

Franczek Radelet Webinar

5 OCR Changes to Know Before Responding to Your Next Complaint

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The Times They Are A Changin'

The New York Times

By Erica L. Green

Sept. 10, 2018

Proposed Rules Would Reduce Sexual Misconduct Inquiries, Education Dept. Estimates

Office for Civil Rights
Withdraws Guidance
on Sexual Violence and
Issues Q&A on Campus
Sexual Misconduct

September 22, 2017

OCR Instructions to the Field re Scope of Complaints

Ed Department Reconsidering Previously Settled Disability Complaints

by Hannah Lang | June 7, 2018

disabilityscoop

EDUCATION WEEK

DeVos Team Tempering Its Changes to Process of Civil Rights Complaints

By Christina A. Samuels and Alyson Klein

December 11, 2018

U.S. Department of Education Builds on Efforts to Improve Services for Students, Increase Effectiveness and Fairness of Office for Civil Rights Investigations

NOVEMBER 20, 2018

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

WASHINGTON — As part of its ongoing work to protect students' civil rights and effectively, efficiently and fairly investigate civil rights complaints, today the U.S. Department of Education announced additional improvements to the Office for Civil Rights' (OCR) Case Processing Manual (CPM).

"Our top priority in the Office for Civil Rights is ensuring all students have equal access to education free from discrimination," said Assistant Secretary for Civil Rights Kenneth L. Marcus. "Since joining the OCR team in June, I've reviewed our Case Processing Manual and received important and constructive feedback on it. While we continue to work to improve the timeliness of OCR's case processing, we have determined that additional revisions will help improve our work and allow us to be more responsive to students, stakeholders and our staff."

The CPM provides guidelines for field investigators working to investigate and resolve complaints and to ensure schools comply with the laws and regulations enforced by OCR. The CPM underwent its last revision in March of 2018.

Key revisions to the CPM include the following:

- Requires OCR to comport with the First Amendment when investigating and resolving complaints.
- Restores appeals for complainants, who can appeal findings of insufficient evidence, as well as certain types of dismissals, and provides recipients with the opportunity to respond to appeals.
- Eliminates section 108(t) from the earlier CPM, which had provided that OCR would dismiss a complaint that is part of a pattern of complaints that places an unreasonable burden on OCR's resources.

OCR Enforcement Authority

- Statutes
- Regulations
 - Require notice and comment period
- Other Guidance
 - Guidance documents (with or without rulemaking)
- Case Processing Manual

Maybe the
last time, I
don't
know....



Agenda

1

Dismissals

2

RRP

3

Complaint
Access

4

Resolution
Agreements

5

Appeals

DOE Office for Civil Rights (OCR)



OCR Enforcement Authority

- “[P]rovides OCR with the procedures to promptly and effectively investigate and resolve complaints, compliance reviews and directed investigations”
- Articles
 - I: Evaluation
 - II: FRBP
 - III: Case Planning, Investigation, and Resolution
 - IV: Compliance Reviews and Directed Investigations
 - V: Monitoring Resolution Agreements
 - VI: Initiation of Enforcement Action
 - VII: Appendices



Dismissals

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The complaint evaluation process....



OCR will only notify the recipient of the complaint in writing if the complaint has been opened for investigation

Dismissals ... Why Should You Care?



Section 108 Dismissals

Old

- 108(a) failure to state a claim
- 108(b) Insufficient detail to infer discrimination
- 108(c) speculative, conclusory, or incoherent

New

- 108(a) failure to state a claim
- 108(b) insufficient detail to infer discrimination or too speculative, conclusory, or incoherent



