



**Officers**  
**Chair**  
Judith L. Lichtman  
National Partnership for  
Women and Families  
**Vice Chairs**  
Derrick Johnson  
NAACP  
Thomas A. Saenz  
Mexican American Legal  
Defense and Educational Fund  
**Secretary**  
Fatima Goss Graves  
National Women's Law Center  
**Treasurer**  
Lee A. Saunders  
American Federation of State,  
County and Municipal Employees

**Board of Directors**  
Gloria L. Blackwell  
AAUW  
Ray Curry  
International Union, UAW  
Jocelyn Frye  
National Partnership for  
Women and Families  
Jonathan Greenblatt  
Anti-Defamation League  
Mary Kay Henry  
Service Employees International Union  
Damon Hewitt  
Lawyers' Committee for  
Civil Rights Under Law  
Sherrilyn Ifill  
NAACP Legal Defense and  
Educational Fund, Inc.  
David H. Inoue  
Japanese American Citizens League  
Benjamin Jealous  
People for the American Way  
Virginia Kase Solomon  
League of Women Voters of the  
United States  
Samer E. Khalaf  
American-Arab  
Anti-Discrimination Committee  
Joni Madison  
Human Rights Campaign  
Marc Morial  
National Urban League  
Janet Murguía  
UnidosUS  
Christian F. Nunes  
National Organization for Women  
Rabbi Jonah Pesner  
Religious Action Center  
of Reform Judaism  
Rebecca Pringle  
National Education Association  
Lisa Rice  
National Fair Housing Alliance  
Anthony Romero  
American Civil Liberties Union  
Liz Shuler  
AFL-CIO  
Fawn Sharp  
National Congress of American Indians  
Maria Town  
American Association of  
People with Disabilities  
Randi Weingarten  
American Federation of Teachers  
John C. Yang  
Asian Americans Advancing Justice |  
AAJC

February 11, 2022

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

Stephanie Valentine  
PRA Coordinator  
Strategic Collections and Clearance  
Governance and Strategy Division  
Office of the Chief Data Officer  
Office of Planning, Evaluation and Policy Development  
U.S. Department of Education  
400 Maryland Avenue SW, LBJ, Room 6W201  
Washington, DC 20202-8240

## Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection

Dear Ms. Valentine,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 38 undersigned organizations, we write in response to the notice published in the Federal Register on December 13, 2021, regarding a proposed Civil Rights Data Collection (CRDC) Information Collection Request (ICR) for the 2021-22 school year.

The civil and human rights community has relied on these data since the collection began in 1968.<sup>1</sup> We believe it is vitally important that we preserve and enhance the scope, frequency, and public accessibility of the information so as to support the Department of Education's work, and the work of others, in ensuring equal educational opportunity and compliance with federal law. The CRDC plays an important role in ensuring the Department of Education's Office for Civil Rights (OCR) takes its civil rights responsibilities seriously and provides schools with the tools they need to address disparities. Disaggregated and cross-tabulated data reported in the CRDC by race, ethnicity, native language, socioeconomic status, English learner (EL) status,<sup>2</sup> disability status, disability type, and sex (including sexual orientation and gender identity) help us to know about students' experiences in schools and whether all students have equal access to education. Effective data collection and dissemination are necessary for evaluation and review of all other programs and activities. Any change to limit the scope, frequency, or public accessibility of the CRDC would hamper the ability of the

---

<sup>1</sup> Section 203(c)(1) of the 1979 Department of Education Organization Act delegates to the Assistant Secretary for Civil Rights the authority to "collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights" (20 U.S.C. § 3413(c)(1)).

<sup>2</sup> Note for the purposes of this comment, the term English learner is used as defined by the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act. Many communities refer to such students as "emergent bilingual" or "dual language learners" for an asset-based approach to recognize student's native language proficiency.

department to fulfill its legal obligations and undermine our shared interest in creating the best school environments so that all people can thrive and reach their full potential.

The global COVID-19 pandemic has significantly affected the lives of children, their families, teachers, and school systems across the country. Not only are families and communities mourning lives lost, but also children have missed months and months of in-person instruction, and far too many children have not even had meaningful access to remote learning. In many cases, school systems are now doing the difficult work of reopening safely and ensuring that they are prepared to receive children again. Educators from the classroom through the education state chiefs have been asked to be flexible and creative in unprecedented ways.

We must find the best way possible to get useful, timely, and comprehensive data — even during a pandemic. The COVID-19 pandemic and related long-term school closures have made it even more clear that access to educational opportunity is not equitably available to all in this country and that the inequity in resources, support, and funding available for children in marginalized communities must be documented and made transparent. We commend the department’s decision to conduct the CRDC survey in the 2021-22 school year.<sup>3</sup> These data are integral to protecting students and ensuring that their civil rights are upheld. Data are critical to ensuring equal educational opportunity — and must drive real changes to policy and practice at the school, district, and federal levels. It is time to make this collection annual and for Congress to provide the resources needed to ensure this information is available to students, families, educators, advocates, and policymakers.<sup>4</sup>

In response to the proposed changes submitted to the Office of Management and Budget (OMB), and on behalf of the civil and human rights community, we offer the following feedback:

