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The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington DC, 20202

The Honorable Catherine Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: Mandatory Civil Rights Data Collection (86 FR 70831; ED-2021-SCC-0158)

LGBTQ+ youth—including lesbian, gay, bisexual, transgender, queer, nonbinary, two-spirit, and intersex youth—continue to face substantial barriers to full and equitable inclusion in our nation’s K-12 learning communities, including hostile school climates and discriminatory school policies and practices. For many LGBTQ+ youth—particularly those who are transgender, nonbinary, Black, Indigenous, people of color, and people with disabilities—existing disparities have been exacerbated by the ongoing pandemic¹ and by state and local efforts to bar access to school programs, facilities, and affirming representations of LGBTQ+ people.²

GLSEN and the 42 undersigned organizations are grateful for the U.S. Department of Education’s recent efforts to dismantle barriers and address disparities impacting LGBTQ+ youth, in alignment with President Biden’s Executive Orders on racial equity and underserved communities, implementing the landmark *Bostock* ruling, and advancing gender equity and equality.³ The express and clear affirmation that “the Department interprets Title IX’s prohibition

¹ U.S. Department of Education. *Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students*. Washington, DC: 2021. <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>.

GLSEN. (2021). Advancing LGBTQ+ Inclusive Equity through COVID-19 Relief Funds. <https://www.glsen.org/covid-19-relief-funds>.

The Trevor Project. (2021). 2021 National Survey on LGBTQ Youth Mental Health. West Hollywood, California: The Trevor Project. <https://www.thetrevorproject.org/survey-2021/?section=Covid19>.

² Knowles, H. & Natanson, H. “Backlash to school books centering on race, sex and LGBTQ people turns into conservative rallying cry.” Washington Post, November 12, 2021. <https://www.washingtonpost.com/education/2021/11/12/school-book-challenges-conservative/>.

The Trevor Project. (2022). New Poll Illustrates the Impacts of Social & Political Issues on LGBTQ Youth. <https://www.thetrevorproject.org/blog/new-poll-illustrates-the-impacts-of-social-political-issues-on-lgbtq-youth/>.

GLSEN and TransAthlete. (2021). Gender Affirming and Inclusive Athletics Participation. <https://www.glsen.org/activity/gender-affirming-inclusive-athletics-participation>.

GLSEN. (2022). Inclusive Curricular Standards. <https://www.glsen.org/activity/inclusive-curriculum-standards>.

³ Executive Order 13985 of January 20, 2021. *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. 86 Fed. Reg. §14 (January 25, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>.

on discrimination ‘on the basis of sex’ to encompass discrimination on the basis of sexual orientation and gender identity,”⁴ and the publication of new resources on anti-LGBTQ+ harassment or bullying,⁵ supporting transgender students,⁶ and supporting intersex students⁷ represent meaningful and much-needed steps towards addressing deep-rooted inequities.

We see the Department’s renewed commitment to ensuring K-12 education systems are free from victimization and discrimination on the basis of sexual orientation and gender identity in many of the new and revised measures in the 2021-2022 Civil Rights Data Collection (CRDC). We commend the Department for these measures and urge revisions to further improve our understanding of school conditions for LGBTQ+ youth and to strengthen accountability for anti-LGBTQ+ discrimination, harassment, and bullying.

Measures Related to Nonbinary Students

We strongly support the Department’s addition of a nonbinary measure for student enrollment records and the disaggregation across all CRDC measures where “sex (membership)”—or simply: gender—is collected for K-12 students. This measure makes it possible for schools and LEAs that collect this data to accurately report it and will help shed light on existing disparities.

GLSEN’s national survey research has found that nonbinary students, including those who are transgender, experience more hostile school climates than their lesbian, gay, and bisexual (LGB) peers, as evidenced by higher rates of victimization based on their gender identity, gender expression, and sexual orientation. Roughly three in four nonbinary students reported that they were harassed or bullied in the past year because of their gender expression and more than two-thirds reported that they were harassed or bullied because of their sexual orientation.⁸ Nonbinary students are more likely to report feeling unsafe at school in the past year because of their gender (77.7% of transgender nonbinary students and 52.4% of all other nonbinary students vs. 8.8% of

Executive Order 13988 of January 20, 2021. *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*. 86 Fed. Reg. §14 (January 25, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>.

Executive Order 14021 of March 8, 2021. *Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*. 86 Fed. Reg. §46 (March 11, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf>.

⁴ U.S. Department of Education, Office of Civil Rights. (2021). *Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*. 86 Fed. Reg. 86 no. §117. <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-13058.pdf>.

⁵ U.S. Department of Education, Office for Civil Rights and U.S. Department of Justice, Office of Civil Rights. (2021). *Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families*. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>.

⁶ U.S. Department of Education. (2021). *Supporting Transgender Youth in Schools*. <https://www2.ed.gov/about/offices/list/ocr/docs/ed-factsheet-transgender-202106.pdf>.

⁷ U.S. Department of Education Office for Civil Rights. (2021). *Supporting Intersex Students: A Resource for Students, Families, and Educators*. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-intersex-202110.pdf>.

⁸ 72.8% of trans nonbinary and 68.7% of all other nonbinary students reported victimization based on their gender identity, compared to 36.8% of cisgender LGB students reported the same. 74.8% of trans nonbinary and 75.2% of all other nonbinary students reported victimization based on their gender expression, compared to 39.3% of cisgender LGB students reported the same. 68.4% of trans nonbinary and 76.6% of all other nonbinary students reported victimization based on their sexual orientation, compared to 66.2% of cisgender LGB students reported the same.

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>. (pp. 94, 96, 103).

cisgender LGB students).⁹ Nonbinary students are also more likely to report missing school because they felt unsafe or uncomfortable (37.7% of trans nonbinary students 38.1% of all other nonbinary students vs. 24.9% of cisgender students).¹⁰ Finally, nonbinary students are more likely than their LGB peers to report in-school discipline, with over one-third reporting that they were disciplined in school in the past year (compared to 28.5% of LGB students).¹¹

The absence of a nonbinary reporting option has led to problematic data collection practices. For example, the Department has directed LEAs that use a third nonbinary gender for enrollment records to report nonbinary students “as either male or female... mak[ing] the determination as best it can.”¹² Requiring SEAs and LEAs that have a nonbinary option to report students as male or female not only results in the collection of data that is known to be inaccurate, but also creates a burden for LEAs tasked with misgendering nonbinary students.

In addition to including the nonbinary measure in the CRDC, we urge the Department to include this measure on all collections where gender data is collected via student enrollment records, including in the *EDFacts* Submission System (ESS). The ESS provides critical information for evaluating disparities nonbinary students may experience in K-12 education systems, including data on chronic absenteeism and the number of students graduating. Unfortunately, for the 2021-2022 CRDC, this data will be disaggregated using a binary gender measure even where LEAs have data on nonbinary students.

Finally, because the nonbinary measure will only provide data on a small subset of LGBTQ+ students, we continue to urge the Department to consider facilitating voluntary data collection and encouraging voluntary data reporting inclusive of LGBTQ+ youth while working towards LGBTQ+ inclusive data collection standards and practices that improve accountability while protecting students’ privacy.¹³

The Department should support implementation through robust technical assistance and guidance.

We urge the Department to provide robust technical assistance and guidance to support the implementation of the nonbinary measure. Importantly, the Department should clarify that a students’ self-identified gender, as represented in student records, is appropriate and

⁹ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 94-95, 103).

¹⁰ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 94, 98, 103).

¹¹ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 97, 101, 104).

¹² For example, the Department has directed schools that use a nonbinary gender category 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>. GLSEN’s commends the Department for revising this collection to provide an alternative to binary coding for nonbinary students.

¹³ For example, USED guidance on state and local report cards notes that SEAs and LEAs may use disaggregated data on bullying and harassment targeting LGB students to meet ESSA reporting requirements. See: U.S. Department of Education. (2019). Opportunities and Responsibilities for State and Local Report Cards under the ESEA of 1965, as Amended by the Every Student Succeeds Act. <https://www2.ed.gov/policy/elsec/leg/essa/report-card-guidance-final.pdf>.

recommended for federal reporting of students’ “Sex (Membership)” or gender. This means not only that nonbinary students whose enrollment records affirm their gender identity are reported as nonbinary, but also that transgender boys and girls whose student records affirm their gender identities as male and female, respectively, be reported as such.

The Department should also develop broader guidance addressing concerns and common questions that SEAs can use to support LEAs in implementing more inclusive student enrollment records in ways that best support student safety and privacy. For example, nonbinary and transgender students must be informed that their parents have access to their student records so they can make fully informed decisions about correcting their enrollment records.

Additionally, the Department should share best practices that SEAs and LEAs are using to communicate that students may correct their enrollment records to ensure the process is not unnecessarily arduous,¹⁴ and to maintain separate, confidential records of sensitive information, where required. Finally, the Department can clarify how federal funds can support more inclusive student enrollment records through staff training and other means.¹⁵

The Department should communicate clearly about barriers that underscore the importance of this collection and the need to foster positive, LGBTQ+ inclusive school climates.