Section 108 Dismissals

Old

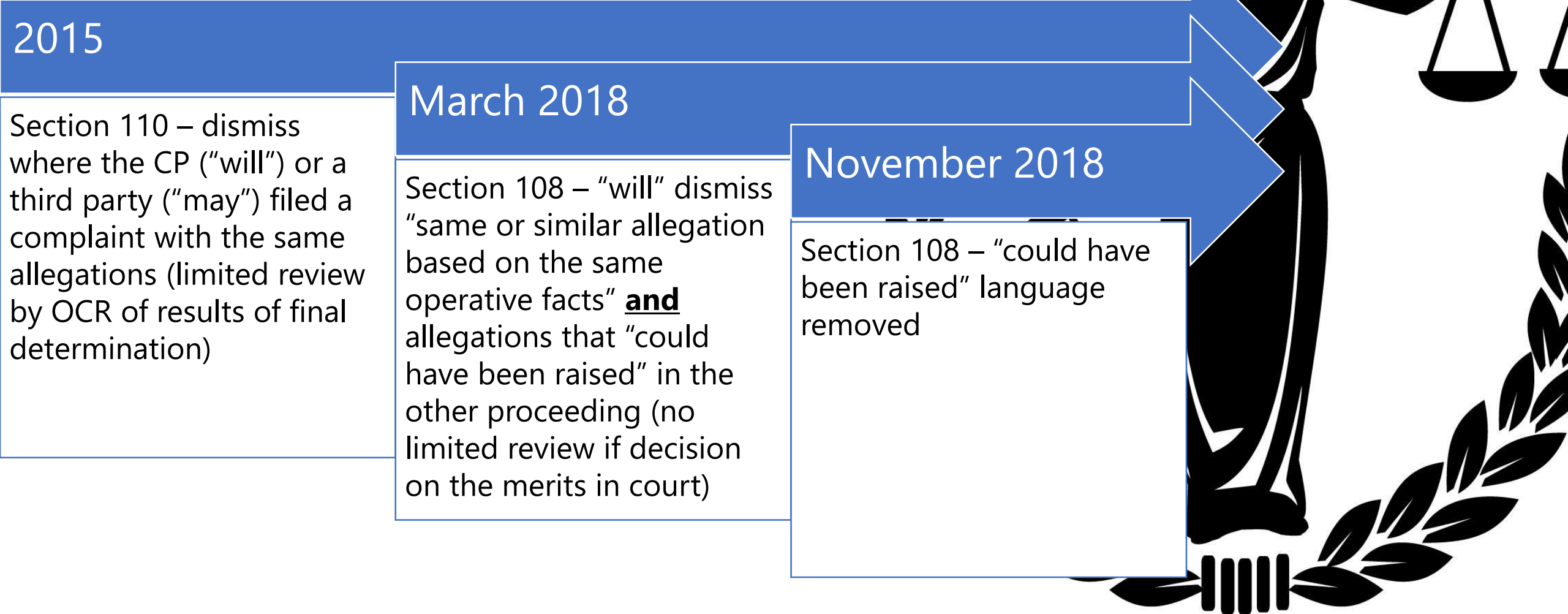
- *108(d) "unable to conclude" that the allegation establishes a violation*
- *108(u) moot*

New

- *108 (c) "cannot reasonably conclude" that the recipient has violated a law*
- *108(r) moot or unripe*



Concurrent Filing Elsewhere





RRP

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Rapid Resolution Process

- Expedited case processing approach
- Recipient takes or promises to take some action that will resolve the complaint
- No admission of wrongdoing for Section 110(a) or (b)
- Three types
 - Section 110(a) – Action already taken resolved complaint (Dismissal Letter ONLY)
 - Section 110(b) – Action will be taken to resolve complaint or action already taken but required monitoring (302 Agreement + Letter of Findings)
 - Section 110(c) – Sufficient information from the recipient to make a finding of noncompliance (303 Agreement + Letter of Findings)

~~If an allegation(s) is not dismissed~~ in the evaluation stage ~~consistent with CPM Section 108, OCR may elect to resolve the allegation(s)~~ prior to issuing a letter of notification ~~to the recipient by employing the~~ The Rapid Resolution Process (RRP). ~~RRP~~ is an expedited case processing approach that can be ~~utilized~~ used to resolve cases in any of OCR's statutory areas; ~~RRP provides an opportunity to resolve complaints and to obtain information and make determinations early, either during the evaluation stage or after issuance of the letter of notification.~~ The outcomes in all RRP cases must meet OCR's standards for legal sufficiency and be consistent with applicable statutory and regulatory authority. Any resolution agreement reached through RRP must be aligned with the allegations in the complaint deemed appropriate for resolution pursuant to RRP. See CPM Article III.

