July 18, 2022, OCR issued a revised Case Processing Manual (CPM)
- The revised CPM came only a few weeks after we proposed Title IX regulations and the day before OCR issued discipline guidance for students with disabilities



U.S. DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS



CASE PROCESSING MANUAL  
(CPM)

EFFECTIVE DATE: JULY 18, 2022

# Case Processing Manual

“THE CASE PROCESSING MANUAL (CPM) PROVIDES OCR WITH THE PROCEDURES TO PROMPTLY AND EFFECTIVELY INVESTIGATE AND RESOLVE COMPLAINTS, COMPLIANCE REVIEWS, AND DIRECTED INVESTIGATIONS TO ENSURE COMPLIANCE WITH THE CIVIL RIGHTS LAWS OCR ENFORCES.”



# Overview of Changes

Overarching theme:  
“whiplash”

CPM reverts to many Obama-era practices

Signals more vigorous enforcement



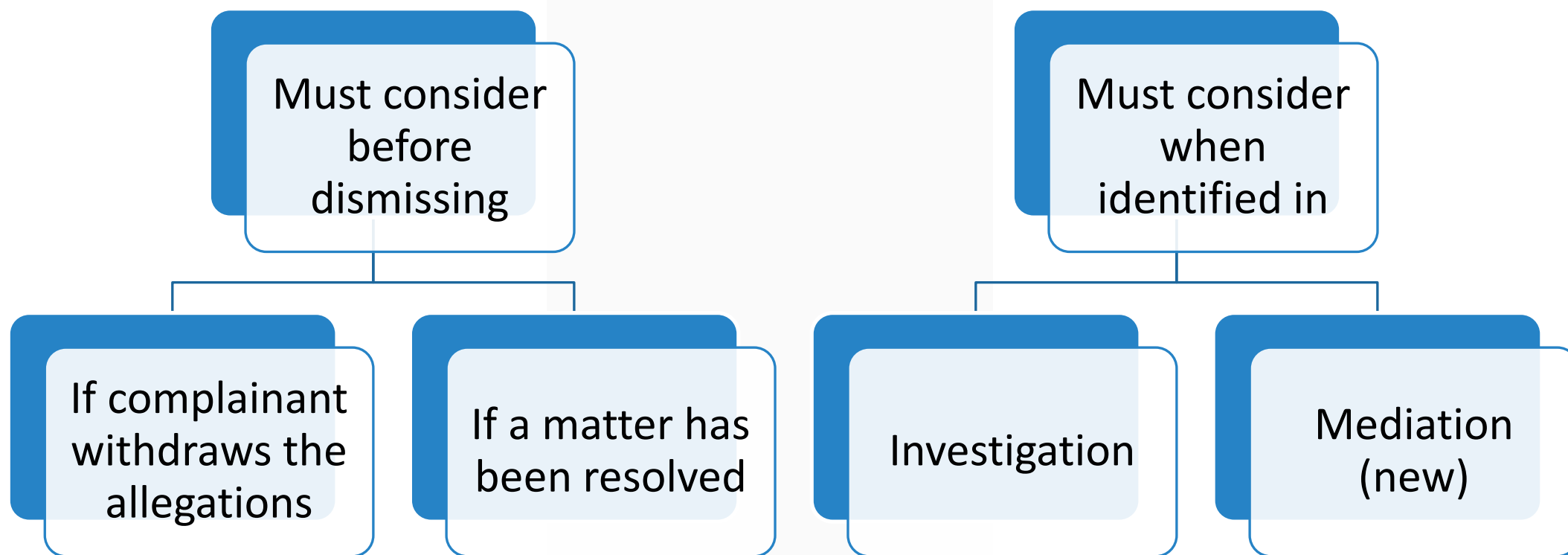
# OCR is Their Friend (Not Yours)



- Support during evaluation and investigation stage *for complainants*
- No similar provision *for recipients*
- Small changes in new CPM signal greater focus
- You must protect yourself



# Systemic Issues





# Key Takeaways for School Leaders

- Make sure your District has an action plan for when it receives an OCR complaint
- Much more is on the line now in OCR investigations; going it alone is a bigger risk than under the previous administration



# Thank You! Questions?

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