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October 31, 2022

Submitted via www.reginfo.gov

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Governance and Strategy Division
Office of the Chief Data Officer
Office of Planning, Evaluation and Policy Development
U.S. Department of Education
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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, we write in response to the notice published in the Federal Register on September 30, 2022, regarding a proposed Civil Rights Data Collection (CRDC) Information Collection Request (ICR) for the 2021-22 and 2023-24 school years.

We appreciate that the U.S. Department of Education accepted some of the recommendations that we, along with 38 civil rights and education organizations, submitted in response to the notice published in the Federal Register on December 13, 2021.¹ These data are integral to protecting students and ensuring that their civil rights are upheld.² In

¹ In February 2022, The Leadership Conference and 38 organizations submitted comments in response to the notice published in the Federal Register on December 13, 2021, regarding a proposed CRDC Information Collection Request (ICR) for the 2021-22 school year: <https://civilrights.org/resource/leadership-conference-comments-on-civil-rights-data-collection/>

The recommendations that were accepted in this current proposal for the 2021-22 and 2023-24 school years include:

1) Retaining the collection of data on all schools, 2) Including information about schools' support for remote learning, 3) Retaining teacher experience, teacher absenteeism, and teacher retention items, 4) Retaining support services staff data, 5) Retaining all early childhood education items, 6) Retaining Advanced Placement (AP) test-taking items, 7) Retaining item related to the number of EL students enrolled in Language Instructional Educational Programs by disability status including IDEA-eligible and 504-status, 8) Retaining item regarding participation in credit recovery programs, 9) Retaining the count of children with disabilities in preschool who are served only under Section 504, and 10) Providing information regarding district level, school level, and state level Civil Rights Coordinators

² 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>

response to the recently published draft survey, we would like to reinforce the need for additional changes, and hope that they will be considered as this process moves forward.

Collect and report universal data on an annual basis.

We are disappointed that the recent notice indicates that there will not be CRDC data collected for the 2022-2023 school year. We urge the department to reconsider this decision, given the importance of timely data.³ 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.

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

We commend OCR for proposing data elements focused on the amount of virtual instruction provided by teachers and the percentage of students who received virtual instruction. We ask that these new elements include student characteristics so that they can be disaggregated at the school level.

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

Although we appreciate the inclusion of data about the amount of virtual instruction provided (and urge its disaggregation at the school level), we ask that the department also include information about the extent to which various methods of instruction were provided to students based on race, ethnicity, disability, English learner (EL) status, and other student characteristics.

Include previously collected school finance items for the 2021-22 school year during the transition to the National Center for Education Statistics (NCES) collection of these data.

We commend OCR for collaborating with 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.

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

While we appreciate the inclusion of a question about whether districts have enumerated anti-bullying and anti-harassment policies, the request for links to those policies, and the number of harassment or bullying allegations reported by students on the basis of gender identity, we are disappointed that the survey does not propose to 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.⁴ OCR can do this by replacing Civil Rights Categories (Counts) with Civil Rights 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.⁵ OCR should also clarify that bullying and harassment based on sex includes bullying and harassment based on transgender status, gender

³ 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/>

⁴ 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.

⁵ This is in reference to Data Group 933: The number of reported allegations of harassment or bullying.

expression, as well as sexual assault (including rape), dating violence, and stalking.⁶ 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,⁷ and separately the count of students who were disciplined for sexual harassment, including sexual assault (including rape), dating violence, and stalking.⁸ 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,⁹ and the number of allegations against a student that had a determination that remained pending.¹⁰

Include bullying and harassment by staff, including sexual assault.

We are disappointed that the proposed survey does not include separate 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).¹¹ 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).¹²

Replace staff-on-student “sex offenses” data groups.¹³

We are disappointed that the department has proposed to retain the flawed staff-on-student “sex offenses” data groups and recommend that instead OCR adopt the recommendation above with regard to bullying and harassment by staff.

⁶ 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.

⁷ This is in reference to Data Group 934: The number of students disciplined for engaging in harassment or bullying.

⁸ 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.”

⁹ This can be structured similarly to Data Group 1027.

¹⁰ This can be structured similarly to Data Group 1028.

¹¹ This can be structured similarly to Data Group 1025.

¹² 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).

¹³ 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.

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

While we appreciate the importance of data about bullying and harassment based on religion, we urge the department to make this data element 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.

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

While we appreciate that some of the data elements are disaggregated by both IDEA- and 504-status, we are disappointed that the survey does not propose that all data elements that are disaggregated by disability status are disaggregated by both IDEA- and 504-status.¹⁴

Include and disaggregate the experiences of children with disabilities placed by school districts in non-public schools in the CRDC.

We are disappointed that the proposed survey does not include the experiences of children with disabilities in non-public schools. The department collects enrollment data, but it does not collect any data about how those students are treated in the non-public schools. This is data that public school districts already receive and maintain or can access readily — but which is not sufficiently publicly available.

Require reporting about informal removals.

We commend OCR for its commitment to account for the removal of children from school for discipline reasons that are counted as suspensions or expulsions. These “informal removals” cost children valuable instructional time and may violate their rights under civil rights law and the Constitution.

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

We are disappointed that the proposed survey does not include information about students who are referred into “threat assessment” systems, or the outcomes of these referrals. OCR should report on the number of “threat assessment” referrals and include the outcomes of those students, given the flawed and discriminatory nature of this system.

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

We are disappointed that the proposed survey does not include information about the instances of assault 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.

While we appreciate OCR acknowledging the ongoing harm caused to children by the use of chemical restraints and irritant restraints, we are disappointed that the proposed survey does not include the instances where post-restraint parent contact has not been confirmed (attempted but not confirmed or no

¹⁴ In the proposed survey, only 10 out of the 25 relevant data elements that are disaggregated by disability status are disaggregated by both IDEA- and 504-status.

meeting held). OCR should collect data on the use of chemical restraint and irritant restraint beginning with the 2021-2022 CRDC.¹⁵ 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.

While we appreciate OCR elevating the need for further disaggregation of race and ethnicity data, we are disappointed that OCR has not proposed to disaggregate race and ethnicity data by the American Community Survey categories starting in the 2021-22 school year. Existing disaggregation categories obscure significant diversity within communities.

Disaggregate by pregnant or parental status.

We are disappointed that the survey does not propose to 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. 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.

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

While we appreciate the inclusion of teacher data disaggregated by the race and sex of the teacher, we urge the department to further collection data on teachers disaggregated by their voluntarily disclosed national origin, LGBTQI2S+ identity, and disability. We also urge OCR to make this data element mandatory beginning in the 2020-21 school year.

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.

While we appreciate OCR committing to improve its CRDC data analyses and website, the department should integrate data systems across the department so that students, families, and the community at large

¹⁵ 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)

can access and interpret school, district, state, and national information about public schools in an accessible format is essential to ensuring equal educational opportunities.

Improve the efficiency and timeliness of data reporting.

While we appreciate OCR’s commitment to ensuring that the CRDC data are made available to the public consistent with OCR’s privacy policies, we urge OCR to process and report data in an efficient and timely manner. 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.

Encourage states to support districts with reporting data.

While we appreciate OCR for exploring ways to reduce the reporting burden on local education agencies and improving the process of obtaining data from SEAs, OCR should encourage states to support districts with reporting CRDC data since SEAs typically have more capacity with data management and collection personnel. 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.

As an organization 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 non-discrimination 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 Almazán, K-12 education senior program manager at The Leadership Conference on Civil and Human Rights, at almazan@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
The Leadership Conference Education Fund