Even among LEAs that use a nonbinary gender category for enrollment records, nonbinary students may be unaware that they can correct their records, and the process to correct records may be unnecessarily arduous. These barriers can—and should—be minimized with gender-affirming school policies and practices¹⁶ and the Department has a role in supporting this work through the dissemination of guidance on inclusive student records, as discussed above.¹⁷ Even so, nonbinary students may not feel safe correcting their records, particularly in cases where they are not out to their family, their family is unsupportive, or they experience a hostile school climate.¹⁸

The Department must communicate clearly about these and other barriers that will result in underreporting of nonbinary students. These barriers underscore the importance of fostering

¹⁴ The National Center for Transgender Equality (NCTE) has found that state processes—or lack of processes—for correcting identity records are often intrusive and burdensome. Only 21% of transgender people who have transitioned according reported that they were able to update all of their IDs and records. See: National Center for Transgender Equality. (N.D.) Issues: Identity Documents & Privacy. <https://transequality.org/issues/identity-documents-privacy>. <https://transequality.org/issues/identity-documents-privacy>. (Accessed January 25, 2022).

See also: James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality. <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹⁵ Washick, B., Tobin, H. J., Ridings, A., & Juste, T. (2021). States’ Use of the Every Student Succeeds Act to Advance LGBTQ+ Equity: Assessment of State Plans and Recommendations. DC: GLSEN. <https://www.glsen.org/essa-implementation>. (p. 26).

¹⁶ GLSEN and NCTE. (2020). Model Local Education Agency Policy on Transgender and Nonbinary Students. <https://www.glsen.org/activity/model-local-education-agency-policy-on-transgender-nonbinary-students>.

¹⁷ GLSEN. (2021). Letter to the Secretary of Education Re: Recommendations for Advancing Equity Inclusive of LGBTQ+ Equity under the Every Student Succeeds Act (ESSA) and ARP ESSER. Available at <https://www.glsen.org/essa-implementation>.

¹⁸ Allen, B. J., Andert, B., Botsford, J., Budge, S. L., & Rehm, J. L. (2020). At the Margins: Comparing School Experiences of Nonbinary and Binary-Identified Transgender Youth. *The Journal of school health*, 90(5), 358–367. <https://doi.org/10.1111/josh.12882>.

positive, LGBTQ+ inclusive school climates and improving our understanding of school conditions for nonbinary and all LGBTQ+ students.

The Department should disaggregate data on teachers by race and sex (membership), including nonbinary where available.

Nonbinary people represent 11% of the adult LGBTQ+ population.¹⁹ While all educators can create supportive learning environments for LGBTQ+ students, research indicates that LGBTQ+ educators are more likely than their non-LGBTQ+ peers to engage in LGBTQ-inclusive and affirming practices. For example, a national survey of secondary school teachers found that LGBTQ+ educators were more than twice as likely to include the stories or contributions of LGBTQ+ people in their curriculum (31.5% vs. 14% for non-LGBTQ+ teachers). LGBTQ+ teachers were also nearly three times as likely to educate other staff or advocate for staff training about LGBTQ+ issues (25.2% vs. 8.9%) and to advocate for LGBTQ+ inclusive school or district policies (21.7% vs. 7.8%).²⁰

It is important to identify where there are inequities in teacher diversity and representation in schools, particularly as our country's student population becomes more diverse. We appreciate the restoration of the count of teachers employed at the school level during the current school year (Data Group 1003, p. A2-108), however, we ask the Department to revise this measure to enable schools to report data on educators who are nonbinary by adding "or Sex (Membership)-Expanded" after "Sex (Membership)."

We continue to urge the Department to provide additional measures on other Department collections where educators may choose to self-report their sexual orientation and gender identity.

The Department should publish data on nonbinary students at the state level data where privacy prevents publishing data at the district and school level.

Maintaining student privacy is essential. Where privacy concerns prevent the Department from publishing data on nonbinary students and educators at the district level, the Department should publish state-level data.

Directed Question 3.1: Have LEAs collected data using a third nonbinary sex category?

We do not have comprehensive data showing the scope of adoption and implementation of a nonbinary gender category for student enrollment records by LEAs and, even at the state level, the picture is incomplete. The Department notes that SEAs in California, Connecticut, the District of Columbia, Illinois, Maryland, Massachusetts, New Jersey, New Mexico, Oregon, Utah, and Virginia allow for the reporting of three gender categories. Pennsylvania's and Washington's SEAs also enable nonbinary students to affirm their gender identity in their student

¹⁹ Williams Institute. (2021). Nonbinary LGBTQ Adults in the United States. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Nonbinary-LGBTQ-Adults-Jun-2021.pdf>. (Accessed January 25, 2022).

²⁰ GLSEN. (2020). Supporting LGBTQ Students by Protecting LGBTQ Teachers. New York: GLSEN. <https://www.glsen.org/research/lgbtq-supportive-teaching>.

records.²¹ One benefit of the Department’s new measure is greater clarity regarding the availability of a nonbinary gender category as schools and LEAs respond to Directional Indicator 22, which asks if a school or LEA classified any of its students as nonbinary in its enrollment records (p. A4-23).

Directed Question 3.2: What, if any obstacles have LEAs faced in collecting such data?

Our review of this and related student records issues suggests LEAs need guidance, best practices, model policies, and technical assistance to support the implementation of more inclusive student enrollment records.²² In many cases, LEAs need new or updated student information systems because gender has been built into their software as a binary value, and sometimes also a non-changeable value.²³ Updating a student information system to be more inclusive requires money and time, including staff time for training and policy development that addresses questions that impact student privacy, such as the level of access restriction needed for data on students’ genders, and the process for correcting a student’s gender. See above (pp. 3-4) for our discussion of how the Department can provide technical assistance and guidance, including on authorized uses of federal funds, to assist SEAs in supporting LEAs implementing more inclusive student enrollment records.

Until the Department adds this nonbinary gender category to all collections where gender data is collected via student enrollment records, LEAs that have implemented more inclusive student enrollment records will continue to face the obstacle of adhering to federal reporting requirements that require reporting only binary genders.

Directed Question 3.3: What, if any, changes should OCR make to the proposed definition for nonbinary?

We recommend that the Department revise its proposed definition to clarify that nonbinary gender may be indicated by an X gender marker. SEAs like Washington and other states agencies, including departments of motor vehicles and vital records, have adopted an “X” for

²¹ Pennsylvania Information Management System. (2021). *User Manual, Vol. 1*. Available at <https://www.education.pa.gov/DataAndReporting/PIMS/ManualsCalendar/Pages/default.aspx>.

Washington Office of Superintendent of Public Education. (2020). *Comprehensive Education Data and Research System (CEDARS) Data Manual*. <https://www.k12.wa.us/sites/default/files/public/cedars/pubdocs/2019-20CEDARSDataManual.pdf>.

Washington Office of Superintendent of Public Education. (2020). *Title I, Part A Program Guide Tools and Tips for Title I, Part A Directors*. https://www.k12.wa.us/sites/default/files/public/titlei/pubdocs/documents/TitleI%20Guide%202020_2021%20MASTER%20A DA.pdf.

²² GLSEN. (2021). Letter to Secretary of Education re: Recommendations for Advancing Equity Inclusive of LGBTQ+ Equity under the Every Student Succeeds Act (ESSA) and ARP ESSER. <https://www.glsen.org/sites/default/files/2021-10/GLSEN-Federal-ESSA-and-ARP-ESSER-Recommendations.pdf>. (p. 5).

Washick, B. et al. (2021). States’ Use of the Every Student Succeeds Act to Advance LGBTQ+ Equity: Assessment of State Plans and Recommendations. DC: GLSEN. <https://www.glsen.org/essa-implementation>. (p. 26).

²³ Herold, B. “Students Embrace a Wide Range of Gender Identities. Most School Data Systems Don’t.” EdWeek, January 4, 2022. <https://www.edweek.org/leadership/students-are-embracing-a-wide-range-of-gender-identities-most-school-data-systems-dont/2022/01>.

Washick, B. et al. (2021). States’ Use of the Every Student Succeeds Act to Advance LGBTQ+ Equity: Assessment of State Plans and Recommendations. DC: GLSEN. <https://www.glsen.org/essa-implementation>. (p. 26).

Thank you to the Illinois SOGI Data Working Group and particularly Alison Stanton for insights into the technological challenges facing LEAs that are implementing more inclusive student information systems.

those who do not identify as exclusively male or female.²⁴ Additionally, technical assistance should include a list of all known ways by which schools are coding nonbinary gender in their student information systems.

We also note that the Department’s definition of the new measure, “Sex (Membership)—Expanded” is identical to that provided for the binary measure of gender—“Sex (Membership)”. The measure definition should be revised to read “An indication that students are female, male, or nonbinary” (p. A3-37).