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Example

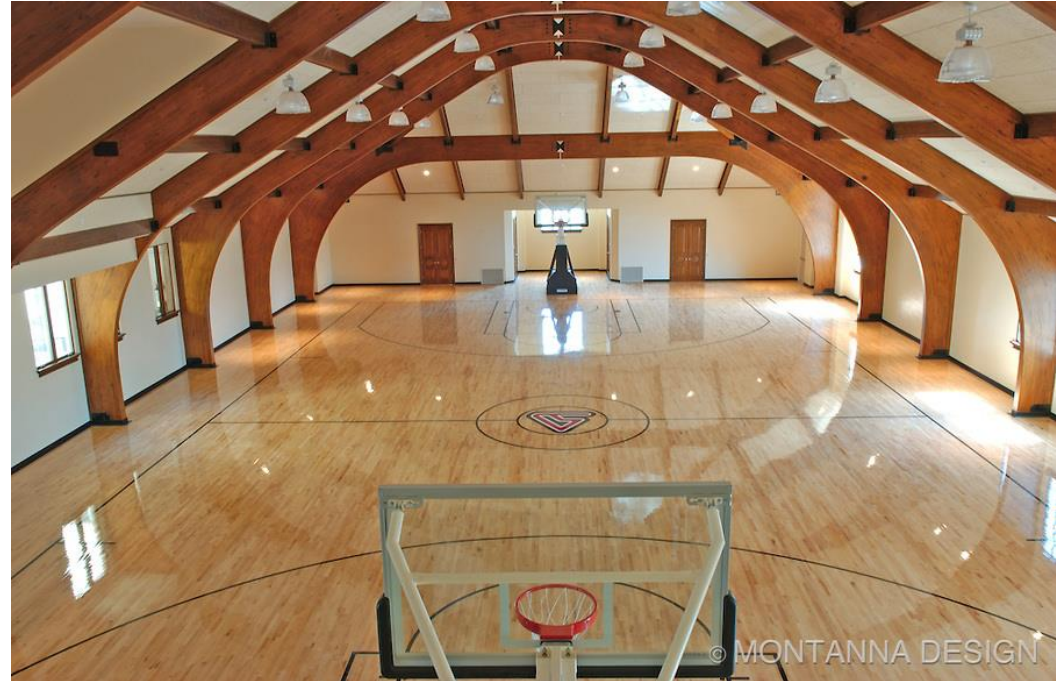
Student A requested extra time on a semester exam based on a disability. The student made the request to the teacher directly, and he denied the request without directing her to speak to the disability services professionals. She filed an OCR complaint. Had the request been directed to the proper location, it likely would have been granted.



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Example

Student A files a complaint to OCR alleging that the boys' basketball team is being given unfair preference in the use of the nicer gym at the school for practices. After OCR notifies the school that it is opening the case for investigation, you speak to the AD, who acknowledges that the practice is occurring.



Complaint Access



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Access to the Complaint

- Historically only access to complaint through FOIA
 - Slow
 - Redactions
- March 2018 CPM revisions: “A copy of the complaint will be provided to the recipient **if requested.**”
 - OCR: Still a FOIA request, shorter timeline
- November 2018 CPM revisions: **removed “if requested”**



Resolution Agreements

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Resolution Agreements 101



- After an investigation begins
- Section 302
 - Requested by recipient
 - Investigation not complete
 - Truncated letter of finding + resolution agreement
 - Letter of finding includes summary of investigation thus far but no findings
- Section 303
 - Investigation complete
 - Proposed by OCR
 - Complete letter of finding + resolution agreement

Section 302 Resolution Agreements

- “appropriate to resolve ... ~~with an~~ because OCR’s investigation has identified issues that can be addressed through a resolution agreement.”
- Must be tied to the “allegations and the evidence obtained during the investigation”
 - SOC – concerns that support need for provisions
 - Broad language in CPM re addressing “compliance concerns” or “identified violations” in agreement
- Analysis of evidence obtained to date in 302 letter