### **Collect and report universal data on an annual basis**

One of the most important improvements made to the CRDC in the last several years has been the move to a universal collection. The inclusion of all public schools — and importantly all children — is significant and should be preserved.<sup>5</sup> The next important step is to move the data collection schedule from biennial to annual. This shift would allow a better understanding of changes over time and also better represent each individual annual snapshot. Children spend a short period of time in school from preschool through 12th grade, so it is critically important that data be available for every year. The department, educators, families, and advocates need access to regular, timely data in order to address issues and to intervene quickly so that no children lose access to educational opportunities. Moving the CRDC to an annual schedule will enhance the accuracy and timeliness of this critical tool for tracking potential civil rights violations and responding to discrimination and inequity in communities. The most recent dataset available to the public is the 2017-2018 CRDC — released in October 2020 — and the 2020-2021 CRDC has not yet been released. In president’s Fiscal Year 2022 Budget Request, OCR announced its intent to collect the CRDC in the 2021-2022 school year and then again in the 2022-2023 school year.<sup>6</sup> Given that

---

<sup>3</sup> In March 2021, The Leadership Conference and 29 organizations called on the Department of Education to administer the Civil Rights Data Collection survey in the 2021 school year: <https://civilrights.org/resource/letter-re-civil-rights-data-collection/>

<sup>4</sup> In December 2020, The Leadership Conference called on the Biden administration and Congress to double the size of the Office for Civil Rights: <http://civilrightsdocs.info/pdf/policy/task-force-priorities/Transition-ShortToplinePriorities-TheLeadershipConference-November2020-FINAL.pdf>

<sup>5</sup> As raised previously by signers of this letter, information about the educational experiences of the nearly 300,000 children in the Commonwealth of Puerto Rico public schools should be collected and publicly available just as it is for children attending schools in the 50 states and the District of Columbia. Source: <https://civilrights.org/resource/letter-re-civil-rights-data-collection/>

<sup>6</sup> Department of Education. Office for Civil Rights. Fiscal Year 2022 Budget Request: “Given the continuing importance of measuring the impact of the pandemic, OCR will move forward with administering a 2020–21 CRDC as planned, followed by a

OCR is also collecting the CRDC in the 2020-21 school year, the department's commitment to collect the CRDC three years in a row provides the unique opportunity for OCR to collect and report these data on an annual basis moving forward.

### **Retain the collection of data on *all* schools**

The CRDC should, as it has for several years, include the experiences of children in *all* schools through a universal collection instead of a sample. Students, families, educators, advocates, and policymakers have come to rely on the ability to find data for their own school and the schools in their community and across the country. Limiting the scope of the collection to a sample would miss the considerable variability among schools and districts. A narrower collection would also make it more difficult to represent the experiences of smaller student groups such as Asian American and Pacific Islander or Native American students (or cross-tabulated groups by race, gender, and disability, for example), who often are left out of data reports at the school or district level. With a universal collection, these smaller groups can be more easily aggregated. Furthermore, the universal collection would allow for the disaggregation and cross-tabulation of data by race, ethnicity, native language, socioeconomic status, EL status, disability status, disability type, sex, national origin, and pregnant or parental status. Since the CRDC is often the only source of disaggregated school-level data about students' experiences, loss of the data provided by a universal collection would be significant.

### **Include information about instructional time during the COVID-19 public health crisis**

As schools adjusted to long-term closures, there has been significant variability in the number of hours of instruction provided to children. Anecdotally, it is clear that some children are receiving access to the curriculum and content in a scope comparable to their time before the crisis began, while others are receiving only a few hours of instruction per week. To understand the extent to which access to instructional time varies based on student characteristics, it is vital that the collection in the 2021-2022 school year include questions about instructional time.

### **Include information about the method of instruction during the COVID-19 public health crisis**

As schools grappled with the difficult decision to either open their doors or to provide all instruction remotely, it is critical that there be an understanding of what manner of instruction was provided to students.<sup>7</sup> To understand the extent to which various methods of instruction were provided to students based on race, ethnicity, disability, EL status, and other student characteristics, the CRDC must collect and report these data for the 2021-2022 school year. We commend OCR for proposing the data elements focused on the amount of virtual instruction provided by teachers and the percentage of students who received virtual instruction. We urge OCR to include the proposed data elements in the COVID-related items section.

---

2021-22 collection, and depending on funding and other factors, an additional collection in school year 2022-23." Source: <https://www2.ed.gov/about/overview/budget/budget22/justifications/bb-ocr.pdf>

<sup>7</sup> Questions could include: 1) Tracking, at the school level, number of students who were instructed on-line or in-person, 2) Whether students were under a staggered or hybrid school plan, and/or 3) The length of time (measured in weeks or school days) students were instructed under the methods listed above (hypothetical scenario example that could be supported through CRDC data collection: "9<sup>th</sup> graders at X High School were instructed in the 2020-21 school year under a hybrid plan for 180 days, 20 students were taught in person for 180 days, 100 students were taught in-person for 50 days and 130 days online, 300 students were taught online for 180 days).

### **Include information about schools' support for remote learning**

The well-documented digital divide, often contributing to what has been described as the “homework gap,” has limited the educational success of marginalized students for years.<sup>8</sup> This inequity in access to the internet and connected devices has had catastrophic consequences for marginalized students who have lost significant educational opportunity during long-term school closures.<sup>9</sup> The CRDC should collect and report data about what schools did to identify barriers to connectivity and to provide students with the connections and devices they needed to ensure continuity of learning. In collecting these data, there can be a better understanding of any differences to connectivity based on race, ethnicity, disability, EL status, sex, and other student characteristics. We commend OCR for proposing the data elements focused on the number of students who needed and received Wi-Fi enabled devices and hotspots from the school for student learning use. We urge OCR to include the proposed data elements in the Pathways to College and Career section.