Measures Related to Harassment or Bullying on the Basis of Sexual Orientation and Gender Identity

LGBTQ+ youth experience higher rates of harassment and bullying than their non-LGBTQ+ peers.²⁵ GLSEN’s National School Climate Survey found more than 8 in 10 LGBTQ+ secondary students were verbally harassed because of their sexual orientation, gender expression, or gender identity in the past year, and over a third reported that they were verbally harassed often or frequently.²⁶ More than one in three LGBTQ+ students were physically harassed, and one in seven were physically assaulted because of their sexual orientation, gender expression, or gender.²⁷

Transgender and nonbinary students experience more hostile school climates than their cisgender LGB peers.²⁸ Transgender students experienced the most hostile school climates, with the overwhelming majority reporting victimization based on their gender identity and gender expression.²⁹

Students who hold multiple marginalized identities commonly report victimization across these identities. At least two in five LGBTQ+ youth who are Black, Indigenous, and people of color

²⁴ 21 states and DC allows residents to mark M, F, or X on their driver's license and 15 states and DC allow residents to mark M, F, or X on their birth certificates. See: Movement Advancement Project. (2021). Equality Maps: Identity Document Laws and Policies. https://www.lgbtmap.org/equality-maps/identity_document_laws (Accessed January 25, 2022).

²⁵ Johns, M. M., Lowry, R., Haderxhanaj, L. T., Rasberry, C. N., Robin, L., Scales, L., Stone, D., & Suarez, N. A. (2020). Trends in Violence Victimization and Suicide Risk by Sexual Identity Among High School Students - Youth Risk Behavior Survey, United States, 2015-2019. *MMWR supplements*, 69(1), 19–27. https://www.cdc.gov/mmwr/volumes/69/su/su6901a3.htm?s_cid=su6901a3_w.

²⁶ 81.0% of LGBTQ+ youth reported being verbally harassed because of their sexual orientation, gender identity, or gender expression; 35.1% reported they were verbally harassed often or frequently. See: Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (p. 28).

²⁷ 34.2% of LGBTQ+ students reported being physically harassed (e.g., shoved or pushed) and 14.8% reported being physically assaulted in the past year. See: Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (p. 28).

²⁸ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (94-104).

²⁹ 83.3% of transgender students reported victimization based on their gender identity (compared to 36.8% of cisgender LGB and 52.0% of nonbinary, non-transgender LGB youth). 82.1% of transgender students reported victimization based on their gender expression (compared to 39.3% of cisgender LGB and 75.2% of nonbinary, non-transgender LGB youth). See: Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 94, 96).

(BIPOC) report bullying based on both their sexual orientation and their race.³⁰ Similarly, LGBTQ+ students who are people with disabilities experience higher levels of bullying and harassment because of their actual or perceived disability in addition to victimization based on their sexual orientation, gender identity, and gender expression.³¹

Recent studies suggest that the harm of bias-motivated harassment and bullying is especially severe.³² GLSEN's National School Climate Surveys have consistently found an association between victimization on the basis of sexual orientation, gender identity, or gender expression, and a range of adverse educational outcomes, including increased absences, lower GPAs, and a decreased likelihood of pursuing post-secondary education.³³ Anti-LGBTQ+ harassment and bullying are also associated with lower self-esteem and higher levels of depression.³⁴ LGBTQ+ youth of color who experience both racist and anti-LGBTQ+ victimization were most likely to skip school due to feeling unsafe, report the lowest levels of school belonging, and experience the highest levels of depression, compared to those who experience one or neither form of victimization.³⁵

We therefore strongly support the continued inclusion of a measure of allegations of bullying or harassment based on sexual orientation and the introduction of a new measure of allegations of

³⁰ 40.0% of both Black and Asian American/Pacific Islander students, 41.2% of Indigenous students, and 41.6% of Latinx students reported bullying based on both their sexual orientation and their race. See: Truong, N. L., Zongrone, A. D., & Kosciw, J. G. (2020). Erasure and resilience: The experiences of LGBTQ students of color, Asian American and Pacific Islander LGBTQ youth in U.S. Schools. New York: GLSEN. <https://www.glsen.org/research/aapi-lgbtq-students>. (p. 17).

Truong, N. L., Zongrone, A. D., & Kosciw, J. G. (2020). Erasure and resilience: The experiences of LGBTQ students of color, Black LGBTQ youth in U.S. Schools. New York: GLSEN. <https://www.glsen.org/research/black-lgbtq-students>. (p. 16).

Zongrone, A. D., Truong, N. L., & Kosciw, J. G. (2020). Erasure and resilience: The experiences of LGBTQ students of color, Latinx LGBTQ youth in U.S. Schools. New York: GLSEN. <https://www.glsen.org/research/latinx-lgbtq-students>. (p. 17).

Zongrone, A. D., Truong, N. L., & Kosciw, J. G. (2020). Erasure and resilience: The experiences of LGBTQ students of color, Native and Indigenous LGBTQ youth in U.S. Schools. New York: GLSEN. <https://www.glsen.org/research/native-and-indigenous-lgbtq-students>. (p. 18).

³¹ 38.9% of LGBTQ+ students with disabilities were bullied or harassed because they had a disability or because people thought they had a disability (compared to 20.9% of LGBTQ+ young people who are not students with disabilities. See: Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 90-91).

³² Russell, S.T., Sinclair, K.O., Poteat, V.P., & Koenig, B.W. (2012). Adolescent health and harassment based on discriminatory bias. *American Journal of Public Health*, 102(3): 493-495.

Birkett, M., Newcomb, M.E., & Mustanski, B. (2015). Does it get better? A longitudinal analysis of psychological distress and victimization in lesbian, gay, bisexual, transgender, and questioning youth. *Journal of Adolescent Health*, 56(3):280-285.

³³ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 46-54.)

³⁴ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 46-54.)

The impact of harassment and bullying on LGBTQ+ youth mental health is particularly alarming. In a survey of LGBTQ+ youth aged 13-17, the Trevor Project found that nearly half (48%) had seriously considered attempting suicide in the past year and 1 in 5 (20%) reported attempting suicide. See: The Trevor Project. (2021). 2021 National Survey on LGBTQ Youth Mental Health. West Hollywood, California: The Trevor Project. <https://www.thetrevorproject.org/survey-2021/>.

³⁵ Truong et al. (2020). Erasure and resilience: The experiences Asian American and Pacific Islander LGBTQ youth in U.S. Schools. <https://www.glsen.org/research/aapi-lgbtq-students>.

Truong et al. (2020). Erasure and resilience: The experiences of Black LGBTQ youth in U.S. Schools. <https://www.glsen.org/research/black-lgbtq-students>.

Zongrone et al. (2020). Erasure and resilience: The experiences of Latinx LGBTQ youth in U.S. Schools. <https://www.glsen.org/research/latinx-lgbtq-students>.

Zongrone et al. (2020). Erasure and resilience: The experiences of Native and Indigenous LGBTQ youth in U.S. Schools. <https://www.glsen.org/research/native-and-indigenous-lgbtq-students>.

bullying or harassment based on gender identity (Data Group 933). We do however urge the Department to revise the proposed definitions of harassment or bullying on the basis of sexual orientation and gender identity to further strengthen both.

The Department should define harassment or bullying to encompass associational harassment or bullying.

Students experience harassment or bullying because of the actual or perceived sex (including sexual orientation and gender identity) of an individual or individuals that they are associated with, particularly family members. In a survey of students with an LGBTQ+ parent or parents, more than two in five (42%) reported that they had been verbally harassed at school in the past year because a parent is LGBTQ+ and more than one in ten (12%) reported being physically harassed or assaulted because a parent is LGBTQ+.³⁶

While having an LGBTQ+ parent may be associated with an increased likelihood of a student being harassed or bullied because of their own actual or perceived sex (including sexual orientation, gender identity, and gender expression), these forms of sex-based harassment or bullying are distinct. Among students who have an LGBTQ+ parent, 37% reported being verbally harassed because of their actual or perceived sexual orientation. Over half of these students reported being verbally harassed *both* because a parent is LGBTQ+ and because of their sexual orientation, while the remainder reported being verbally harassed only based on their actual or perceived sexual orientation.³⁷ Nearly one-fifth (19%) of students with an LGBTQ+ parent reported that they were verbally harassed because their parent is LGBTQ+, but not because of their actual or perceived sexual orientation.³⁸

Associational harassment or bullying is not limited to harassment or bullying on the basis of sexual orientation or gender identity. We therefore recommend that the Department revise all definitions of harassment or bullying on the basis of civil rights categories to clarify that they include associational bullying.

The Department should clarify that harassment or bullying based on sexual orientations or gender identities that are not enumerated are nonetheless included.

LGBTQ+ youth who are two-spirit, agender, asexual, pansexual, queer, and otherwise identified experience harassment and bullying because of their LGBTQ+ identities. For example, GLSEN's National School Climate Survey found that 75.9% of LGBTQ+ students who identify as pansexual and 66.5% who identify as queer reported experiencing victimization based on their

³⁶ Kosciw, J. G. and Diaz, E. M. (2008). *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in Our Nation's K-12 Schools*. New York: GLSEN. <https://www.glsen.org/research/involved-invisible-ignored-lgbtq-parents-and-their-children>. (pp.52, 56).

³⁷ 21% of students reported being harassed both because of their actual or perceived sexual orientation and because a parent is LGBTQ+, representing 57% of students with an LGBTQ+ parent who reported verbal harassment because of their sexual orientation. 17% of students reported being harassed only because of their actual or perceived sexual orientation, representing 45.9% of students with an LGBTQ+ parent who reported verbal harassment because of their sexual orientation. See: Kosciw, J.G. et al. (2008). *Involved, Invisible, Ignored*. <https://www.glsen.org/research/involved-invisible-ignored-lgbtq-parents-and-their-children>. (pp.52, 54).