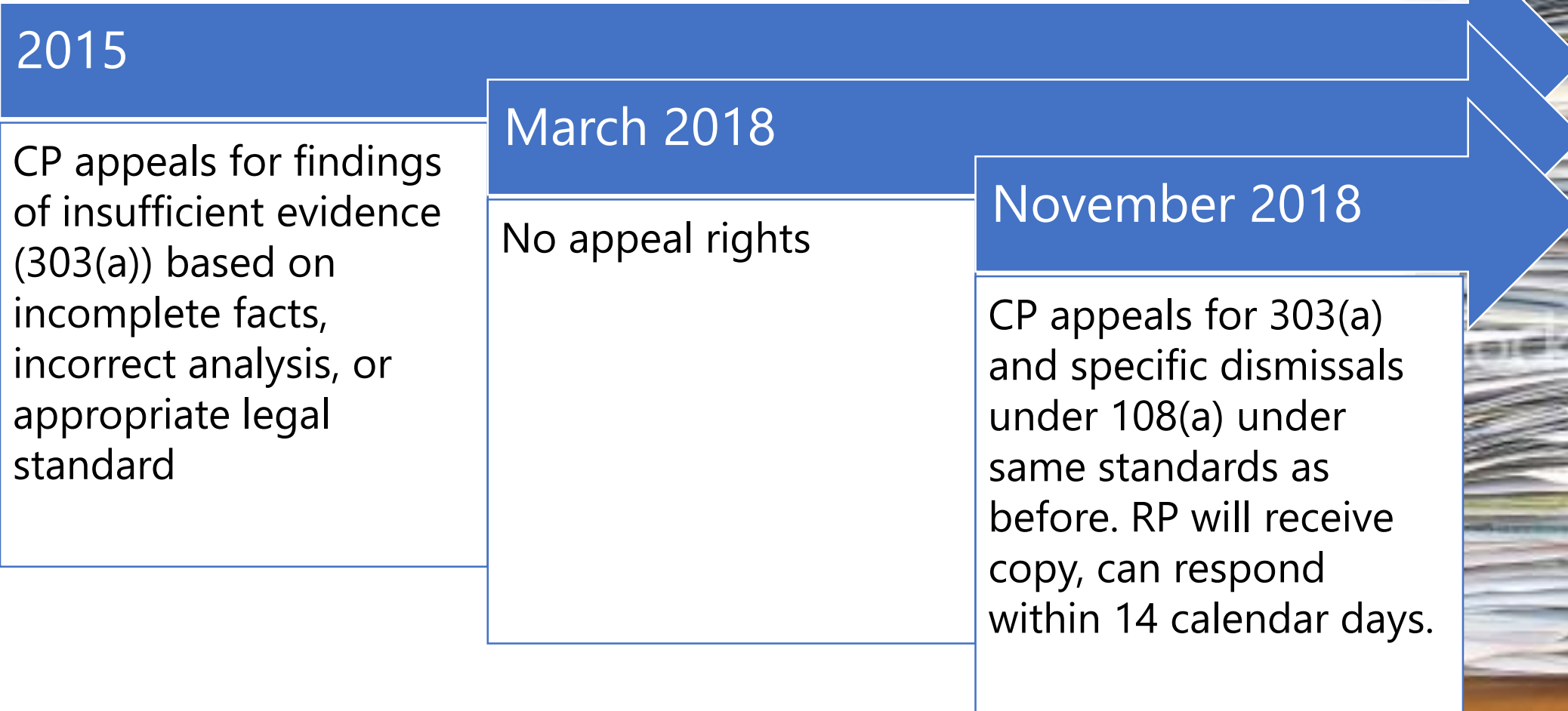
Appeals

A graphic on the left side of the slide. It features a black silhouette of a person standing behind a gold-colored podium. The podium has the word 'APPEAL' written on it in large, bold, black capital letters. The background of the slide is a gradient of orange and brown, with a large, semi-transparent orange shape overlapping the podium and the text area.

APPEAL

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Appeals





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Questions?

