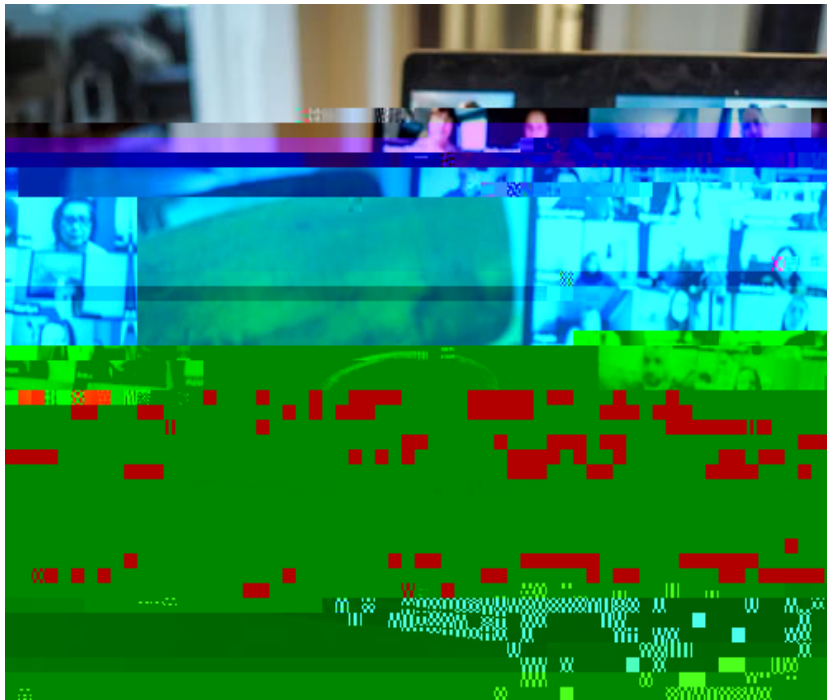


Phil Catanzano
Partner, Holland & Knight LLP

Marjory Fisher
Associate Vice President & Title IX
Coordinator, Columbia University

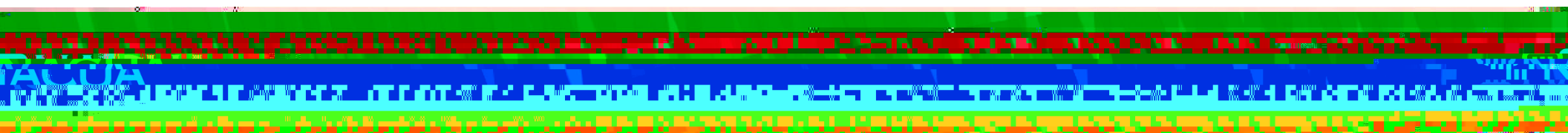
Melinda Grier
Melinda Grier Consulting

PLEASE

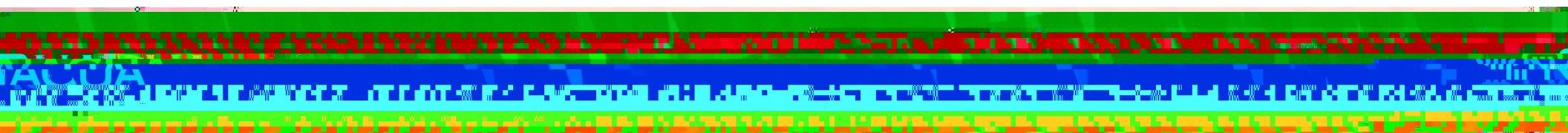


- Questions from Class Three
- Demystifying the OCR's Multi Phase Process
- Understanding different aspects of OCR's Case Processing Manual
- Practical Points to Consider in Working with OCR
- Summary