Kosciw, J.G. et al. (2008). *Involved, Invisible, Ignored*. <https://www.glsen.org/research/involved-invisible-ignored-lgbtq-parents-and-their-children>. (p.54).

sexual orientation.³⁹ We urge the Department to revise its proposed definitions to clarify that sexual orientations and gender identities that are not enumerated are nonetheless included.

We recommend the following amendments (underlined) to the Department’s proposed definitions of harassment or bullying on the basis of sexual orientation and gender identity:

Harassment or bullying on the basis of sexual orientation – Sexual orientation harassment or bullying refers to harmful conduct based on actual or perceived sexual orientation (including, but not limited to, harassment because a student identifies as or is perceived to be gay, lesbian, bisexual, heterosexual, or asexual). Harassment or bullying of an individual because of the actual or perceived sexual orientation of another person the individual is associated with constitutes harassment or bullying on the basis of sexual orientation. Harassment or bullying may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that is physically threatening, harmful, or humiliating. Harassment or bullying includes conduct carried out by school employees, other students, or third parties.

Harassment or bullying on the basis of gender identity – Gender identity harassment or bullying refers to harmful conduct based on actual or perceived gender identity (including, but not limited to, harassment because a student identifies as or is perceived to be transgender, cisgender, or nonbinary). Harassment or bullying of an individual because of the actual or perceived gender identity of another person the individual is associated with constitutes harassment or bullying on the basis of gender identity. Harassment or bullying may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment or bullying includes conduct carried out by school employees, other students, or third parties.

The Department should separately collect data on students subjected to, and disciplined for, harassment or bullying on the basis of sexual orientation and on the basis of gender identity.

Currently, the Department proposes to separately collect data on allegations of harassment or bullying on the basis of sexual orientation and on the basis of gender identity, but omits separate collections of LGBTQ+ based harassment or bullying from its measures of the number of students who subjected to, or were disciplined for, these forms of harassment or bullying (Data Groups 934 and 935).

The CRDC is a critical source of data on disparities that may indicate discriminatory school practices. CDC data confirms that LGBTQ+ students experience harassment and bullying at disproportionate rates.⁴⁰ GLSEN’s National School Climate Survey research indicates that school practices play a role in fostering school climates hostile to LGBTQ+ students through the

³⁹ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (p. 89).

⁴⁰ Johns, M. et al. (2020). Trends in Violence Victimization and Suicide Risk by Sexual Identity Among High School Students. https://www.cdc.gov/mmwr/volumes/69/su/su6901a3.htm?s_cid=su6901a3_w.

way that staff respond—or fail to respond—to reports of anti-LGBTQ+ bullying and harassment. For example, among LGBTQ+ students who indicated that they reported being harassed or bullied to school staff, more than three in five (60.5%) said that staff did nothing or told the student to ignore it.⁴¹ More than one in five (20.8%) were told to change their behavior by, for example, changing the way they dressed.⁴²

For these reasons, it is essential the CRDC collect separate data on the number of students subjected to, and disciplined for, harassment or bullying on the basis of sexual orientation and on the basis of gender identity. We recommend that the Department revise Data Groups 934 and 935 to replace “Civil Rights Data Category (Counts)” (p. A3-8) with “Civil Rights Data Category (Allegations)” (p. A3-9). The revision offers the additional benefit of uniform collection across measures related to harassment or bullying on the basis of all civil rights categories.⁴³

The Departments already collects data on the number of students reported as harassed or bullied on the basis of sex (including sexual orientation and gender identity), and the number of students disciplined for harassment or bullying on the basis of sex (including sexual orientation and gender identity), so we do not anticipate significant burdens on jurisdictions to respond to these additional measures. Further, collecting this data does not raise privacy concerns because Data Groups 934 and 935 ask educators to “look to the likely motives of the alleged harasser/bully, and not the actual status of the alleged victim.”

The Department should use an intersectional lens when collecting and publishing student count data.

The Department can further strengthen these and other student count measures by standardizing the collection of student data disaggregated by sex (membership)—including nonbinary where available—and race/ethnicity when collecting other measure-specific student characteristics or status data. With Data Groups 934 and 935 in particular, we recommend that the Department:

- Collect data on the number of homeless students reported as harassed or bullied, and who were disciplined for harassment or bullying, disaggregated by race/ethnicity and sex (membership), including nonbinary where available. An analysis of CDC data found that homeless high school students are bullied at nearly twice the rate of housed students (24% vs. 13%).⁴⁴ LGBTQ+ youth are overrepresented among youth experiencing homelessness, being more than twice as likely (120% more likely) to experience homelessness, compared to non-LGBTQ+ youth.⁴⁵

⁴¹ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 34-35).

⁴² Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 34-35).

⁴³ Alternatively, the Department could revise Civil Rights Data Category (Counts)” (p. A3-8) to list sexual orientation and gender identity as two additional permitted values.

⁴⁴ Institute for Children Poverty and Homelessness. (2017). More Than a Place to Sleep: Understanding the Health and Well-Being of Homeless High School Students. <https://www.icphusa.org/reports/homelessstudenthealth/>.

⁴⁵ LGBTQ+ youth are more than twice as likely (120% more likely) to experience homelessness, compared to non-LGBTQ+ youth. See: Voices of Youth Count. (2017). Missed Opportunities: Youth Homelessness in America. Chicago: Chapin Hall at

- Revise Category Sets B and C to collect data on the number of students with disabilities reported as harassed or bullied, and who were disciplined for harassment or bullying, disaggregated by race/ethnicity, in addition to sex (membership), including nonbinary where available.
- Revise Category Set D to collect data on the number of students who are English learners reported as harassed or bullied, and who were disciplined for harassment or bullying, disaggregated by race/ethnicity, in addition to sex (membership), including nonbinary where available.

Equally important, we urge OCR to publish student count data disaggregated by race/ethnicity and sex (membership)—including nonbinary, where available—in addition to other measure-specific student identities. Where privacy concerns prevent the Department from publishing disaggregated and cross-tabulated data at the district level, the Department should publish state-level data.

Measures Related to LEA Policies Prohibiting Harassment or Bullying of Students on the Basis of Sexual Orientation or Gender Identity

Studies have consistently found that anti-bullying policies that enumerate sexual orientation and gender identity are associated with better health, education, and wellbeing outcomes for LGBTQ+ youth.⁴⁶ Based on findings from GLSEN’s National School Climate Survey, LGBTQ+ students who reported having an enumerated policy at their school experienced less anti-LGBTQ+ victimization than those who reported having a generic policy or no anti-bullying policy. Additionally, LGBTQ+ students who reported having an enumerated anti-bullying policy were more likely to report bullying and were also far more likely to say that staff responses were effective than those in schools with only generic policies.⁴⁷

There is evidence of the positive impact of enumerating sexual orientation and gender identity in school policies from the perspective of educators, too. Educators in schools with enumerated anti-bullying policies reported higher levels of comfort addressing bullying based on sexual

the University of Chicago. <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>

See also: Choi, S. K., Wilson, B. D., Shelton, J., & Gates, G. J. (2015). *Serving our youth 2015: The needs and experiences of lesbian, gay, bisexual, transgender, and questioning youth experiencing homelessness*. Los Angeles: The Williams Institute with True Colors Fund, 2015. <https://truecolorsunited.org/portfolio/serving-our-youth/>.

⁴⁶ Russell, S. T., Horn, S., Kosciw, J., and Saewyc, E. (2010). Safe schools policy for LGBTQ students and commentaries. *Social Policy Report*, 24(4), 1-25.

Hatzenbuehler, M. L., & Keyes, K. M. (2013). Inclusive anti-bullying policies and reduced risk of suicide attempts in lesbian and gay youth. *Journal of Adolescent Health*, 53(1), S21-S26. <https://www.sciencedirect.com/science/article/pii/S1054139X12003540>.

Kull, R. M., Greytak, E. A., Kosciw, J. G., & Villenas, C. (2016). Effectiveness of school district antibullying policies in improving LGBT youths’ school climate. *Psychology of Sexual Orientation and Gender Diversity*, 3(4), 407.

Hall, W. (2017). The effectiveness of policy interventions for school bullying: A systematic review. *Journal of the Society for Social Work and Research*, 8(1), 45-69. <https://www.journals.uchicago.edu/doi/full/10.1086/690565>.

Seelman, K. L., Walker, M.B. (2018). Do Anti-Bullying Laws Reduce In-School Victimization, Fear-based Absenteeism, and Suicidality for Lesbian, Gay, Bisexual, and Questioning Youth?. *Journal of Youth Adolescence*, 47, 2301-2319. <https://doi.org/10.1007/s10964-018-0904-8>.

⁴⁷ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 79-81).

orientation (77.7% v. 53.9%) and gender expression (72.3% v. 52.2%) than educators in schools with no anti-bullying policy.⁴⁸

For these reasons, we strongly support the introduction of a new measure of LEA policies prohibiting discriminatory harassment or bullying of students on the basis of sexual orientation, gender identity, or religion (Data Group 1034, p. A2-44) and collection of these LEA policies via weblink, when available (Data Group 1035, p. A2-46). We also support the comparable measures related to LEA policies prohibiting discriminatory harassment or bullying of students on the basis of sex, race/color/national origin, and disability (Data Groups 988 and 1022 on p. A2-43 and p. A2-45, respectively).

