



# AMERICAN ATHEISTS

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November 18, 2019

Stephanie Valentine  
PRA Clearance Coordinator  
Information Collection Clearance Program  
Office of the Chief Information Officer  
U.S. Department of Education  
550 12th Street SW  
PCP, Room 9089  
Washington, DC 20202-0023

**Re: Comments Regarding Proposed Changes to Collection of Religious Harassment and Bullying Data in 2019-20 Mandatory Civil Rights Data Collection (Docket No. ED-2019-ICCD-0119; Doc. No. 2019-20292)**

Dear Ms. Valentine:

American Atheists writes to comment on the proposed change to the collection of religious harassment and bullying data in the 2019-20 mandatory Civil Rights Data Collection (CRDC) titled “Agency Information Collection Activities; Comments Requested; Mandatory Civil Rights Data Collection,” published September 19, 2019.<sup>1</sup> The proposed change would add a new question to the 2019-20 mandatory CRDC, requiring schools to provide the number of allegations of religious harassment or bullying disaggregated by the victim’s apparent religion.<sup>2</sup>

American Atheists supports collecting disaggregated religious harassment and bullying data to promote the enforcement of civil rights laws<sup>3</sup> and make schools safer and more productive learning environments. However, American Atheists is concerned about the method used to collect this data. Past CRDC surveys suggest that religious bullying “[a]llegations can be reported by” students, faculty, or anybody else.<sup>4</sup> And schools would disaggregate reports of religious bullying and harassment by

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<sup>1</sup> Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection, 84 Fed. Reg. 49, 2777-78 (Sept. 19, 2019) (Docket No. ED-2019-ICCD-0119; Doc. No. 2019-20292). In addition to these comments, American Atheists joins with and fully supports comments submitted by The Leadership Conference on Civil and Human Rights.

<sup>2</sup> UNITED STATES DEPARTMENT OF EDUCATION’S OFFICE FOR CIVIL RIGHTS, Paperwork Reduction Act Submission: Mandatory Civil Rights Data Collection September 2019: Supporting Statement, Part A: Justification, Tracking No. 1870-0504, on REGULATIONS.GOV (September 13, 2019), at Docket ID ED-2019-ICCD-0119, pages 5 & 29, available at <https://www.regulations.gov/document?D=ED-2019-ICCD-0119-0002> (henceforth “Statement A”). There are “14 religion categories”: “[Atheist and agnostic]; Buddhist; Catholic; Eastern Orthodox; Hindu; Islamic...Jehovah’s Witness; Jewish; Mormon; multiple religions...other Christian...other religion; Protestant; [and] Sikh.” Statement A. at 5, 29.

<sup>3</sup> See Statement A at 10.

<sup>4</sup> OFFICE FOR CIVIL RIGHTS, *2017-18 Civil Rights Data Collection – School Form*, U.S. DEPARTMENT OF EDUCATION, page 96 <https://www2.ed.gov/about/offices/list/ocr/data.html> (last visited November 8, 2019).

examining “the likely motives of the alleged harasser/bully.”<sup>5</sup> American Atheists is concerned that this method of collecting and disaggregating reports will encourage school faculty to investigate and consider student religion, endanger students’ privacy and security, and fail to capture the reality of religious bullying and harassment. American Atheists proposes that the Office for Civil Rights (hereinafter, “Office”) should adopt methodological improvements and safeguards, including anonymous self-reporting and faculty training, to protect students and refine data collection.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for religious equality, American Atheists supports efforts to address religious bullying and harassment in schools that are inclusive and protect student privacy.

### **1. The proposed method for collecting and disaggregating religious bullying data may harm students.**

Although disaggregating religious harassment and bullying data could promote students’ civil rights<sup>6</sup> and make schools safer and more effective learning environments, the proposed implementation of this new survey question would endanger student privacy and safety. This new survey question will lead to schools routinely considering, investigating, and recording students’ religions. Religious bullying in schools is common.<sup>7</sup> Whenever religious bullying is reported, school faculty will have “to look to the likely motives of the alleged harasser” to discern the apparent religion of the victim and sort the incident.<sup>8</sup> Often, the victim’s apparent religion will be the same as her actual religion. Thus, in many or most cases, school officials who ascertain a student’s apparent religion will know her actual religion. Even where students are not named in reports, faculty may know who the report is talking about, or later find out. And school faculty may further investigate or consider a student’s religion by, for example, asking the student what her religion is, or speaking with other students. In schools with small student populations, data collected and reported on religious harassment and bullying may not be anonymous because few students, or only one student, fit the demographic information reported about the victim or victims.

Students’ privacy and security would be threatened by school officials considering, investigating, and recording students’ religions. Many students do not want their religious beliefs revealed to school staff or other students. For many students, religion is a private matter. For other students, religious privacy is

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<sup>5</sup> Statement A at 17-18.

<sup>6</sup> *See id.* at 10.

<sup>7</sup> *Id.* at 19; *see also* Emily A. Greytak, Joseph G. Kosciw, Christian Villenas, and Noreen M. Giga, FROM TEASING TO TORMENT: SCHOOL CLIMATE REVISITED 3, 4, 6 (2016) (finding that 18% of “students reported verbal harassment based on...actual or perceived religion.”)

<sup>8</sup> Statement A at 17-18.

a prerequisite to security and acceptance. When a student's religion is revealed to other students and school staff, the student may be bullied, harassed, or face discrimination for her beliefs. Teachers may discriminate against students with contrasting religious beliefs by grading the students differently, offering less help to the students, or failing to include the students in opportunities and activities. Sadly, many Americans are deeply biased against atheists and religious minorities<sup>9</sup> and likely will not treat them fairly.