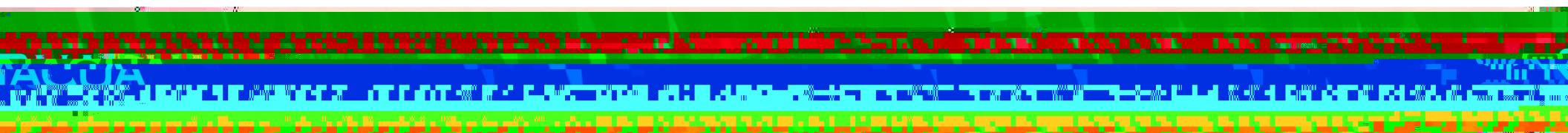
- Do you see any problem with the Title IX coordinator participating in the pre hearing meetings with parties/hearing panel chair?
- Can a party have more than one advisor present at the grievance proceeding?



- OCR is the

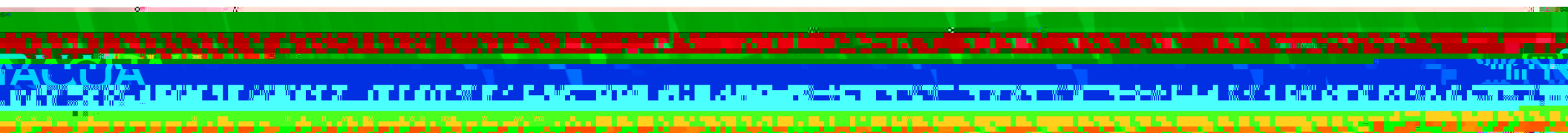


- OCR enforces several laws, including:
 - Title VI
 - Title IX
 - Section 504 of the Rehabilitation Act and Title II of the ADA
 - Age Discrimination Act
- DOJ/USAO and EEOC may also conduct investigations that overlap into these areas, *e.g.*, DOJ reviews disability issues under Title III of the ADA, sexual misconduct issues under VAWA
- OCR may refer complaints to DOJ for enforcement and DOJ occasionally transfers cases to OCR for investigation

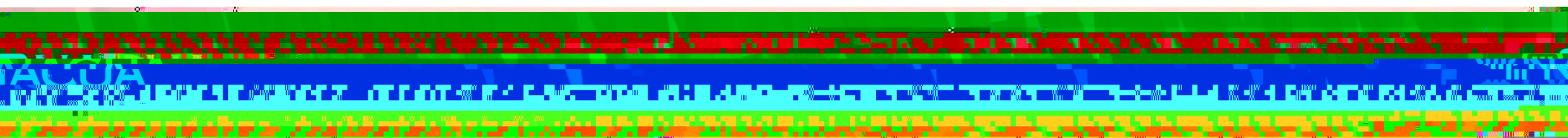


- The main phases of an OCR complaint investigation:*
 - Notification to the Institution
 - Early Resolution Options
 - Data Requests
 - Investigation
 - Negotiation and Monitoring of Resolution Agreements (if necessary)

***Note that OCR can also conduct broad, agency instituted compliance reviews, but they typically follow these same phases**

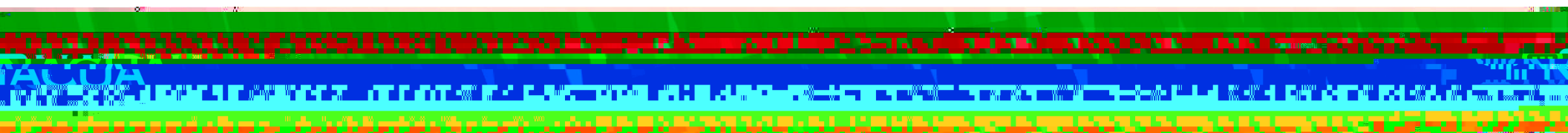


- OCR Complaint Processing Manual (Aug. 2020)
- Dear Colleague Letters and Enforcement Guidance by Statute
- Prior OCR/DOJ Resolution Agreements by Statute
- Case law can be helpful, but OCR does not always recognize court precedent unless it is directly on point and typically only federal cases (but see state cases in CA that require certain process)