The Department should report policy weblinks provided by LEAs.

Although the Department has been collecting data on LEA weblinks to policies prohibiting discriminatory harassment or bullying of students on the basis of sex, race/color/national origin, and disability since the 2013-2014 CRDC, this data has not been made available via the Department's online CRDC dataset (<https://ocrdata.ed.gov>). Instead, the Department has only reported whether an LEA indicated that it has such a policy or policies.

Omitting the results of the policy weblink collection prevents researchers from conducting further analysis on the effects of enumerated anti-bullying policies. LEA weblinks are not sensitive information. The Department should publish weblinks provided in response to the harassment or bullying weblink measures (Data Groups 1035, p. A2-46 and 1022, p. A2-45).

Measures Related to Harassment or Bullying on the Basis of Sex

We strongly support the Department's enumeration of gender identity and sexual orientation in the proposed definition of sex. This revision restores the inclusion of harassment or bullying on the basis of gender identity, which was removed—along with all references to gender—in the 2020-2021 CRDC. Enumerating gender identity and sexual orientation in the definition of sex is consistent with the *Bostock* ruling, which the Department of Justice⁴⁹ and Department of Education have affirmed apply fully to Title IX.⁵⁰

In addition to clarifying that associational harassment and bullying are included (see p. 9 above), the Department should amend the definition of harassment or bullying on the basis of sex to expressly include other common forms of sex-based harassment or bullying.

⁴⁸ Greytak, E.A., Kosciw, J. G., Villenas, C., & Giga, N. M. (2016). From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary School Students and Teachers. New York: GLSEN. <https://www.glsen.org/research/teasing-torment-school-climate-revisited-survey-us-seconda>.

⁴⁹ US Department of Justice. (2021). *Title IX Legal Manual*. <https://www.justice.gov/crt/title-ix#Bostock> (“The reasoning in these interpretations applies with equal force to discrimination against intersex people”).

⁵⁰ U.S. Department of Education, Office of Civil Rights. (2021). *Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*. 86 Fed. Reg. 86 no. §117. <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-13058.pdf>.

The Department should define “on the basis of sex” to encompass harassment or bullying based on transgender status and gender expression.

Within their *Bostock* decision, the Supreme Court framed cases before it as involving “sexual orientation or transgender status.”⁵¹ The Justice Department’s analysis, echoed by the Department of Education, rightly recognizes that *Bostock* applies equally whether a classification is viewed as one based on gender identity or the status of being transgender or cisgender.⁵² However, many institutions—including the federal government as recently as 2020—seek to justify anti-transgender discrimination by distinguishing between gender identity and transgender status.⁵³ Given the government’s prior reliance on meritless arguments distinguishing between these terms, the Department of Education should make unequivocally clear that transgender status is included by enumerating it in this definition.⁵⁴

The Department previously enumerated “gender expression” in this CRDC data element prior to its removal—along with all other references to gender—in the 2020-2021 CRDC.⁵⁵ It is all too common for LGBTQ+ young people to experience harassment or bullying because of their gender expression. According to GLSEN’s National School Climate Survey of LGBTQ+ secondary school students, a majority (56.9%) were verbally harassed at school in the past year because of their gender expression and one-fifth (20.0%) experienced this harassment often or frequently.⁵⁶ Additionally, more than one in five LGBTQ+ students (21.8%) reported that they were physically harassed at school in the past year based on their gender expression and 5.3% report that they experienced this harassment often or frequently.⁵⁷ Among elementary school students, nearly one in ten (8%) report that they do not conform to traditional gender norms and that these students are more likely than other students to experience incidents of bullying or verbal harassment at school and to feel less safe at school.⁵⁸

⁵¹ 140 S.Ct. 1731, 1749 (2020).

⁵² Memorandum of Principal Deputy Assistant Attorney General Pamela S. Karlan, Civil Rights Division, “Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972” (March 26, 2021). (“The *Bostock* Court concluded that Title VII’s prohibition of discrimination ‘because of’ sex includes discrimination because of sexual orientation and transgender status. ... [T]he best reading of Title IX’s prohibition on discrimination ‘on the basis of sex’ is that it includes discrimination on the basis of gender identity and sexual orientation.”)

⁵³ See, e.g., DoD Instruction 1300.28, “Military Service by Transgender Persons and Persons with Gender Dysphoria” (Sept. 4, 2020; subsequently revised) (stating no person will be separated or denied accession “solely on the basis of his or her gender identity” while effectively prohibiting service by most transgender people); US Department of Housing and Urban Development, Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs; Proposed rule, 85 FR 44811 (Jul. 24, 2020; subsequently withdrawn) (purporting to maintain gender identity nondiscrimination provision while expressly permitting shelters to refuse admission based on transgender status).

⁵⁴ GLSEN et al. (2021). Written Comment Title IX Public Hearing (86 FR 27429): Discrimination based on sexual orientation and gender identity in the K-12 educational environment. Available at: <https://www.glsen.org/title-ix-public-hearing-2021>.

⁵⁵ OCR included “gender expression” in the 2013-2014, 2015-2016, and 2017-2018 CRDCs. These CRDC instruments are available at: <https://www2.ed.gov/about/offices/list/ocr/data.html>.

⁵⁶ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 28-29).

⁵⁷ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 28-29).

⁵⁸ GLSEN and Harris Interactive. (2012). Playgrounds and Prejudice: Elementary School Climate in the United States, A Survey of Students and Teachers. New York: GLSEN. <https://www.glsen.org/research/playgrounds-and-prejudice-lgbtq-issues-elementary-schools>. In this study, students who do not conform to traditional gender norms are those that identified as a boy who others sometimes think act or look like a girl, or as a girl who others sometimes think act or look like a boy.

By restoring “gender expression” to this data element, the Department affirms that harassment or bullying based on how students express their genders through their style of dress and comportment constitutes harassment or bullying on the basis of sex.

We recommend the following amendments (underlined) to the Department’s proposed definition of harassment or bullying on the basis of sex:

Harassment or bullying on the basis of sex – Harassment or bullying on the basis of sex refers to harmful conduct based on actual or perceived sex (including but not limited to sexual orientation, gender identity, transgender status, gender expression, sex characteristics, sex stereotypes, and pregnancy, parental status, childbirth, termination of pregnancy, or related conditions). Harassment or bullying of an individual because of the actual or perceived sex of another person the individual is associated with constitutes harassment or bullying on the basis of sex. Harassment or bullying may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. This includes sexual harassment, dating violence, stalking, sexual assault, and rape. Harassment or bullying includes conduct carried out by school employees, other students, or third parties.

Measures Related to Harassment or Bullying on the Basis of Sex Characteristics

We strongly support the Department’s defining “on the basis of sex” to encompass “sex characteristics,” consistent with the Justice Department’s *Title IX Legal Manual*.⁵⁹ People with variations in sex characteristics, including those who are intersex, may comprise as much as 1.7% of the population⁶⁰ and face documented but understudied health and social disparities.⁶¹ Intersex students often face harassment, discrimination, and privacy infringements at school, as

⁵⁹ U.S. Department of Justice. (2021). *Title IX Legal Manual*. <https://www.justice.gov/crt/title-ix#Bostock>. (“The reasoning in these interpretations applies with equal force to discrimination against intersex people”).

⁶⁰ Blackless, M., Charuvastra, A., Derryck, A., Fausto - Sterling, A., Lauzanne, K., & Lee, E. (2000). How sexually dimorphic are we? Review and synthesis. *American Journal of Human Biology: The Official Journal of the Human Biology Association*, 12(2), 151-166.

Although this population may be comparable in size to some other LGBTQ+ subpopulations, a recent National Academies consensus study noted that “[p]opulation-based data on intersex populations are generally not available at all,” calling this “a significant gap in terms of identifying and understanding the well-being of intersex populations” and recommending that federal agencies develop, evaluate, and consider implementing measures to identify intersex populations across federal data collection efforts. See: National Academies of Sciences, Engineering, and Medicine, & Committee on Population. (2020). *Understanding the well-being of LGBTQI+ populations*. Washington, DC: Nat’l Acad. Press. <https://www.ncbi.nlm.nih.gov/books/NBK563325>. (pp. 53, 67, 401-402).

⁶¹ Rosenwohl-Mack, A., Tamar-Mattis, S., Baratz, A. B., Dalke, K. B., Ittelson, A., Zieselman, K., & Flatt, J. D. (2020). A national study on the physical and mental health of intersex adults in the US. *PLoS one*, 15(10), e0240088.

Zeeman, L., & Aranda, K. (2020). A systematic review of the health and healthcare inequalities for people with intersex variance. *International Journal of Environmental Research and Public Health*, 17(18), 6533.

National Academies. (2020) *Understanding the Well-Being of LGBTQI+ Populations*.

well as curricula that erase or stigmatize bodies like theirs.⁶² These experiences contribute to educational, health, and other disparities.⁶³

Increasing debate and scrutiny surrounding students' sex characteristics—including scrutiny mandated by school sports legislation passed in several states, and proposed in many more—may increase the risk of harassment for intersex students. In accord with its affirmed protections for intersex students,⁶⁴ the Department should also collect data on the number of harassment or bullying allegations reported by students on the basis of sex characteristics, including intersex status.