### **Retain all school finance items for the 2021-22 school year**

The previously collected CRDC school finance data elements are central to identifying inequities. School spending matters. More money leads to better outcomes, especially if spent well and spent in schools serving students with the highest needs.<sup>10</sup> We commend OCR for collaborating with the National Center for Education Statistics (NCES) to explore options for requiring state education agencies (SEAs) to complete NCES' School-Level Finance Survey (SLFS) beginning in the 2022–23 school year; however, we urge OCR to retain all of the previous data elements in the school finance section for the 2021-22 school year to collect this critical information as this transition occurs.

### **Retain teacher experience, teacher absenteeism, and teacher retention items**

Retaining teacher experience, teacher absenteeism, and teacher retention data items, along with the school finance items discussed above, would send a strong signal that OCR is interested in addressing resource inequities. The experience of teachers matters for students' educational experiences and outcomes.<sup>11</sup> We commend OCR for proposing to retain the data elements focused on the number of first- and second-year teachers and teachers absent more than 10 school days. We urge OCR to retain all of the data elements regarding first- and second-year teachers, teacher absenteeism, and teacher turnover.

### **Retain support services staff data**

The public has relied on OCR's continued collection of data elements concerning the full time equivalent (FTE) counts of school counselors, psychologists, social workers, and nurses. These data elements are crucial in helping the public determine how school districts are prioritizing students' mental health.<sup>12</sup>

---

<sup>8</sup> Turner, Derek. “[Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption.](#)” *Freepress.net*. December 2016.

<sup>9</sup> For example, in 2017, the National Center for Education Statistics reported that 36 percent of Native students nationwide did not have internet access in their homes, compared to 18 percent of their peers nationwide.

<sup>10</sup> Jackson, Kirabo, Rucker C. Johnson, Claudia Persico (2016). “The Effects of School Spending on Educational & Economic Outcomes: Evidence from School Finance Reforms”. *The Quarterly Journal of Economics* 131(1): 157-218; Lafortune, J., Rothstein, J., & Schanzenbach, D. W. (2018). School finance reform and the distribution of student achievement. *American Economic Journal: Applied Economics*, 10(2), 1-26. <https://doi.org/10.1257/app.20160567>

<sup>11</sup> Cardichon, J., Darling-Hammond, L., Yang, M., Scott, C., Shields, P. M., & Burns, D. (2020). Inequitable opportunity to learn: Student access to certified and experienced teachers. Palo Alto, CA: Learning Policy Institute. Source: [https://learningpolicyinstitute.org/sites/default/files/product-files/CRDC\\_Teacher\\_Access\\_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/CRDC_Teacher_Access_REPORT.pdf)

<sup>12</sup> Before the pandemic, youth were already experiencing mental health crises at alarming rates. One in four young people expressed feeling psychological distress. Since the pandemic, the mental health crisis has been exacerbated for everyone — especially Black and brown young people. Since the pandemic, 2 in 3 young people have expressed feeling down, lonely, depressed, or hopeless. For Asian American young people, that number is even higher, with 4 in 5 young people feeling hopeless down, hopeless, and/or depressed. Additionally, since the pandemic, the rate of suicide and suicide ideation amongst young

These data are especially important when viewed alongside data about the presence of sworn law enforcement officers as a measure of whether students have more access to supportive professionals or law enforcement. Over the years, numerous organizations — including some of the below signatories to this letter — have published reports and analyses on student mental health that largely rely on these data. Without these data, our stakeholders would be left in the dark about how districts are staffing their schools to best support the development of healthy schools. We urge OCR to continue collecting all the current data elements regarding school support staff.

### **Retain all early childhood education items**

It is important to retain the collection and reporting of preschool enrollment data disaggregated by race, ethnicity, sex, disability-IDEA, and EL status. Absent the disaggregated enrollment data, there will be no effective way of determining whether exclusionary discipline continues to fall more harshly on particular groups of students. It is essential that we have the data that can help us measure progress in ensuring that all children remain in and benefit from quality early childhood settings. OCR should also retain the collection and reporting of all early childhood education program data. Early education is offered and supported by a variety of government programs, including public schools. It is important to understand the types of early childhood programs used by public schools that are currently serving children, including by collecting data regarding whether early childhood programs are full-day versus part-day, whether there is a cost for participation in the program, and whether services for children birth to age 2 are offered for children not identified for services under the IDEA. Without these data, it will be impossible to create an accurate picture of the early education landscape and potential discrimination in early education across the country. We urge OCR to retain the current data elements regarding early childhood education.

### **Retain Advanced Placement (AP) test-taking items**

Measuring AP enrollment without measuring AP test-taking ignores the fact that taking the examination seems to solidify the benefits of an AP course, and that this is true even if the student fails the examination.<sup>13</sup>

### **Expand the disaggregation of data about the bases on which students are subjected to bullying and harassment and the form of harassment**

In addition to the existing categories of race, color, national origin, disability, and sex,<sup>14</sup> OCR should separately collect, disaggregate, and cross-tabulate data about the number of students who were subjected to bullying or harassment based on all civil rights categories, including based on sexual orientation and gender identity.<sup>15</sup> OCR can do this by replacing Civil Rights Categories (Counts) with Civil Rights

---

people has also increased, especially for Black youth. In the Surgeon general's advisory, he noted more than 6,600 deaths by suicide among the 10-24 age group in 2020. In another report, researchers found that Black youth, 5-12 years of age, were approximately twice as likely to die by suicide than their white counterparts. Our children need resources to help support any mental health conditions and symptoms.