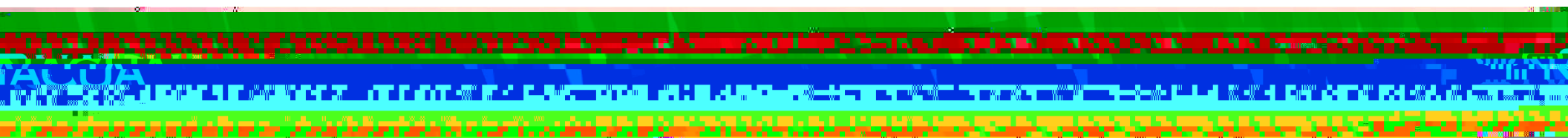


OCR may administratively close/dismiss the Complaint if, *e.g.*:

- Complaint does not state a violation of a law OCR enforces
- Complaint is not filed timely
- Complaint is unclear/incomplete and complainant did not provide OCR with clarifying information
- Complaint has been investigated by another federal, state, or local civil rights agency and resolution meets OCR regulatory standards
- Same allegations have been filed by same complainant against same school in state or federal court

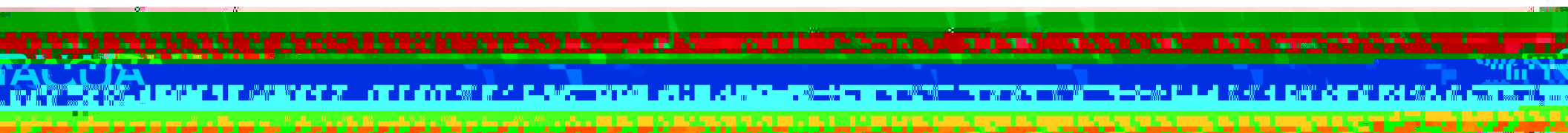


- OCR sends “**Letter of Notification**” to the institution and the complainant if it determines it will open the complaint for investigation. This letter typically includes:
 - OCR’s jurisdiction
 - A brief factual description and allegations to be investigated
 - A statement that OCR is a neutral party
- OCR may refuse to disclose the identity of the student/group bringing the complaint
- OCR may consolidate multiple similar complaints into a single investigation
- OCR may convert a complaint into a broader compliance review

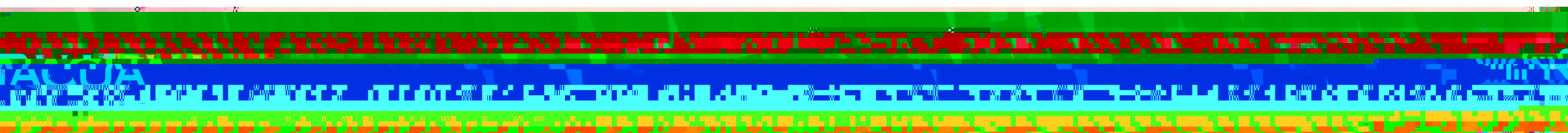


- Notification letters are not typically detail heavy
- OCR will typically provide a link heavy

- Rapid Resolution Process (RRP): Cases chosen by OCR because resolution seems more straight forward or timing is an issue. Often precedes the notification letter and could obviate a finding of any sort.
- Facilitated Resolution Between the Parties (FRBP): An OCR facilitated mediation like process:
 - Available only where OCR deems “appropriate.”
 - Both parties must agree to mediate; if unsuccessful the case goes back to investigation. (Different OCR staff mediate v. investigate.)
 - Ultimate agreement not typically monitored by OCR unless a breach is alleged and, even then, OCR will typically revert to investigating the original allegations and not the breach.