We recommend the following definition for this data element:

Harassment or bullying on the basis of sex characteristics – Sex characteristics harassment or bullying refers to harmful conduct on the basis of actual or perceived variations in sex characteristics (including, but not limited to, harassment because a student has or is perceived to have variations in sex characteristics, identifies as or is perceived to be intersex, or is associated with such an individual). Sex characteristics include sexual or reproductive anatomy, chromosomal patterns, hormone function, secondary sex characteristics, or any combination thereof. Variations in sex characteristics, sometimes called intersex traits, include any combination of sex characteristics at birth that may be perceived as not fitting typical, binary definitions of male or female in terms of development, appearance, or function. Harassment or bullying may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that is physically threatening, harmful, or humiliating. Harassment or bullying includes conduct carried out by school employees, other students, or third parties.

Because this data element is part of an existing question (allegations of harassment or bullying on the basis of sex), we do not anticipate significant burdens on jurisdictions to respond to it.

⁶² Simons, J. D., Gonzalez, J. M., & Ramdas, M. (2020). Supporting intersex people: Effective academic and career counseling. *Journal of LGBT Issues in Counseling*, 14(3), 191-209.

Brief of interACT: Advocates for Intersex Youth, et al., as Amicus Curiae in Support of Respondent, Gloucester County School Board v. G.G. ex rel. Grimm, No. 16-273 (U.S. Mar. 2, 2017).

InterACT. (2018). What We Wish Our Teachers Knew. <https://interactadvocates.org/wp-content/uploads/2018/07/BROCHURE-interACT-Teachers-final.pdf>.

⁶³ Henningham, M., & Jones, T. (2021). Intersex students, sex-based relational learning & isolation. *Sex Education*, 21(5), 600-613.

Rosenwohl-Mack A. et al. (2020). A national study on the physical and mental health of intersex adults in the U.S.

Jones, T. (2016). The needs of students with intersex variations. *Sex Education*, 16(6), 602-618.

⁶⁴ U.S. Department of Education Office for Civil Rights. (2021). Supporting Intersex Students: A Resource for Students, Families, and Educators. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-intersex-202110.pdf>.

Measures Related to Sexual Assault and Rape

CDC data show that LGBTQ+ youth experience elevated rates of sexual victimization.⁶⁵ GLSEN's National School Climate Survey found that a majority (58.3%) of LGBTQ+ students reported sexual harassment at school in the prior year.⁶⁶

State legislation attempting to undermine the civil rights of transgender and nonbinary youth by preventing them from participating in sports or accessing school facilities that align with their gender identity⁶⁷ creates conditions in which they are more likely to be sexually assaulted. A recent study by the American Academy of Pediatrics found that transgender and nonbinary students who were banned from using locker rooms and restrooms that matched their gender identity were significantly more likely to have been sexually assaulted during the previous 12 months.⁶⁸ This increased risk of sexual assault was observed among transgender boys (1.3 times higher), transgender girls (2.5 times higher), and nonbinary adolescents who were designated female at birth (1.4 times higher).⁶⁹

The Department should adopt more specific definitions of “rape” and “sexual assault” that encompass LGBTQ+ students’ experiences.

We appreciate the Department clarifying that all students can be victims of rape and sexual assault, regardless of sex, sexual orientation, or gender identity. However, the Department's proposed definitions may otherwise exclude some incidents of rape and sexual assault experienced by LGBTQ+ young people.

The Department should revise its definitions of rape and sexual assault to center the absence of consent, consistent with the Department's definitions of rape and sexual assault under the Clery

⁶⁵ Williams, R. D., & Gutierrez, A. (2021). Increased likelihood of forced sexual intercourse, sexual violence, and sexual dating violence victimization among sexual minority youth. *Journal of community health*, 1-8.

Johns, M. et al. (2020). Trends in Violence Victimization and Suicide Risk by Sexual Identity Among High School Students. https://www.cdc.gov/mmwr/volumes/69/su/su6901a3.htm?s_cid=su6901a3_w

Kann, L., Olsen, E. O. M., McManus, T., Harris, W. A., Shanklin, S. L., Flint, K. H., ... & Zaza, S. (2016). Sexual identity, sex of sexual contacts, and health-related behaviors among students in grades 9–12—United States and selected sites, 2015. *Morbidity and Mortality Weekly Report: Surveillance Summaries*, 65(9), 1-202. <https://files.eric.ed.gov/fulltext/ED575473.pdf>.

⁶⁶ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (p. 30).

⁶⁷ Between 2020 and 2021, nine states have enacted discriminatory laws barring transgender youth from participating in school athletics programs that align with their gender and others have required or encouraged discriminatory practices administratively. See: GLSEN and TransAthlete. (2021). Gender Affirming and Inclusive Athletics Participation. <https://www.glsen.org/activity/gender-affirming-inclusive-athletics-participation>.

In 2021, Tennessee passed a bill (HB1233) barring transgender students from using school bathrooms and locker rooms that align with their gender. See: HRC. (2021). Tennessee Governor Lee Signs Anti-Transgender Student Bathroom Bill 2.0 into Law. <https://www.hrc.org/press-releases/tennessee-governor-lee-signs-anti-transgender-student-bathroom-bill-2-0-into-law>.

Several states have already introduced or pre-filed similar discriminatory bills in 2022. See, e.g., Missouri SB 781, New Hampshire HB 198, South Carolina HB 4608, South Dakota SB 46, and Oklahoma SB 1164.

⁶⁸ Ehrensaft, D., & Rosenthal, S. M. (2019). Sexual assault risk and school facility restrictions in gender minority youth. *Pediatrics*, 143(6). <https://pubmed.ncbi.nlm.nih.gov/31061221>.

See also: Murchison, G. R., Agénor, M., Reisner, S. L., & Watson, R. J. (2019). School restroom and locker room restrictions and sexual assault risk among transgender youth. *Pediatrics*, 143(6). <https://publications.aap.org/pediatrics/article/143/6/e20182902/76816/School-Restroom-and-Locker-Room-Restrictions-and>.

⁶⁹ Ehrensaft, D. & Rosenthal, S. M. (2019). Sexual assault risk and school facility restrictions in gender minority youth. *Pediatrics*, 143(6). <https://pubmed.ncbi.nlm.nih.gov/31061221>. (p. 5).

Act.⁷⁰ Additionally, the Department should define rape to include a broader range of non-consensual sex, including when an individual with a penis is made to penetrate another person's vagina, anus, or mouth; and when one person performs non-penetrative oral sex on another person with a vagina without the consent of one of the people involved.

The Department should further revise its definition of sexual assault to add clarity and specificity. For example, the Department could define sexual assault as “the intentional touching, over or under clothing, of the breast, vagina, vulva, penis, testicle, anus, buttock, inner thigh, or other private body parts of another person, with any body part or object; or of any part of another person's body with a private body part; without the consent of one of the people.”

The Department should include measures on outcomes of all allegations of harassment or bullying on the basis of civil rights categories, including sexual orientation and gender identity.

As proposed, the CRDC only collects comprehensive data on the outcomes of allegations of one subset of harassment or bullying: staff-on-student sexual assault (including rape). We support the collection of this data via the CRDC, but recommend that the Department instead collect this data as part of an expanded collection of data on outcomes following allegations of harassment or bullying on the basis of civil rights categories, including sexual orientation and gender identity. We recommend that the Department:

- Separately collect data on allegations of sexual harassment—including sexual assault (including rape), dating violence, and stalking—under Data Group 933.
- Collect data on outcomes following allegations of staff-on-student harassment or bullying across civil rights categories listed under Data Group 933. These can be structured similarly to Data Groups 1026, 1027, 1028, and 1029.
- Collect data on outcomes following allegations of student-on-student harassment or bullying across civil rights categories listed under Data Group 933, specifically, the number of allegations for which a student was determined to be responsible, the number of allegations for which a student was determined to be not responsible, and the number of allegations where a decision remained pending.

We further recommend retiring Data Groups 1026, 1027, 1028, and 1029, as these would be preserved and expanded as detailed above. Finally, we recommend reviewing and potentially retiring the Offenses Table (Data Group 952), in consultation with organizations focused centrally on the issue of community violence and its impact on students' equal access to education. In its current form, Data Group 952 includes no outcomes (disciplinary or otherwise) and no information on students impacted by the collected incidents (including student demographics) that would enable an analysis of disparities and the potential role of school practices. Additionally, at least some portion of this collection appears to be duplicative of other

⁷⁰ The Clery regulations define “rape” as “[t]he penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, without the consent of the victim.” 34 C.F.R. App’x A to Subpart D of Part 668 (emphasis added). The Clery regulations define “sexual assault” as “[a]n offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s UCR program and included in Appendix A of this subpart.” 34 C.F.R. § 668.46. Appendix A of the Clery regulations, in turn, define “fondling” as “[t]he touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.” 34 C.F.R. App’x A to Subpart D of Part 668 (emphasis added).

collections, such as the School-Associated Violent Death Surveillance System and the Gun Free Schools Act (GFSA) Survey via EdFacts/EMaps.