The Center for Law and Social Policy (CLASP). <https://www.clasp.org/why-we-cant-wait-healing-well-being>

U.S. Surgeon General, Admiral Vivek Murthy (2021). Protecting Youth Mental Health: The U.S Surgeon General's Advisory. <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>

Liz Tung. *We are in a State of Emergency: What's Behind the Rising Rate of Suicide Among Black Kids?* WHYY. Source: <https://whyy.org/segments/we-are-in-a-state-of-emergency-whats-behind-the-rising-suicide-rate-among-black-kids/>

<sup>13</sup> Russell T. Warne, Ross Larsen, Braydon Anderson & Alyce J. Odasso, The Impact of Participation in the Advanced Placement Program on Students' College Admissions Test Scores, *J. of Educ. Research*, 108:5, 400 (2015), <https://www.tandfonline.com/doi/full/10.1080/00220671.2014.917253>

<sup>14</sup> This is in reference to Data Group 935: The number of students reported as harassed or bullied.

<sup>15</sup> LGBTQ+ students experience harassment and bullying at disproportionate rates and national survey research indicates that school practices can play a role in fostering school climates hostile to LGBTQ+ students.



Categories (Allegations). Furthermore, OCR should add distinct measures for harassment or bullying on the basis of sex characteristics (including intersex status), sexual assault (including rape), dating violence, and stalking in addition to the existing categories of sex, race, color, national origin, disability, sexual orientation, religion, and gender identity.<sup>16</sup> OCR should also clarify that bullying and harassment based on sex includes bullying and harassment based on transgender status, gender expression, as well as sexual assault (including rape), dating violence, and stalking.<sup>17</sup> Because schools have an obligation to intervene in bullying and harassment, not simply to report the incidences, the existing count of students who were disciplined for bullying or harassing a student based on their race, color, national origin, disability, and sex should be expanded. OCR should separately include counts of students who were disciplined for bullying or harassment based on sexual orientation and based on gender identity,<sup>18</sup> and separately the count of students who were disciplined for sexual harassment, including sexual assault (including rape), dating violence, and stalking.<sup>19</sup> In order to ensure students have access to equal educational opportunity, OCR should include the number of allegations against a student of sexual assault, dating violence, and stalking that were followed by a determination that the student was responsible, how many allegations resulted in a determination that the student was not responsible,<sup>20</sup> and the number of allegations against a student that had a determination that remained pending.<sup>21</sup>

#### **Include bullying and harassment by staff, including sexual assault**

In addition to expanding the disaggregation of data about bullying and harassment by students, OCR should collect and report comparable data about the number of students who were subjected to bullying or harassment based on their race, color, national origin, disability, or sex (including sexual orientation, gender identity, sex characteristics, sex stereotypes, and pregnancy), or sexual harassment (including sexual assault or stalking) by employees of the school (including law enforcement).<sup>22</sup> Similarly, OCR should report on the number of staff disciplined for bullying or harassing a student, including separately those who were disciplined for sexual assault or stalking of a student. Furthermore, OCR should include how schools are responding to reports of staff-on-student sexual harassment (including sexual assault or stalking).<sup>23</sup>

---

<sup>16</sup> This is in reference to Data Group 933: The number of reported allegations of harassment or bullying.

<sup>17</sup> Dating violence and stalking are serious and prevalent forms of sex-based harassment among K-12 students. For example, in the last year, 1 in 11 girls and 1 in 14 boys in high school experienced physical dating violence. Among all those who experience dating violence in their lifetime, 26 percent of women and 15 percent of men first experienced dating violence before they turned 18. Similarly, among stalking survivors, 12 percent were under 18 when the stalking began. Since dating violence and stalking are serious and prevalent forms of sex-based harassment, the CRDC should expand its definition of “harassment or bullying on the basis of sex” to include “dating violence” and “stalking,” just as it already states that “harassment or bullying on the basis of sex” includes “sexual assault” and “rape.” This change would not be too burdensome, as it is merely a revision to existing data elements.

<sup>18</sup> This is in reference to Data Group 934: The number of students disciplined for engaging in harassment or bullying.

<sup>19</sup> All of these data groups should be revised to include off-campus incidents, consistent with Supreme Court case law, two decades of Department guidance, and the current Title IX regulations. Furthermore, the definitions of rape and sexual assault should be updated to be more consistent with the Clery definitions, including by focusing on lack of “consent” rather than requiring “force.”

<sup>20</sup> This can be structured similarly to Data Group 1027.

<sup>21</sup> This can be structured similarly to Data Group 1028.

<sup>22</sup> This can be structured similarly to Data Group 1025.

<sup>23</sup> This can be structured similarly to Data Groups 1026, 1027, 1028, and 1029: The unduplicated number of allegations against a school staff member that were followed by a resignation or retirement prior to final discipline or termination (DG 1026), determination (DG 1027), determination that remained pending (DG 1028), or a duty reassignment (DG 1029).

### **Replace staff-on-student “sex offenses” data groups<sup>24</sup>**

OCR and institutions have a responsibility under Title IX regulations to ensure schools are responding to reports of staff-on-student sexual assault because this is a denial of access to educational opportunity. With this in mind, OCR should replace the staff-on-student “sex offenses” data groups since they are preserved and expanded in our recommended data collection on the outcomes of reports of staff-on-student sexual harassment, including sexual assault and stalking.<sup>25</sup>

### **Exercise caution with regard to disaggregation of experiences of bullying and harassment based on religion**

Disaggregating experiences of religion-based bullying and harassment may help us to better understand students’ experience of school and to ensure that all students have access to equal education, but it is essential that these data elements are handled with sensitivity and confidentiality. Investigation and reporting on student religious beliefs has the potential to result in religious discrimination and coercion, particularly for students who are religious minorities or nonreligious. We urge the department to allow the collection of disaggregated religion-based bullying and harassment data to remain optional for at least the 2021-22 CRDC cycle. This would allow the department and school districts time to assess the results of the optional collection of this data for the 2020-21 CRDC, to identify any concerns regarding data integrity and confidentiality, and to develop in consultation with community stakeholders appropriate training and clear guidance for school administrators about how to implement this data collection in a manner that is accurate, respectful, and confidential. Lastly, we encourage the department to move forward with the proposed optional collection of written policies prohibiting harassment or bullying on the basis of religion for the 2021-22 CRDC.