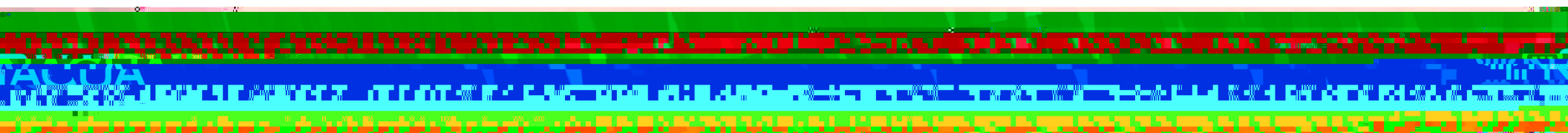


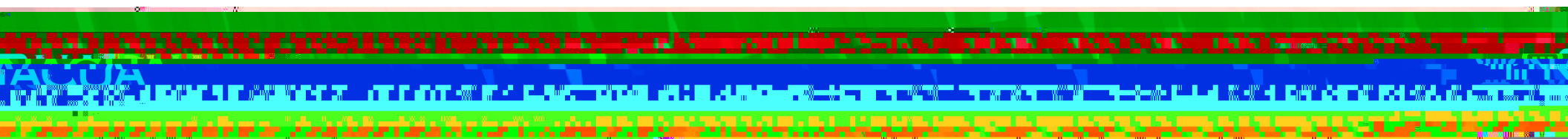
- Institutions may seek to affirmatively resolve complaint before conclusion of the investigation by initiating negotiations for a Resolution Agreement (a/k/a “302 Agreement,” because it’s defined under CPM Section 302)
- Appropriate when the institution agrees to forego the investigation and enter a compliance agreement on some or all issues
- OCR reserves the right



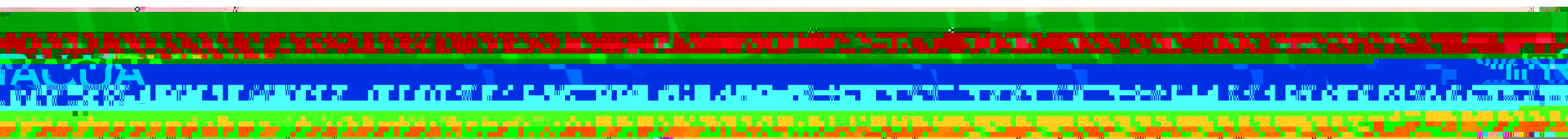
- OCR will typically include a Data Request with the notification letter:
 - Requests

- Maintain updated and comprehensive records of trainings
- Maintain accessibility and consistency of policies
- Begin gathering information *promptly* upon receipt of Notification Letter; clearly communicate delays with OCR staff
- PROVIDE A NARRATIVE: An opportunity to educate OCR staff; can also propose witnesses
- OCR does not have authority to compel production in a specific form or require the creation of materials; obligation can be satisfied by permitting OCR to come onsite and permit access
- All data submitted to OCR is subject to a FOIA request; consider redactions, as appropriate





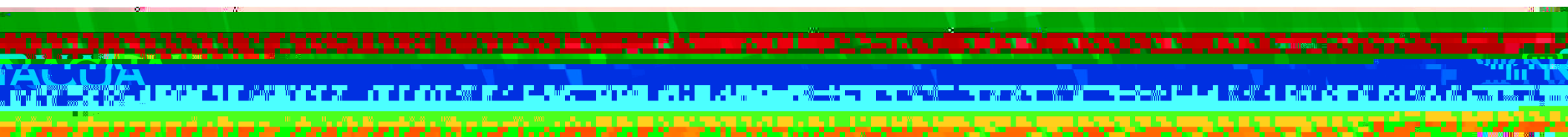
- Be involved: The process can take clumps of days over an