Measures Related to Participation in Interscholastic Athletics Participation

Interscholastic athletics have demonstrated academic and well-being benefits.⁷¹ Among LGBTQ+ youth specifically, research has found psychological well-being and school belonging benefits of sports participation.⁷²

Unfortunately, LGBTQ+ students are half as likely to participate in athletic-related activities as their non-LGBTQ+ peers.⁷³ Transgender and nonbinary students commonly experience discriminatory policies or practices around school locker rooms: 55.5% of transgender students and 32.8% of nonbinary students who do not identify as transgender reported being prevented from using the locker room that aligns with their gender.⁷⁴ Transgender and nonbinary students were also more likely than their cisgender peers to report that they avoided school locker rooms because they felt unsafe or uncomfortable.⁷⁵

⁷¹ U.S. Office of the Assistant Secretary for Health. (2019). *The National Youth Sports Strategy*.

https://health.gov/sites/default/files/2019-10/National_Youth_Sports_Strategy.pdf.

Eime, R. M., Young, J. A., Harvey, J. T., Charity, M. J., & Payne, W. R. (2013). A systematic review of the psychological and social benefits of participation in sport for children and adolescents: Informing development of a conceptual model of health through sport. *International Journal of Behavioral Nutrition and Physical Activity*, 10(98).

Biddle, S. J. H., & Asare, M. (2011). Physical activity and mental health in children and adolescents: A review of reviews. *British Journal of Sports Medicine*, 45(11), 886-895.

Taliaferro, L. A., Eisenberg, M. E., Johnson, K. E., Nelson, T. F., Neumark-Sztainer, D. (2011). Sport participation during adolescence and suicide ideation and attempts. *International Journal of Adolescent Medicine and Health*, 23 (1), 3-10.

Snyder, A., Martinez, J., Bay, R., Parsons, J., Sauers, E., & McLeod, T. (2010). Health-related quality of life differs between adolescent athletes and adolescents nonathletes. *Journal of Sport Rehabilitation*, 19, 237-248.

Slutzky, C. B., & Simpkins, S. D. (2009). The link between children's sport participation and self-esteem: Exploring the mediating role of sport self-concept. *Psychology of Sport and Exercise*, 10(3), 381-389.

⁷² Clark, C. M., & Kosciw, J. G. (2022). Engaged or excluded: LGBTQ youth's participation in school sports and their relationship to psychological well-being. *Psychology in the Schools*, 59(1), 95-114.

GLSEN. (2021). Gender Affirming and Inclusive Athletics Participation. <https://www.glsen.org/activity/gender-affirming-inclusive-athletics-participation>.

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<https://www.glsen.org/sites/default/files/2020-06/The%20Experiences%20of%20LGBT%20Students%20in%20Athletics.pdf>.

⁷³ 15.9% of LGBTQ+ students participated in intramural sports, compared to 35.8% of cisgender, heterosexual students, and 19.2% of LGBTQ+ students participated in interscholastic sports, compared to 40.2% of cisgender, heterosexual students. See: Greytak et al. (2016). From Teasing to Torment. <https://www.glsen.org/research/teasing-torment-school-climate-revisited-survey-us-seconda>.

See also: Goldberg, S.K. (2021) Fair Play: The Importance of Sports Participation for Transgender Youth. Center for American Progress. Available at <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play/>.

The Trevor Project, "LGBTQ Youth Sports Participation" (2020). <https://www.thetrevorproject.org/wp-content/uploads/2020/06/June-2020-Brief-LGBTQ-Youth-Sports-Participation-Research-Brief.pdf>.

Human Rights Campaign, "Play to Win: Improving the Lives of LGBTQ Youth in Sports" (2018). <https://www.hrc.org/resources/play-to-win-improving-the-lives-of-lgbtq-youth-in-sports>.

⁷⁴ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 96, 100, 103-104).

⁷⁵ 69.1% of transgender and 45.3% of nonbinary students reported avoiding locker rooms because they felt unsafe or uncomfortable, compared to 29.5% of cisgender LGB students. See: Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (pp. 94, 98, 103).

The Department should collect data on opportunities to participate in interscholastic athletic programs that vary across students' genders.

We support the Department's proposal to collect data on student participation in school athletics disaggregated by sex (membership), including nonbinary, where available. However, we urge the Department to include measures related to opportunities to participate in athletic programs that vary across students' genders.

It is well established that there are gender disparities in students' participation in school sports.⁷⁶ Availability, access, and students' experiences of comfort and safety contribute to these disparities. For transgender students, these disparities increasingly take the form of discriminatory bans or invasive barriers to participating in the athletic programs that align with their gender identities.⁷⁷

Given the academic and well-being benefits of participating in sports, the CRDC should include measures that enable the analysis of how students' genders impact their opportunities to participate in school athletic programs. For example, the Department could amend and retain Data Groups 937 and 938 to capture the number of "boys' sports" and "girls' sports" and "boys' teams" and "girls' teams," respectively, that schools offer. In this case, boys' sports and boys' teams and girls' sports and girls' teams should be defined to include students who participate in sports or teams that primarily serve boys and girls, respectively, and replace prior CRDC references to "male-only" and "female-only" sports and teams.⁷⁸ Data Group 939 should also be revised to capture student participation counts in "boys'," "girls'," and "all other" athletic programs by sex (membership), including nonbinary where available, and race/ethnicity.

Measures Related to Student Discipline

GLSEN's National School Climate Survey found that more than one in four (28%) LGBTQ+ students reported being disciplined for public displays of affection that are not disciplined when involving non-LGBTQ+ students and 3% reported being disciplined simply for identifying as

⁷⁶ U.S. Office of the Assistant Secretary for Health. (2019). *The National Youth Sports Strategy*. https://health.gov/sites/default/files/2019-10/National_Youth_Sports_Strategy.pdf. (pp. 35, 51).

Goldberg, S.K. (2021) Fair Play: The Importance of Sports Participation for Transgender Youth. Center for American Progress. Available at <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play/>.

The Trevor Project. (2020). LGBTQ Youth Sports Participation. <https://www.thetrevorproject.org/wp-content/uploads/2020/06/June-2020-Brief-LGBTQ-Youth-Sports-Participation-Research-Brief.pdf>.

National Women's Law Center. (2011). Gender Equity in Education: A Data Snapshot. <https://www2.ed.gov/about/offices/list/ocr/docs/gender-equity-in-education.pdf>.

⁷⁷ GLSEN & TransAthlete. (2021). Gender Affirming and Inclusive Athletics Participation. <https://www.glsen.org/activity/gender-affirming-inclusive-athletics-participation>.

Goldberg, S.K. (2021) Fair Play: The Importance of Sports Participation for Transgender Youth. Center for American Progress. Available at <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play/>.

⁷⁸ Students may participate in an athletic program that primarily serves students of another gender for a variety of reasons, including discriminatory state laws or regulations that prevent them from participating in a program that aligns with their gender identity and the unavailability of program that aligns with their gender identity. See, e.g.: GLSEN & TransAthlete. (2021). Gender Affirming and Inclusive Athletics Participation. <https://www.glsen.org/activity/gender-affirming-inclusive-athletics-participation>. Women's Sports Foundation. (2019). Issues Related to Girls and Boys Competing with and Against Each Other in Sports and Physical Activity Settings. <https://www.womenssportsfoundation.org/wp-content/uploads/2019/08/issues-related-to-girls-and-boys-competing-with-and-against-each-other-in-sports-and-physical-activity-settings-the-foundation-position.pdf>.

LGBTQ+.⁷⁹ Additionally, GLSEN found that experiencing anti-LGBTQ+ discrimination at school is associated with an increased likelihood of experiencing school discipline. Compared to their LGBTQ+ peers who did not experience LGBTQ+ related discrimination at school, LGBTQ+ students who experienced discriminatory policies and practices were more likely to have been disciplined at school (40.2% vs. 22.6%).⁸⁰ In effect, schools' discriminatory policies and practices make it "against the rules" to be LGBTQ+, resulting, for example, in trans youth being disciplined for using the bathroom that aligns with their gender.⁸¹

This and other research suggests that LGBTQ+ students—particularly those who are transgender, nonbinary, BIPOC, and people with disabilities—are subjected to school discipline at elevated rates.⁸²

The Department should use an intersectional lens when collecting and publishing student discipline data.

Black LGBTQ+ youth are almost twice as likely to report being disciplined by removal from school (suspension or expulsion) than their white LGBTQ+ peers.⁸³ Additionally, LGBTQ+ students with disabilities are more likely to have experienced school discipline than their LGBTQ+ peers without disabilities and are also more likely to have been involved in the justice system as a result of school discipline.⁸⁴ These findings underscore the importance of using an intersectional lens when examining school conditions for LGBTQ+ students and other students who experience marginalization.

We support that Department's collection of data disaggregated by sex (membership), including nonbinary where available, and race/ethnicity via Category Set A on measures related to the discipline of students without disabilities, restraint or seclusion for non-IDEA students, and school days missed due to out-of-school suspensions.

We appreciate that the Department consistently collects data on students with disabilities and students who are English learners disaggregated by sex (membership), including nonbinary

⁷⁹ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (p. 41).

⁸⁰ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (p. 51).