### **Retain item related to the number of EL students enrolled in Language Instructional Educational Programs by disability status including IDEA-eligible and 504-status**

It is a widespread misconception that a student cannot be both an English learner in a language instructional educational program (LIEP), as well as a student with disability receiving education services required under IDEA and 504. In fact, an EL enrolled in an LIEP cannot be denied education services required under IDEA and 504, and a student can and should be enrolled in both types of services at the same time when the student qualifies for both services. It is essential that the CRDC collect data that examines how well schools are serving the nearly 700,000 public school students who are both ELs and students with disabilities. Excluding this disaggregation from the data collection will severely undermine public access to information about this often overlooked and underserved population. We commend OCR for proposing to retain the data element related to the number of EL students enrolled in an LIEP by disability status. We urge OCR to retain this proposed data element in the School & District Characteristics section.

### **Retain item regarding participation in credit recovery programs**

Nearly 7,000 students drop out (are pushed out) of high school every day for various reasons and most, if not all, return to complete their educational credits.<sup>26</sup> Excluding data on the number of students who are participating in credit recovery programs will limit information about the experiences of this marginalized group of students. Additionally, excluding this item would forgo an opportunity to reinforce the responsibility of school districts to ensure the success of *all* students. We commend OCR for proposing to

---

<sup>24</sup> Currently, similar data are collected in Data Groups 1025, 1026, 1027, 1028, and 1029. We mention these data groups in this footnote and the previous footnotes to inform the replacement of these data in the inclusion of bullying and harassment by staff.

<sup>25</sup> This is in reference to our recommendation included under the section titled, “Include bullying and harassment by staff, including sexual assault.”

<sup>26</sup> Miller, Tony. "[Partnering for Education Reform.](#)" *U.S. Department of Education.* July 7, 2011.

retain the data element focused on the number of students who participate in at least one credit recovery program that allows them to earn missed credit to graduate from high school. We urge OCR to retain this proposed data element in the Pathways to College and Career section.

**Disaggregate by both IDEA- and 504-status for any item that is disaggregated by disability status**

Students with disabilities vary from one another in a multitude of ways, although all students with disabilities are protected from discrimination under Section 504 and the Americans with Disabilities Act (ADA). The CRDC should disaggregate separately those students who are receiving supports and accommodations through IDEA (the majority of students with disabilities) from those students who are receiving supports and accommodations exclusively through Section 504. CRDC is the only source of available information about the educational experiences and outcomes of these students. For many items collected through CRDC, data are disaggregated by disability status. In each of those items, disability status should be further differentiated by “disability-IDEA” and “disability-Section 504 only” so the public can better understand how the experiences of students with disabilities differ based on this factor. We commend OCR for proposing to disaggregate by “disability-Section 504 only” in relevant items included in the CRDC. We urge OCR to include this proposed disaggregation in all relevant sections.

**Retain the count of children with disabilities in preschool who are served only under Section 504**

Understanding the enrollment of and status of children as young as ages 3-5 who are eligible under Section 504 can be a useful tool. We support the proposal to collect these data and also report by sex, race, and EL status.

**Include and disaggregate the experiences of children with disabilities placed by school districts in nonpublic schools in the CRDC**

While tens of thousands of students with disabilities who are placed by their school districts into nonpublic schools can be subjected to exclusionary discipline, restraint and seclusion, and other adverse actions, or can be denied access to experienced teachers, those students’ experiences are not adequately tracked by the CRDC. According to data reported to the department as required by IDEA Section 618, 3 percent of students served under IDEA are educated in separate schools (not parentally placed). The IDEA is the only federal education law that provides for students to be placed by school districts in a nonpublic school as a remedy when the public school cannot provide the student with a free appropriate public education. The department’s claim that it currently collects data from school districts on these students is insufficient. The department collects enrollment data, but it does not collect any data about how those students are treated in the nonpublic schools. This is data that public school districts already receive and maintain or can access readily — but which is not sufficiently publicly available. The current scope of the CRDC fails to encompass a substantial proportion of the restraint and seclusion experienced by students with disabilities placed in nonpublic schools. As the best available data show, these students experience levels of restraint and seclusion that are magnitudes higher than those experienced by other publicly educated students with and without disabilities.

**Require reporting about informal removals**

Although the CRDC currently includes data elements regarding students who are formally suspended and expelled, these data provide users a false sense of security that school removal data are complete. By “complete,” we mean data that provide the number and type of significant school removals that occur per year, how much instructional time is lost through them, and which students are impacted.<sup>27</sup> Given the fact

---

<sup>27</sup> Hundreds, and possibly thousands of children are removed from school “off the books” each year, for periods far longer than 10 school days. It is not unusual to hear of children moved from school without due process for weeks and months. Some are even removed early in the school year, for the remainder of the year, as part of an annual “housecleaning.” These children are



that, anecdotally, these “off the books” removals most impact already marginalized children, this collection should be a priority for OCR. The CRDC must require schools to capture and report this information, which would provide a more complete picture of lost instructional time and who it impacts, rounding out the current data collection on school removal. The department should work with stakeholders, researchers, and others to determine the most effective methods to collect these data.

