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Maya Wiley

June 20, 2025

Ross Santy

Chief Data Officer

Office of Planning, Evaluation, and Policy Department

U.S. Department of Education

400 Maryland Avenue SW

Washington, DC 20202

RE: Docket ID ED-2024-SCC-0142: Comment Request: *EDFacts* Data Collection School
Years 2025-26, 2026-27, and 2027-28 (with 2024-25 continuation)

Dear Mr. Santy,

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, and The Leadership Conference Education Fund, we write to express deep concern regarding the U.S. Department of Education (ED)'s proposed changes to the *EDFacts* Information Collection for FY2025-26, 2026-27, and 2027-28 (with 2024-25 continuation), and to oppose the elimination of data elements that allow for the inclusion of nonbinary students.

As discussed below, the removal of two questions that collect gender identity beyond male and female¹ – reportedly made to align with Executive Order 14168² – represents a regressive step that undermines ED's mission to ensure equal access to education and promote educational excellence for all students, regardless of gender identity. These changes are detailed in the "Change Memo" from the National Center for Education Statistics (NCES) that was approved in May by the Office of Management and Budget (OMB):

"Change Request: Two Metadata Questions to be Deleted (Attachment C, page C-20)

1. For sex, does your state collect more than two permitted values (male and female)?

¹ See "Change Memo," (15 May 2025). Office of Information and Regulatory Affairs: Department of Education, Information Collections under Review: <https://www.reginfo.gov/public/do/PRAMain>.

² Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, (20 January 2025), mandates that the federal government recognize only two sexes—male and female—and requires agencies to align with this definition. See: <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/> This Executive Order carries no force or effect of law.

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2. *Beyond male and female, what permitted values does your state collect about students to represent sex, gender, and/or gender identity? Please provide state definitions if terms are defined.*”

By stripping out data collection related to nonbinary students, ED seeks to render these students invisible within the education system. This erasure not only undermines enforcement of civil rights laws but also obstructs efforts to identify and respond to disparities in access, achievement, and safety affecting gender-diverse students. Accordingly, we make the following recommendations:

Reinstate Nonbinary Questions in EDFacts Data Collection for FY2025-2028.

EDFacts collects data on behalf of ED grant and program offices for approximately 150 data groups for all 50 states, Washington DC, and Puerto Rico, to promote the use of high-quality pre-kindergarten through grade 12 performance data to improve outcomes for students and to inform education planning, policymaking, and management and budget decision making. Because EDFacts is the federal government’s primary education data source, what it does – and doesn’t – collect directly shapes what is visible and measurable in education policy. If a population (e.g., nonbinary students) is excluded from EDFacts data, it is significantly more difficult to identify systemic inequities or ensure legal protections for those students.³ Without visibility in data, nonbinary students are much less likely to receive adequate academic support or legal protections. Their absence in federal data falsely implies their nonexistence, thereby contributing to ongoing marginalization.⁴

Restore the Detailed EDFacts Data Collection Model Proposed in November 2024.

We urge ED to return to the more robust data collection proposal outlined in the November 27, 2024 *Federal Register* notice,⁵ which called for expanded, disaggregated, and school-level EDFacts reporting beginning in FY2025–26. From 2009-2019, EDFacts collected detailed, cross-sectional data that was disaggregated by student subgroup – such as race/ethnicity, socioeconomic status, disability, English learner status, and gender – and included proficiency at the district and school level. These granular data were crucial to identifying barriers to opportunity, helping to inform a landscape of student learning and school improvement in the United States. After 2019, the EDFacts data collection was changed⁶ to only require state education agencies to report a single performance measure – the proportion of students

³ Comprehensive data is the cornerstone of high-quality, data-driven policymaking. As the National Academies of Sciences, Engineering, and Medicine emphasized, “Inclusive data collection on gender identity...is critical for ensuring that the needs of all students are understood and addressed.” See National Academies of Sciences, Engineering, and Medicine. (2022). *Measuring Sex, Gender Identity, and Sexual Orientation*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/26424>.

⁴ For example, Pew Research Center survey identified that 3 percent of young adults (age 18-29) identify as nonbinary, constituting an estimated 125,000 high school seniors who were eligible to file the 2024-2025 FAFSA Form but would not be able to do so if ED removes “nonbinary” options from the FAFSA application. See Pew Research Center. About 5 percent of young adults in the U.S. say their gender is different from their sex assigned at birth <https://www.pewresearch.org/short-reads/2022/06/07/about-5-of-young-adults-in-the-u-s-say-their-gender-is-different-from-their-sex-assigned-at-birth/>.

⁵ 2024-27845 (89 FR 83378). Department of Education, Docket No.: ED-2024-SCC-0142. <https://www.federalregister.gov/documents/2024/11/27/2024-27845/agency-information-collection-activities-comment-request-EDFacts-data-collection-school-years>

⁶ 2019-06829 FR. Department of Education, Docket No.: ED-2018-ICCD-0117. <https://www.regulations.gov/document/ED-2018-ICCD-0117-0150>

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above the state's proficiency threshold. The November 2024 proposal represented a promising return to data transparency by proposing the reinstatement of detailed, disaggregated data collection, along with mechanisms for public input and alignment with Office for Civil Rights monitoring needs. Yet the May 2025 notice⁷ abruptly reverses this progress, maintaining the inadequate framework from previous years, omitting any mention of the proposed instruments, and removing options for gender identity. This move not only excludes nonbinary students from visibility but also hampers state and local agencies' ability to address persistent disparities across race, income, disability, and language status.

In summary, we urge ED to restore the proposed revisions outlined in the November 2024 notice, including detailed, school-level, disaggregated data collection. Additionally, we call on ED to engage stakeholders in a renewed public comment process to finalize the *EDFacts* framework and instruments that support increased transparency and accountability, with expanded student categories and gender identification, in its data collection and reporting.

If you have any questions or need additional information, please contact Natalie Truong (truong@civilrights.org), K-12 education senior program manager.

Sincerely,

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

⁷ 2025-09085 (90 FR 21763). Department of Education, Docket No.: ED-2024-SCC-0142.
<https://www.federalregister.gov/documents/2025/05/21/2025-09085/agency-information-collection-activities-submission-to-the-office-of-management-and-budget-for>