

**Release of Claim
Office for Civil Rights
U.S. Department of Education
December 2nd, 2015**

Question: Does OCR have a policy or position on whether a resolution between a college and a student can include a release of claim encompassing a release of all rights to file a complaint with OCR about the matter being resolved?

Answer: Each case is fact-specific and each determination is based on the particular set of facts presented. Although we do not give legal advisory opinions, we do provide information on how the civil rights laws that OCR enforces apply generally.

As you know, OCR enforces, among other laws, Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance; Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance; Section 504 of the Rehabilitation Act of 1973 (Section 504) which prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits discrimination on the basis of disability in certain public entities. Under these laws, a student may not, on the basis of race, color, national origin, sex, or disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in federally funded educational programs or activities.

The Federal civil rights laws make it unlawful for a recipient of Federal financial assistance to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. It is unlawful for a recipient to retaliate against an individual because he or she made a complaint, testified, or participated in any manner in an OCR investigation or proceeding. Once an individual complains formally or informally to a school about a potential civil rights violation or participates in an OCR investigation or proceeding, the recipient is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation. Thus, agreements that condition resolution of a civil rights complaint on a waiver of the right to file a complaint with OCR may constitute unlawful retaliation, even if that waiver is part of a settlement agreement that otherwise resolves the individual's concerns. OCR vigorously enforces this prohibition against retaliation and considers an individual's promise not to file a complaint with OCR null and void as a matter of public policy.

OCR's position is consistent with interpretations of other federal civil rights laws. Specifically, it is consistent with long-standing policy guidance issued by the Equal Employment Opportunity Commission (EEOC), which explains that:

Some employers attempt to limit an individual's right to file a charge or participate in an EEOC proceeding by requiring him or her to sign an agreement in which s/he relinquishes these statutory rights. Such language may appear in contracts requiring the use of alternative dispute resolution procedures (such as mediation or arbitration), waiver agreements, employee handbooks, employee benefits plans, and "non-compete"



agreements. Notwithstanding the format or context of the agreement in which such language might appear, promises not to file a charge or participate in an EEOC proceeding are null and void as a matter of public policy. Agreements extracting such promises from employees may also amount to separate and discrete violations of the anti-retaliation provisions of the civil rights statutes.

See EEOC, NOTICE NUMBER 915.002, ENFORCEMENT GUIDANCE ON NON-WAIVABLE EMPLOYEE RIGHTS UNDER EEOC ENFORCED STATUTES (1997) (footnote omitted), <http://www.eeoc.gov/policy/docs/waiver.html>.

OCR is committed to providing the public, including students and their families, school staff and administrators, and other interested persons, with information about the civil rights laws OCR enforces. In responding to correspondence, OCR provides general, publicly available information about a wide variety of civil rights issues in the education context. OCR does not, however, provide legal or other advice or issue advisory opinions to customers concerning specific factual scenarios. Correspondence issued by OCR in response to an inquiry from the public does not constitute a formal statement of OCR policy and should not be construed as creating or articulating new policy. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