### **Require reporting about referrals to “threat assessment” and outcomes for those students**

Threat assessments apply a law enforcement and terrorism framework to addressing student behavior in schools and ultimately criminalize children, further harming marginalized communities. Given the racialized nature of perceived threats, and the longstanding mistreatment of children displaying atypical behaviors, threat assessments are primed to elicit discriminatory referrals, increase the contact between law enforcement and marginalized children, and exacerbate the discrimination in school discipline that has been revealed throughout the CRDC for decades. Threat assessments also pose a risk to the privacy rights of children and the rights of children under the IDEA and Section 504. Further, every published threat assessment protocol calls for review by law enforcement, which means that nearly all threat assessments meet OCR’s definition of a “referral to law enforcement” and should be counted as such. We also note that it is generally understood that sworn law enforcement who read reports of student threats have the power to investigate and arrest students they deem to have made a threat, and often have the unilateral authority to require a hospital commitment/evaluation, such as under the Baker Act in Florida. We express concerns, as we have in the past, that students of color and those with disabilities are disproportionately referred. Moreover, the anecdotal evidence suggests that in many instances, once misconduct is deemed even mildly threatening, threat assessment teams have exercised inappropriate authority and used the process to circumvent students’ well-established due process rights and procedural requirements found in the IDEA and also protected under Section 504. The CRDC should require schools to collect and report information about students who are referred into these systems, as well as on the disciplinary outcomes of these evaluations in order to provide the necessary insight for the department and stakeholders, including families and advocates, to address these disparities.

### **Require reporting about the use of force by school-based law enforcement**

The presence of school-based law enforcement is harmful for the well-being and education of children — especially children of color, including children of color who have a disability, are LGBTQI2S+, or experience additional forms of marginalization. The CRDC includes data elements that address referrals to law enforcement agencies and school-based arrests, but it should also include the instances of assaults students experience from school-based law enforcement. Without an understanding of the frequency and disproportionality of police violence against school children, it is impossible to have a full picture of the safety and well-being of marginalized children in schools.

### **Include additional restraint and seclusion items**

The CRDC should include additional data elements centered on restraint and seclusion that highlight instances where parent contact has not been confirmed (attempted but not confirmed or no meeting held). The department, educators, families, and advocates should have access to this critical piece of information to know whether children’s parents are notified of these incidents. OCR must continue to address

---

most often placed on “homebound” instruction, meaning they are sent home with minimal ineffective tutoring off premises. Others are placed on school days that commonly end at or before 11 am, or sent home mid-day so often the cumulative time at home counts as suspension or expulsion. These children do not even receive the very minor due process protections that formally suspended and expelled children do. The current counts also do not include the children moved from school through school initiated referral to the juvenile justice system, transfers to either no school program or an inappropriate school program (e.g. without certified staff or access to credit) and those who are removed via psychiatric commitment.

disparities for students who experience restraint and seclusion while also capturing more data on this matter. Additional data elements on restraint and seclusion should include items capturing the use of chemical restraints and irritant restraints. OCR should collect data on the use of chemical restraint and irritant restraint beginning with the 2021-2022 CRDC.<sup>28</sup> We urge OCR to keep all the current data elements regarding restraint and seclusion and include these additional items.

### **Disaggregate race and ethnicity data by the American Community Survey categories**

Existing disaggregation categories obscure significant diversity within communities. Asian Americans and Native Hawaiian / Pacific Islanders (AANHPIs) are tremendously diverse.<sup>29</sup> The U.S. Census Bureau reports data annually on at least 22 distinct, self-identified AANHPI groups, each with unique linguistic, cultural, and historical differences. When government agencies report only averaged aggregate data under the “Asian” category, they conceal significant differences and inequities among the many distinct AANHPI groups. For example, for Southeast Asian Americans, the mass collective trauma from war, genocide, displacement, and the stressors associated with relocation — like English language difficulties and cultural conflicts — affect student outcomes.<sup>30</sup> Disaggregated data would help address this issue. Furthermore, we recommend disaggregating data including the Alone or In Combination section from American Community Survey.

### **Disaggregate by nonbinary where available and support implementation of this new measure**

The absence of a nonbinary reporting option has led to problematic data collection practices that create a burden for LEAs and SEAs that have adopted more inclusive student enrollment records.<sup>31</sup> We commend the department for adding a nonbinary measure for student enrollment records and disaggregation across all CRDC measures where “sex (membership)” — or simply: gender — is currently collected for K-12 students. This measure makes it possible for LEAs that are already collecting these data to report

---

<sup>28</sup> The following elements are recommended:

- Students (K-12) subjected to chemical restraint:
- Number of non-IDEA students subjected to chemical restraint, number of non-IDEA students subjected to irritant restraint (disaggregated by race, sex, nonbinary, disability-Section 504 only, EL); (Optional for 2021–22 CRDC) (Nonbinary expansion optional for 2021–22 CRDC)
- Number of students with disabilities (IDEA) subjected to chemical restraint, number of students with disabilities (IDEA) subjected to irritant restraint (disaggregated by race, sex, nonbinary, EL). (Optional for 2021–22 CRDC) (Nonbinary expansion optional for 2021–22 CRDC)

