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December 16, 2024

Submitted via www.reginfo.gov

Stephanie Valentine

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Office of the Chief Data Officer

Office of Planning, Evaluation and Policy Development

U.S. Department of Education

400 Maryland Avenue SW, LBJ, Room 6W201

Washington, DC 20202-8240

RE: Docket No.: ED-2024-SCC-0128

Dear Ms. Valentine,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 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 October 17, 2024, regarding a proposed Civil Rights Data Collection (CRDC) Information Collection Request (ICR) for the 2025-26 and 2027-28 school years.

We appreciate that the U.S. Department of Education accepted several of the recommendations that we submitted in response to the previous notice published in the Federal Register on October 31, 2022¹. These data are integral to protecting students and ensuring that their civil rights are upheld. In response to the recently published draft survey, we would like to reinforce the need for additional changes as well as respond to the new directed questions.

Collect and report universal data on an annual basis.

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

¹ On October 31, 2022, the Leadership Conference submitted comments to the notice published in the Federal Register on September 30, 2022 for the 2021-22 and 2023-24 school years:

<https://civilrightsdocs.info/pdf/policy/letters/2022/CRDC-Comment-Letter-103122.pdf>

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inequity in communities.² Because students' time in school is so short, and each year is so precious, it is critical that information be available for every year of a student's education.

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

Similar to our asks in 2022, we again want to encourage OCR to update the survey 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. 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. OCR should also clarify that bullying and harassment based on sex includes bullying and harassment based on transgender status, gender expression, as well as sexual assault (including rape), dating violence, and stalking. 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, and separately the count of students who were disciplined for sexual harassment, including sexual assault (including rape), dating violence, and stalking. 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, and the number of allegations against a student that had a determination that remained pending.

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 adults working in the school (including law enforcement). 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).

² In addition to the critical role CRDC data play in ensuring compliance with our civil rights laws and demonstrating whether there is equal educational opportunity, these data support the provision of education as a key driver of economic mobility. By routinely identifying and addressing inequities in educational opportunities and outcomes, policymakers and educators can use CRDC data to design interventions that address systemic barriers to ensure that historically marginalized groups have the tools and opportunities to succeed in the workforce. Education to Workforce Indicator Framework. Retrieved from: <https://educationtoworkforce.org/>.

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

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 and other adults working in the school.

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

The presence of school-based law enforcement is harmful for the well-being and education of children — especially children of color, including children of color who have a disability, are LGBTQI2S+, or experience additional forms of marginalization. We urge OCR to 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.

OCR must continue to address disparities for students who experience restraint and seclusion while also capturing more data on this matter. OCR should collect data on the use of chemical restraint and irritant restraint beginning with the 2025-26 and 2027-28 CRDC. We urge OCR to keep all the current data elements regarding restraint and seclusion and include these additional items.

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’s commitment to improving its CRDC data analyses and website, the department should integrate data systems across the department so that students, families, and the community at large can access and interpret school, district, state, and national information about public schools in an accessible format. The opportunity to access all these data together 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.

Although beyond the scope of this Information Collection Request (ICR), the administration should seek significant additional resources for the Office for Civil Rights, including the administration of the CRDC, so that timely and accurate data are available – alongside a through and efficient process of receiving and

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responding to complaints, robust technical assistance to prevent discrimination in the first instance, and comprehensive policymaking that enables all students, families, educators, and schools to understand the protections provided by civil rights laws.

Encourage states to support districts with reporting data.

While we appreciate OCR's efforts to explore ways to reduce the reporting burden on local education agencies and improve the process of obtaining data from state education agencies (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.

Include information about religious garb and dress codes.

Although none of the laws that OCR enforces expressly address religious discrimination, longstanding guidance has been clear that Title VI of the Civil Rights Act protects students of any religion from discrimination, including harassment, based on a student's actual or perceived shared ancestry or ethnic characteristics. OCR should ask whether a school has a dress code or policy, including a uniform policy or guidelines or those specific to participation in athletics or extracurricular activities, which would interfere with a student's wearing of a dastar, eagle feather, hijab, kippah, patka, or other similar religious garb. Such information would be valuable to OCR's and the public's understanding of whether students are experiencing unlawful discrimination on the basis of shared ancestry.

Retain remote instruction items.

The previously collected CRDC data groups on remote instruction provided by teachers and remote instruction received by students are central for identifying inequities. The type of instruction received by students matter for determining potential discriminatory practices. These COVID-era data elements are still important as students may continue to receive remote instruction for reasons other than COVID-19. We urge OCR to retain these critical data elements in remote instruction for the 2025-26 and 2027-28 school years.

Response to Directed Questions

1. Informal removals.

- *With regard to removing a student from an education program of activity for a period of time, should OCR count any removal from class—even a brief time out in a hallway, another classroom, or quiet room—as an informal removal? Should there be some minimum amount of time that should be excluded from the definition? Should the definition of informal removal be tied more closely to removal from the school campus?*
 - We urge OCR to include the following considerations when determining the minimum amount of time to count as an “informal removal”:
 - **Pattern of exclusion:** The frequent, even if brief, removal of students from their educational settings over time can amount to a denial of educational access. For example, sending a student to the principal's office or holding them in a separate

room may constitute informal removal over time. In younger grades and in some settings, students may only sit for a class for 30 minutes to an hour at a time; frequently removing a student from that setting over time would deny the student the opportunity to learn and constitute an informal removal.