The Office should protect students' privacy and security by providing resources to train school staff on privacy, and by asking respondents to collect religious bullying information through anonymous student self-reporting. The Office could use the National Survey of Family Growth, which collects sensitive information using "[private] self-administration," as a model for anonymous student self-reporting.<sup>10</sup> This method of data collection would give bullied students control over their privacy and security, and allow them to decide whether or not to report the religious aspect of the bullying. Privacy and security training would help staff members protect student privacy and maintain a respectful school environment.

## **2. The proposed method for collecting and disaggregating religious bullying data would create inaccurate data.**

Collecting religious bullying data through anonymous self-reporting would make the proposed data collection more accurate and practicable. Executive Order 13777 encourages federal agencies to avoid "ineffective" regulations.<sup>11</sup> Because the reason for collecting this data is to improve "civil rights enforcement,"<sup>12</sup> the Office should ensure that its data collection method is as accurate and practicable as is reasonably possible.

Disaggregating religious bullying data by using third parties' perceptions of offenders' motives will not be very effective. Bullying targeted at atheists and religious minorities is less likely to be understood, reported, and identified than bullying targeting religious majorities, because most Americans are less familiar with minority religions. This lack of context may cause educators and administrators to not recognize bullying against atheists and religious minorities.

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<sup>9</sup> See Sadie Dingfelder, *Anti-atheist Sentiment Rooted in Distrust, not Disgust, Study Finds*, AMERICAN PSYCHOLOGICAL ASSOCIATION (Feb. 2012), <https://www.apa.org/monitor/2012/02/anti-atheist> (reporting on study finding that Americans trust atheists about as much as they trust rapists, and that "only 33 percent" of Americans "said [they would] hire [an] atheists to work in a day-care center"); see also Michael Lipka, *10 Facts About Atheists*, PEW RESEARCH CENTER (June 1, 2016), <https://www.pewresearch.org/fact-tank/2016/06/01/10-facts-about-atheists/> (considering polls showing, inter alia, that Americans like atheists and Muslims less than they like Jews, Catholics, and Evangelicals).

<sup>10</sup> See NATIONAL CENTER FOR HEALTH STATISTICS, *National Survey of Family Growth*, CENTERS FOR DISEASE CONTROL AND PREVENTION, [https://www.cdc.gov/nchs/nsfg/about\\_nsfg.htm](https://www.cdc.gov/nchs/nsfg/about_nsfg.htm) (last visited November 8, 2019).

<sup>11</sup> Proclamation No. 13,777, 80 Fed. Reg. 12,285 (Feb. 24, 2017).

<sup>12</sup> Statement A at 2.

In many cases, it will be very difficult for school officials to discern the likely basis of discrimination. Anonymous self-reporting would be a more workable solution because atheist and religious minority students who are bullied would be better positioned to identify the cause of the bullying than school faculty. Therefore, anonymous self-reporting would “enhance the quality, utility, and clarity” of the religious bullying data.<sup>13</sup> Finally, to prevent confusion, the Office should clarify for schools and local educational agencies that restrictions on religiously-motivated harassment and discrimination do not constitute religious bullying.<sup>14</sup>

### **3. The Office’s proposed method for collecting and disaggregating religious bullying data raises public policy concerns.**

Requiring school staff to discern a student’s apparent religion raises public policy concerns. The Office should not create a precedent of school faculty considering, investigating, and recording student religion. The Office should be cautious to protect the “religious liberty and privacy rights” and “the constitutional boundaries separating church and state” that led Congress to ban religious questions on the U.S. Census.<sup>15</sup> The same concerns apply to considering, investigating, and recording student religion. Anonymous self-reporting would ameliorate these concerns by protecting students’ privacy and religious freedom and disentangling schools from troublesome religious questions.

The Office should also avoid creating a system that can easily be abused for proselytization and recruitment efforts. If school officials are encouraged to consider, investigate, and report students’ religions, some faculty may access or use such information inappropriately. Children are uniquely vulnerable to religious indoctrination and coercion, and the Office should be very sensitive to schools’ unique influence on the wellbeing and beliefs of children. Protocols for assuring student privacy as well as training for educators would ameliorate concerns about misuse of data. Anonymous self-reporting is most preferable because faculty would have less access to information regarding students’ religion.

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<sup>13</sup> Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection, 84 Fed. Reg.49,2777-78 (Sept. 19, 2019)

<sup>14</sup> GLSEN, *2019-2020 CRDC RE Harassment and Bullying Based on Religion* (forthcoming and on file with author) (“For example, if a student is prohibited from asserting their religious belief as justification for bullying and harassing a student who is LGBTQ, they are not experiencing bullying and harassment based on religion.”)

<sup>15</sup> *A Brief History of Religion and the U.S. Census*, PEW RESEARCH CENTER (Jan. 26, 2010), <https://www.pewforum.org/2010/01/26/a-brief-history-of-religion-and-the-u-s-census/>.

## Conclusion

American Atheists supports collecting disaggregated religious bullying data in the CRDC so long as the Office adopts safeguards to protect student privacy and religious equality. American Atheists urges the Office for Civil Rights to change the proposed method for collecting this data. The currently proposed method would endanger students' safety and privacy, obscure the reality of religious bullying, and risk misuse of information. American Atheists suggests improving this methodology by employing anonymous self-reporting, creating privacy safeguards, and providing resources for training to local educational agencies. If you have any questions regarding American Atheists' position on this proposed change, please contact me at 908.276.7300 x309 or by email at [agill@atheists.org](mailto:agill@atheists.org).

Sincerely,



Alison Gill, Esq.  
Vice President, Legal and Policy  
American Atheists