Proposed definition: The term “chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement that is not— a) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional’s authority under State law, for the standard treatment of a student’s medical or psychiatric condition; and b) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority under State law. Source: S. 1858/H.R.3474 - Keeping All Students Safe Act (117th Congress)

<sup>29</sup> Disaggregation of AAPIs: Asian Indian, Filipino, Japanese, Korean, Vietnamese, Pakistani, Cambodian, Hmong, Laotian, Thai, Burmese, Bangladeshi, and Nepalese (the most populous communities with approximately 200,000 minimum members as of 2020), in addition to “Other Asian” to capture less populated communities. Federal standards for collecting demographic data on Native Hawaiians and Pacific Islanders should use separate collection categories for the following sub-populations: Native Hawaiian, iTaukei (indigenous Fijian), Samoan, Marshallese, Tongan, Palauan, Chuukese, and Chamorro, in addition to “Other NHPI” to capture less populated communities.

<sup>30</sup> Data Disaggregation General Factsheet. SEARAC. March 26, 2019. <https://www.searac.org/education/datadisaggregation-general-factsheet/>

<sup>31</sup> For example, the Department has directed schools that use a third nonbinary gender to report these students’ genders “as either male or female... mak[ing] the determination as best it can.” See: GLSEN. (2021). Comment on U.S. Department of Education Agency Information Collection Activities; Comment Request; 21st Century Community Learning Centers Annual Performance Report. 86 Fed. Reg. 133. Available at <https://www.glsen.org/21st-Century-Community-Learning-Center-LGBTQ-Inclusive-Data>.

accurately and will help shed light on disparities.<sup>32</sup> To support implementation of this measure, we urge the department to provide robust technical assistance and guidance that supports SEAs and LEAs that have adopted more inclusive data collection of students' genders. Additionally, it will be important to prioritize safety and privacy when reporting results and to communicate clearly about barriers that will result in underreporting of nonbinary students. Even among LEAs that have a third nonbinary gender for enrollment records, students may be unaware that they can correct their records, the process to correct records may be unnecessarily arduous, and nonbinary students may not feel safe correcting their records, particularly in cases where their family or larger community is unsupportive or school climate is hostile. These barriers underscore the importance of fostering positive, LGBTQI2S+ inclusive school climates and improving our understanding of school conditions for nonbinary and all LGBTQI2S+ students.

### **Disaggregate by pregnant or parental status**

The CRDC should disaggregate and cross-tabulate data elements by pregnant or parental status to show pregnant and parenting students' experiences in schools and whether they have equal access to education. For example, pregnant students are often pushed out of educational programs and activities by school officials seeking to punish them for their pregnancy; yet, the CRDC does not require data collection on the number of pregnant students who are subject to discipline, nor the type of discipline they receive. The department, educators, families, and advocates should have access to disaggregated data by pregnant or parental status for essential data elements such as students' experiences of sex-based harassment and discipline. At the moment, there is no way to tell if there are systemic abuses happening for pregnant and parenting students who are guaranteed an equal right to an education through Title IX, the federal law that prohibits discrimination based on sex (including sexual orientation, gender identity, parenting status, and pregnancy or related medical conditions).

### **Provide information regarding district level, school level, and state level Civil Rights Coordinators**

Civil Rights Coordinators serve as a critical resource to ensure compliance with nondiscrimination laws and ensure equal opportunity for all students in schools. Detailed information about how to contact these individuals should be also available in the CRDC at the school level, where students and families have the most direct engagement, as well as all the previously requested school district level contact information. Ideally, similar information should be available at the SEA level. All this information should include the previously requested district-level information on the type of Civil Rights Coordinators, such as the required Title IX and Section 504 coordinators, as well as their names, telephone numbers, and email addresses. The requested elimination of all this detailed information except for emails is inadequate because the school districts often provided generic email addresses. The same detailed information on Civil Rights Coordinators should be newly collected at the individual school level and the SEA level.

### **Retain items on single sex interscholastic athletics in high school sports**

The CRDC should retain the three data elements on the number of single-sex interscholastic athletics high school sports to understand disparities based on sex and retain comparisons with past collections. We also commend OCR for proposing the data element focused on the number of students in grades 9-12 (or the ungraded equivalent) who participated on interscholastic athletics sports teams (disaggregated by sex, including nonbinary).

---

<sup>32</sup> Nonbinary students are more likely to report bullying based on their gender and gender expression, avoiding locker rooms and gym classes, missing school because they felt unsafe, and experiencing in-school discipline than their cisgender LGB peers. See: Kosciw, J. G., Clark, C. M., Truong, N. L., & Zongrone, A. D. (2020). *The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*. New York: GLSEN. <https://www.glsen.org/research/2019-national-school-climate-survey>.

### **Include disaggregated and cross-tabulated number of teachers at the school level by race and sex**

The CRDC should disaggregate the number of teachers at the school level by race, ethnicity, national origin, sex (including nonbinary, when available), and voluntarily disclosed disability and LGBTQI2S+ identity because teacher diversity and representation matter to students' educational experiences and outcomes.<sup>33</sup> As our country's student population becomes more diverse, we should identify where there are inequities in teacher diversity and representation in schools. We commend OCR for restoring the count of teachers employed at the school level during the current school year data element, and proposing to collect these data by race, ethnicity, and sex. We urge OCR to include this proposed data element in the Teachers and other Personnel section and enable LEAs that have a third nonbinary gender for staff to accurately report these data.