- Interruption of education: A removal, regardless of duration, which significantly interrupts a student’s ability to participate in instruction or school activities should qualify as an informal removal.
 - Cumulative effect: The accumulation of a series of short removals can have the same effect as a formal suspension and should trigger the same procedural protections. If informal removals are systemic or target specific groups of students, they should be considered discriminatory, regardless of duration.
 - Students eligible under the Individuals with Disabilities Education Act (IDEA): Any exclusion from an education program or activity must count toward and/or constitute a change of placement as required under IDEA.
- *With regard to entering the information into the student’s record, will a school’s ability to track informal removals sufficiently to report them to the CRDC mean that they were entered into a student’s record? Should the definition of informal removal be tied more closely to some alleged misconduct that caused the removal?*
 - A school’s ability to track informal removals for reporting purposes does not necessarily mean that these removals were actually entered into a student’s record. This may depend on school policy or even state or federal reporting requirements. OCR can provide guidance to local educational agencies (LEAs) on tracking informal removals so that schools can monitor patterns and fulfill reporting obligations internally without having the incident appear on a student’s record. Especially for shorter durations of informal removals, documenting the incident is important but may not necessitate a formal entry of disciplinary action.
 - The definition of informal removal does not need to be tied to an alleged misconduct.

2. Threat assessments.

- *How should OCR define threat assessments to capture all functional equivalents? Should OCR define threat assessment teams and, if so, how?*
 - Time and time again, the civil and human rights community has seen so-called “threat assessment systems” and “threat assessment teams” be a source of harm for students and risks to their civil rights. Determinations about the behavior of children should be made by those with expertise in child development and child wellbeing – educators and healthcare providers. For children with disabilities, there are teams that already possess specialized knowledge about the children they support and that can assess when an issue raises new concerns. Unfortunately, threat assessment runs the risk of bypassing those professionals, their expertise, and the procedural safeguards provided for children and their families. However, given how widespread the use of threat assessments has become, it is useful for OCR to understand how these systems operate and what the consequences have been for individual children and nondiscrimination obligations broadly.

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- We are concerned about the vagueness of the new data group that asks LEAs to indicate if they have a threat assessment team. We encourage OCR to provide guidance around the definition of a threat assessment team in the context of this question to ensure that answers are meaningful. Given what is known about the danger threat assessment processes can pose to children, OCR should take care not to imply that threat assessment systems are necessarily beneficial or that they can be administered in ways that do not exacerbate discrimination. It is especially important to understand what role, if any, law enforcement may play in a threat assessment team, given the obvious risk that earlier contact with law enforcement could pose to a child. It will also be important to know whether anyone involved in the process is familiar with a disabled student's Individualized Educational Program (IEP) or Section 504 plan.
 - We support adding a definition of “threat assessment” that captures all functional equivalence and urge the Department to provide guidance on the definition of “threat assessments.”
 - The Department must continue to remind LEAs, including in the context of questions about threat assessment systems and teams, of their ongoing obligation to administer discipline and respond to student behavior in a way that is compliant with civil rights protections. All participants on a threat assessment team, including law enforcement if they are involved, are subject to nondiscrimination obligations.
- In addition to nondiscrimination obligations, students' privacy (including those obligations included in the Family Educational Rights and Privacy Act (FERPA)) and due process rights must be respected through the entire course of a threat assessment process.
- The focus of any disciplinary system or response to student behavior must be consistent with the Civil Rights Principles for Safe, Healthy, and Inclusive School Climates.³
- We urge OCR to include information about the demographics of 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.
- Finally, CRDC should collect disaggregated and cross-tabulated data on the number of students subjected to threat assessments, the number of threat assessments conducted, and the outcomes of these assessments.

³ Threat assessment systems can be wielded as tool to discipline historically disadvantage students. As such, we urge OCR to follow the Civil Rights Principles for Safe, Healthy, and Inclusive School Climates: https://civilrights.org/wp-content/uploads/2021/02/Civil-Rights-Principles-for-Safe-Healthy-and-Inclusive-School-Climates_2.pdf

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4. Disaggregation of Referral and Arrest Data for Section 504 Only Students by Race/Ethnicity

- *What would the benefits and burdens be to collect arrest and referral data, by race/ethnicity, for students with disabilities served only under Section 504, particularly if the data were not made available to the public?*
 - The benefits of collecting these data outweigh the burdens. Although in some cases the count or n-size may be small enough to not publicly share data on students with disabilities under Section 504 by race and ethnicity at the school level, collecting these data is critical so that school themselves can identify and intervene in response to disparities. OCR can still highlight patterns of disproportionate discipline and arrest by providing a report or summary of disproportionality in aggregated groupings (for example, grouping students by ethnicity over two or three years to gain a larger n-size to understand the trends for these students).
 - Whenever possible, we encourage OCR to find opportunities to disclose these data publicly as these data are essential in helping policymakers, school leaders, and education stakeholders understand disparate impact of discipline on these vulnerable student populations.

Thank you for your consideration of our recommendations. If you have any questions or need additional information, please contact Natalie Truong, K-12 education senior program manager at The Leadership Conference on Civil and Human Rights, at truong@civilrights.org.

Sincerely,

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