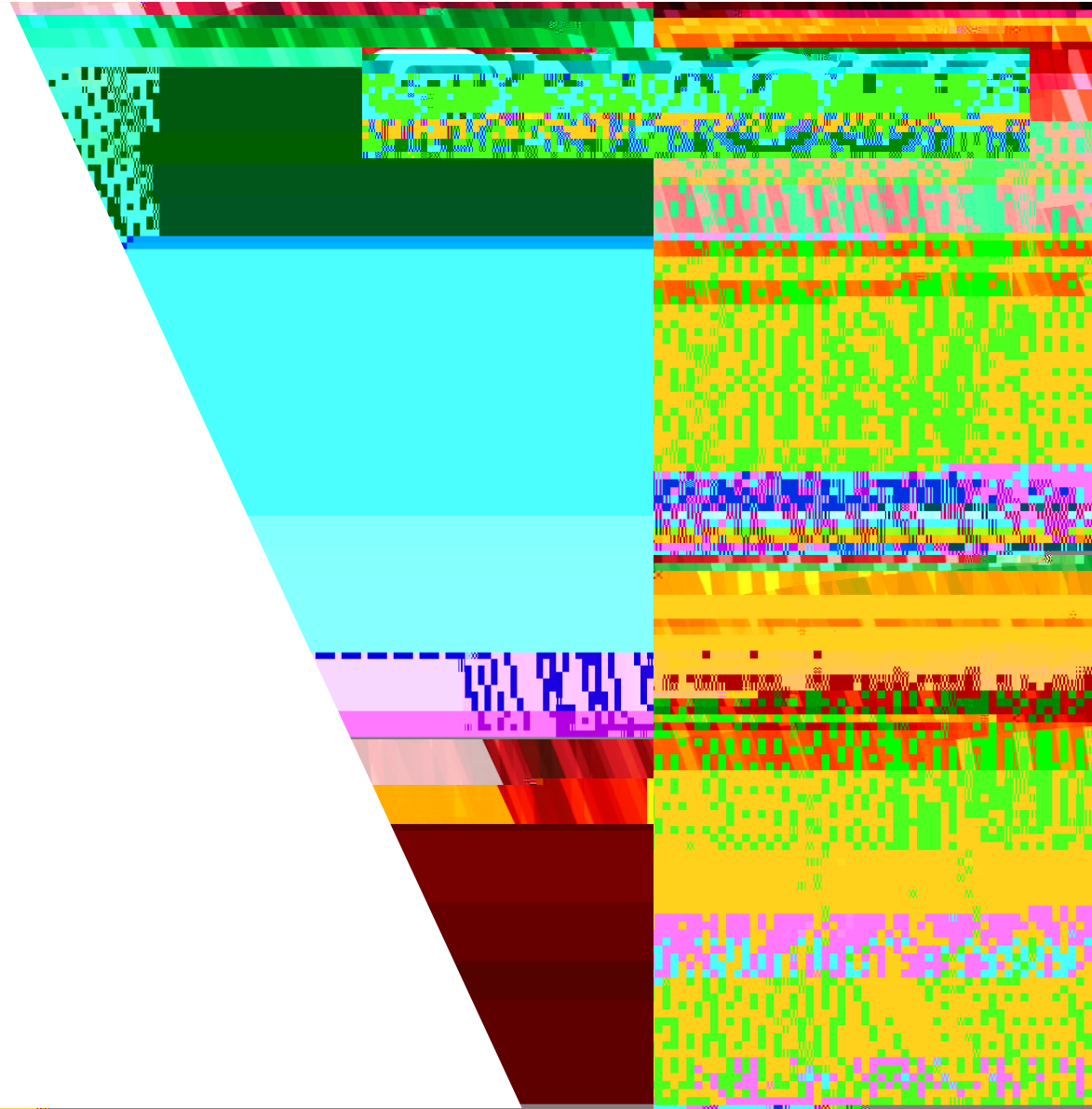
Typical requirements in resolution agreements:

- Mandatory training, with OCR potentially reviewing and approving training content. Occasionally, OCR must approve trainer(s).
- Revision of policies and submission of policies to OCR for approval within a specific period.
- Conduct climate surveys or other assessments in the area of concern.

- Seek details on findings



- An OCR investigation requires significant internal resources to



Note

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