### **Clarify how other data, such as that included in the National Center for Education Statistics (NCES), are integrated into CRDC**

Integrating data systems across the Department of Education so that students, families, advocates, and the community at large can see information about public schools all in one place without requiring duplicate reporting by schools, districts, or states will increase access to data that inform effective decision-making and enable identification of disparities. The department should ensure that the CRDC data tools clearly provide the source and year for each item not collected exclusively in the CRDC survey. Such clarity will enable better understanding of students' educational opportunities and experiences.

### **Utilize the CRDC's user-friendly interface to make data available from other department data sets**

The CRDC is a unique government data collection survey because the information shared is much more publicly accessible and user-friendly to the community than other data sets and tools provided by the department. The department, educators, families, and advocates can easily access critical information and data presented in the CRDC by utilizing the user-friendly quick search tools and data analysis tools. However, other school- and district-level data, such as that included in the National Center for Education Statistics' (NCES') Common Core of Data and in EdFacts, are not as publicly accessible as the data presented in the CRDC. Integrating data systems across the department so that students, families, and the community at large can access and interpret school, district, state, and national information about public schools in an accessible format is essential to ensuring equal educational opportunities. Such clarity would enable better understanding of students' educational opportunities and experiences. Populating data from other federal collections into the CRDC would provide for more information than is available now, without asking for any additional reporting by schools, districts, or states.

### **Improve the efficiency and timeliness of data reporting**

The department, educators, families, and advocates need access to regular, timely data in order to address issues and to intervene quickly so that no children lose access to educational opportunities. Publishing data from the CRDC in a more efficient manner will enhance the effectiveness and timeliness of this critical tool for tracking potential civil rights violations and responding to discrimination and inequity in communities. Most recently, the CRDC released the 2017-2018 collection in October of 2020, which comprised data from three years before the pandemic began. The slow-moving nature of these data releases further hinders the access to timely information that reveals civil rights violations and inequities in communities. Furthermore, releasing data on an annual basis and reporting data in a timely manner would help identify and address data quality issues. The timeliness of the reporting would provide more

---

<sup>33</sup> Cherng, H.-Y. S., & Halpin, P. F. (2016). The Importance of Minority Teachers: Student Perceptions of Minority Versus White Teachers. *Educational Researcher*, 45(7), 407–420. <https://doi.org/10.3102/0013189X16671718> ; Gershenson, S., Hart, C. M. D., Lindsay, C. A., & Papageorge, N. W. (2017). The Long-Run Impacts of Same-Race Teachers. IZA Institute of Labor Economics. <https://ftp.iza.org/dp10630.pdf>

time for OCR to course-correct the incomplete and inaccurate data that often exist in CRDC data reports. To further improve efficiency, timeliness, and data quality, especially if districts are required to report annually, the department should continue to facilitate enhanced coordination between OCR and NCES to improve development and application of business rules in the CRDC data submission system, enhance school district staff capacity to collect and report data required for the CRDC, and encourage more engagement and collaboration with SEA data management staff. On a similar note, publishing national estimation CRDC data at a more efficient pace would provide the necessary information for educators, families, and advocates to have a complete picture of students' experiences in schools. This change in national estimation data would align with the release of public-use data files. We urge OCR to process and report data in an efficient and timely manner.

**Encourage states to support districts with reporting data**

OCR should encourage states to support districts with reporting CRDC data since SEAs typically have more capacity with data management and collection personnel. The department has supported states' capacity to track and report data on students and their experiences, from preschool through workforce participation, through programs such as the statewide longitudinal data systems program. The department should encourage SEAs to leverage that capacity to support local education agencies with collecting and reporting data required for the CRDC. Encouraging SEAs to support districts with data collection and reporting could help improve comparability of data across districts within states; SEAs' increased data management capacity may also help improve quality and timeliness of submitted data. Providing resources and guidance with clear examples and FAQs is an important support that the department can provide to SEAs.

As organizations committed to the fair and appropriate treatment of all children in all settings, we continue to press for changes to policy and practice — and for the critical data that make systemic change possible. A comprehensive, timely, and accessible CRDC is essential to ensuring equal educational opportunity and compliance with nondiscrimination laws. Our children deserve no less. Thank you for your consideration of our recommendations. If you have any questions or need additional information, please contact Steven Almazan, K12 education program manager at The Leadership Conference on Civil and Human Rights, at [almazan@civilrights.org](mailto:almazan@civilrights.org).

Sincerely,

The Leadership Conference on Civil and Human Rights  
The Leadership Conference Education Fund  
All4Ed  
American Association of Colleges for Teacher Education  
American Atheists  
American Civil Liberties Union (ACLU)  
American Humanist Association  
Asian Americans Advancing Justice | AAJC  
Autistic Self Advocacy Network  
Bazelon Center for Mental Health Law  
Center for Law and Social Policy (CLASP)  
Center for Learner Equity  
Children's Defense Fund  
Clearinghouse on Women's Issues  
Council of Parent Attorneys and Advocates



Disability Rights Education & Defense Fund  
Federation for Children with Special Needs  
Feminist Majority Foundation  
Girls Inc.  
GLSEN  
Hispanic Federation  
Human Rights Campaign  
IDRA (Intercultural Development Research Association)  
Lawyers' Committee for Civil Rights Under Law  
NAACP Legal Defense and Educational Fund, Inc. (LDF)  
National Alliance for Partnerships in Equity  
National Black Justice Coalition  
National Center for Learning Disabilities  
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)  
National Center for Youth Law  
National Disability Rights Network (NDRN)  
National Education Association  
National Urban League  
National Women's Law Center  
Poverty & Race Research Action Council  
Southeast Asia Resource Action Center  
Teach For America  
The Arc of the United States  
The Trevor Project