⁸¹ Grinberg, Emanuella. (2016). Transgender teen fights back after suspension for using 'wrong' bathroom. CNN. <https://www.cnn.com/2016/04/26/health/sc-transgender-student-bathroom-suspension/index.html> (Accessed July 23, 2021).
Transgender Law Center. (2016). Transgender Student Files Federal Lawsuit Against Kenosha Wisconsin School District. <https://transgenderlawcenter.org/archives/13126> (Accessed July 23, 2021).

⁸² Palmer, N. A. and Greytak, E. A. (2017). LGBTQ student victimization and its relationship to school discipline and justice system involvement. *Criminal justice review*, 42(2), 163-187.

Arredondo, M., Gray, C., Russell, S., Skiba, R., & Snapp, S. (2016). Documenting disparities for LGBT students: Expanding the collection and reporting of data on sexual orientation and gender identity. *Discipline Disparities: A Research-to Practice Collaborative*. The Equity Project. Bloomington, IN.

Palmer, N.A., Greytak, E.A., & Kosciw, J.G. (2016). *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth*. New York: GLSEN. <https://www.glsen.org/research/educational-exclusion-drop-out-push-out-school-prison-pipeline>.

⁸³ Kosciw, J.G. et al. (2020). The 2019 National School Climate Survey. <https://www.glsen.org/research/2019-national-school-climate-survey>. (p. 111.)

⁸⁴ Palmer et al. (2016). *Educational Exclusion*. <https://www.glsen.org/research/educational-exclusion-drop-out-push-out-school-prison-pipeline>.

where available, on measures related to the discipline of students with and without disabilities, restraint or seclusion, and school days missed due to out-of-school suspensions. We urge the Department to further strengthen these measures by standardizing the collection of data disaggregated by both “Racial Ethnic” and “Sex (Membership) or Sex (Membership)—Expanded,” when collecting other measure-specific student characteristic or status data.

The Department should improve measures related to law enforcement officers in our nation’s schools.

School-based law enforcement officers are associated with a school-to-prison pipeline that disproportionately impacts students who are LGTBQ+, particularly those who are BIPOC and people with disabilities.⁸⁵ For example, a 2016 national survey of juvenile justice facilities across the U.S. found that 40% of girls and 20% of all detained youth identified as LGTBQ+, while LGTBQ+ youth represented 7 to 9% of the youth population at the time. Of these detained LGTBQ+ youth, 85% were youth of color.⁸⁶

As proposed, the CRDC does not collect full and accurate data on the number of law enforcement officers patrolling our country’s public schools.⁸⁷ In light of the growing body of research that shows that the presence of law enforcement officers at school is associated with discriminatory discipline practices,⁸⁸ it is critical that we have an accurate account of the number of law enforcement officers who patrol our schools districts. We recommend the following revisions:

- The Security Staff (FTE) Table (Data Group 975, p. A2-90) should be added to the LEA survey. This revision will capture law enforcement officers who are assigned to patrol a school district, but are not FTE at any one school.

⁸⁵ The Advancement Project and The Alliance for Educational Justice. (2018). We Came to Learn: A Call to Action for Police Free Schools. <https://advancementproject.org/wecametolearn/>.

Mitchum, P. and Moodie-Mills, AC. (2014). Beyond Bullying: How Hostile School Climate Perpetuates the School-to-Prison Pipeline for LGBT Youth. Washington DC: Center for American Progress. <https://www.americanprogress.org/wp-content/uploads/2014/02/BeyondBullying.pdf>.

⁸⁶ Center for American Progress and Movement Advancement Project. (2016). Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBT Youth. Washington & Denver. <https://www.lgbtmap.org/file/lgbt-criminal-justice-youth.pdf>. See also: Kathryn E. W. Himmelstein and Hannah Brückner, “Criminal-justice and school sanctions against nonheterosexual youth: a national longitudinal study” *Pediatrics* vol. 127,1 (2011): 49-57. doi:10.1542/peds.2009-2306.

Development Services Group, Inc. (2014). LGBTQ Youths in the Juvenile Justice System. Prepared for the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice (cooperative agreement number 2013–JF–FX–K002). <https://www.ojjdp.gov/mpg/litreviews/LGBTQYouthsInTheJuvenileJusticeSystem.pdf> (Accessed July 20, 2021).

⁸⁷ Whitaker, A., Cobb, J., Leung, V., and Nelson, L. (2021). No Police in Schools: A Vision for Safe and Supportive Schools in California. <https://www.aclusocal.org/en/no-police-in-schools>. p. 37.

⁸⁸ Anderson, K. (2018). Does more policing make middle schools safer? Brookings Institute.

<https://www.brookings.edu/blog/brown-center-chalkboard/2018/11/08/does-more-policing-make-middle-schools-safer/> (Accessed June 24, 2021).

Merkwae, A. (2015). Schooling the Police: Race, Disability, and the Conduct of School Resource Officers. *Michigan Journal of Race & Law* 21, no. 1 (2015): 147-181. Available at: <https://repository.law.umich.edu/mjrl/vol21/iss1/6>.

Nance, JP. (2016). Students, Police, and the School-to-Prison Pipeline. *Washington University Law Review* 99, no. 4: 919-987. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2577333 (Accessed June 24, 2021).

Whittenberg, T. and Fernandez, M. (2020). Ending Student Criminalization and the School-to-Prison Pipeline. New York: NYU Steinhardt Metropolitan Center for Research on Equity and the Transformation of Schools, <https://steinhardt.nyu.edu/metrocenter/ejroc/ending-student-criminalization-and-school-prison-pipeline> (Accessed June 24, 2021).

Education Week Research Center. (2021). Policing America’s Schools. <https://www.edweek.org/which-students-are-arrested-most-in-school-u-s-data-by-school#/overview> (Accessed June 24, 2021).

- The Security Staff Type Data Category (p. A3-34) should be revised to include non-sworn law enforcement officers who may carry out law enforcement duties, including but not limited to carrying firearms, carrying less-lethal weapons, detaining students, and issuing citations.

We further recommend revisions to the Department’s measures related to referrals to law enforcement and school arrests. In addition to collecting the unduplicated count of students subjected to referrals and arrests, the CRDC should collect data on instances of referrals and arrests. This would provide greater clarity regarding the frequency of these forms of discipline. Finally, the Department should amend its definition of “referral to law enforcement” to specify that “threat assessments” involving law enforcement officers are considered referrals to law enforcement and should also track whether a referral occurred as part of a threat assessment process or not.

Directed Question 4.2: Should data collection include the use of chemical or irritant restraints by a sworn law enforcement officer assigned to a school?

The Department should collect data on the use of chemical or irritant restraints by law enforcement officers (sworn or unsworn) and other school security staff. Pepper spray and chemical irritants are weapons and their use can cause serious harm, including respiratory distress and symptoms of post-traumatic stress.⁸⁹ Future CRDC surveys should also collect data on assaults of students, the use of firearms against students, and the use of other “less-lethal” weapons against students by law enforcement officers or school security staff, which may disproportionately impact students experiencing marginalization, including students who are LGBTQ+, BIPOC, and students with disabilities.⁹⁰

Conclusion

We thank the Department for considering these recommendations and commend the Department’s renewed commitment to ensuring safe, inclusive, and nondiscriminatory educational environments for all students, including LGBTQ+ and other students who experience marginalization.

If you would like to discuss these recommendations, please contact Aaron Ridings of GLSEN at 202-621-5815 or aaron.ridings@glsen.org. Thank you for your consideration.

Sincerely,

GLSEN
Advocates for Youth
American Association of Colleges for Teacher Education

⁸⁹ Physicians for Human Rights. (2017). Health Impacts of Crowd-Control Weapons: Chemical Irritants (Tear Gas and Pepper Spray). <https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-chemical-irritants-tear-gas-and-pepper-spray/>.

Nelson, L., Leung, V., and Cobb, J. (2016). The Right to Remain a Student: How California School Policies Fail to Protect and Serve. CA: ACLU of California. https://www.aclunc.org/docs/20161019-the_right_to_remain_a_student-aclu_california_0.pdf.

⁹⁰ Tchekmedyan, A. “Video Shows Deputy Slam Lancaster Student to the Ground at School.” L. A. Times, October 8, 2021. <https://www.latimes.com/california/story/2021-10-08/sheriffs-deputy-body-slam-antelope-valley-teen>.

American Association of University Women
American Psychological Association
American School Counselor Association
Athlete Ally
California Women's Law Center
Center for LGBTQ Economic Advancement & Research (CLEAR)
CenterLink: The Community of LGBT Centers
COLAGE
EDGE Consulting Partners
Equality California
Equality Federation
Family Equality
FORGE, Inc.
Forum for Youth Investment
Healthy Teen Network
Howard Brown Health
Human Rights Campaign
interACT: Advocates for Intersex Youth
Legal Momentum, the Women's Legal Defense and Education Fund
Los Angeles LGBT Center
Mazzoni Center
Movement Advancement Project
National Alliance for Partnerships in Equity
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition for LGBTQ Health
National Education Association
National LGBTQ Task Force
National Organization for Women
National Women's Law Center
PFLAG National
PowerOn, a program of LGBT Tech
Silver State Equality
Stop Sexual Assault in Schools
The Trevor Project
TransAthlete.com
TransFamily Support Services
True Colors United
Women's Law Project