



AMERICAN ATHEISTS

August 3, 2020

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 2020-21 Mandatory Civil Rights Data Collection (Docket No. ED-2019-SCC-0119; Doc. No. 2020-14486)

Dear Ms. Valentine:

American Atheists writes to comment on the proposed change to the collection of religious harassment and bullying data in the 2020-21 Civil Rights Data Collection (CRDC) entitled “Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection,” published July 7, 2020.¹ The proposed change would add an optional new item to the 2020-21 CRDC, asking schools to provide the number of allegations of religious harassment or bullying, disaggregated by the victims’ apparent religion.²

American Atheists supports collecting disaggregated religious harassment and bullying data to enhance the enforcement of civil rights laws³ and make schools safer and more productive learning environments. However, we are 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,⁴ and schools

¹ Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection, 85 Fed. Reg. 130, 40628 (July 7, 2020) (Docket No. ED-2019-SCC-0119; Doc. No. 2020-14486). On November 18, 2019, American Atheists submitted similar comments in response to 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), also joining with and fully supporting comments submitted by The Leadership Conference on Civil and Human Rights.

² United States Department of Education’s Office for Civil Rights, Paperwork Reduction Act Submission: Mandatory Civil Rights Data Collection July 2020: Supporting Statement, Part A: Justification, Tracking No. 1870-0504, on Regulations.gov (July 7, 2020), at Docket ID ED-2019-ICCD-0119-0606, pages 5 & 29, available at <https://www.regulations.gov/document?D=ED-2019-ICCD-0119-0606> (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.

³ See Statement A at 11.

⁴ 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 July 7, 2020).

would disaggregate reports of religious bullying and harassment by examining “the likely motives of the alleged harasser/bully.”⁵ American Atheists is concerned that this method of collecting and disaggregating reports will encourage school faculty to inappropriately investigate and consider student religion, endanger students’ privacy and security, and fail to capture the reality of religious bullying and harassment. Therefore, we strongly recommend that the Office for Civil Rights (hereinafter, “Office”) adopt methodological improvements and safeguards into this proposal, 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 will result in harm to students.

Although disaggregating religious harassment and bullying data could promote students’ civil rights⁶ and make schools safer and more effective learning environments, the proposed implementation of this new survey question would endanger student privacy and safety. Schools that respond to this new survey question will be required to routinely consider, investigate, and record the religious beliefs and affiliations of students. Whenever religious bullying is reported, school faculty will be required to “look to the likely motives of the alleged harasser” to classify the incident.⁷ In other words, any time religious bullying is reported, faculty will have to make a determination regarding the religion of the victim in order to provide an assessment of the motivation. Religious bullying in schools is common,⁸ meaning that faculty inquiries into students’ religious beliefs will necessarily also become common if this new measure is added to the mandatory CRDC.

Investigations by school officials regarding religious bullying will threaten student privacy and security. Many students do not want their religious beliefs revealed to school staff or other students. For example, a recent survey of nonreligious Americans found that more than two in five (42.8%) always or mostly conceal their nonreligious beliefs at school.⁹ However, the investigations required by the proposed new survey item risk exposing students’ religious and nonreligious beliefs to the entire school. For many students, religion is a private matter, and such privacy may be important for security and acceptance.

⁵ Statement A at 11, 18.

⁶ *See id.* at 11.

⁷ Statement A at 11, 18.

⁸ *Id.* at 18; *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.”).

⁹ Frazer, S., El-Shafei, A., Gill, A.M. (2020). *Reality Check: Being Nonreligious in America*, 19. Cranford, NJ: American Atheists.

When a student's religious beliefs are revealed to other students and school staff, the student may be put at risk of bullying, harassment, or religiously motivated discrimination. In fact, nearly one third of surveyed nonreligious students (29.4%) reported negative experiences in school because of their nonreligious identity.¹⁰ Moreover, students in very religious areas were 2.5 times as likely to have negative experiences in education based on their nonreligious identity than those in "not at all" religious areas.¹¹ Sadly, many Americans are deeply biased against atheists and religious minorities¹² and such students may not receive fair treatment if their beliefs are disclosed.

Moreover, we have serious concerns about the confidentiality of the information gathered to respond to this survey item, particularly for students who are religious minorities or atheists. Even if students are not named in reports, faculty may know or easily determine the identity of the student or students in a report. In schools with a small number of students, data collected on religious harassment and bullying may not be anonymous because few students may fit the demographic information reported about the victim or victims.

We recommend that the Office more effectively collect information on religious bullying and protect students' privacy by asking respondents to collect religious bullying information through anonymous self-reporting and by providing resources and guidelines on data confidentiality. The Office should consider the National Survey of Family Growth, which collects sensitive information using "[private] self-administration," as a model for anonymous student self-reporting.¹³ This method of data collection would give students facing bullying or harassment control over their privacy and security, prevent invasive questioning of religious beliefs by school authorities, allow students to decide whether or not to report the religious aspect of the bullying, and improve data accuracy.

2. The proposed method for collecting and disaggregating religious bullying and harassment data would result in systemic inaccuracies.

Disaggregating religious bullying data by using third parties' perceptions of offenders' motives will almost certainly be ineffective. Most Americans are not as familiar with atheism or minority religions as they are with majority religions such as Christianity. This lack of context may cause educators and administrators significant difficulty in recognizing bullying against atheists and religious minorities. Moreover, nonreligious and religious minority students may be reluctant to report harassment and bullying because the officials to whom they would be reporting likely share the same majoritarian beliefs as the harassers. These students may have well-justified concerns about exposing themselves to additional negative treatment by revealing their beliefs, particularly those students living in very

¹⁰ *Id.* at 23-24.

¹¹ *Id.* at 24.

¹² See Sadie Dingfelder, *Anti-atheist Sentiment Rooted in Distrust, not Disgust, Study Finds*, American Psychological Association (Feb. 2012), available at <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), available at <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).

¹³ See National Center for Health Statistics, *National Survey of Family Growth*, Centers for Disease Control and Prevention, available at https://www.cdc.gov/nchs/nsfg/about_nsfg.htm (last visited July 28, 2020).

religious communities or communities dominated by one majority religion. For example, our research found that stigma against nonreligious participants was 40% higher in very religious communities compared to not at all religious communities, and rates of concealment of participants' nonreligious beliefs were commensurately higher as well.¹⁴

Moreover, using third-party perceptions of offenders' motives will likely skew reporting rates, leading to inaccurate and ineffective investigations. Pursuant to the Paperwork Reduction Act of 1995, agencies should work to "minimize the paperwork burden for . . . educational and nonprofit institutions, . . . relating from the collection of information by and for the Federal Government," and to "improve the productivity, efficiency, and effectiveness of Government programs."¹⁵ As such, agencies should avoid error-prone and inefficient methods of data collection that are likely to result in inaccurate data. Because the reason for collecting this data is to improve "civil rights enforcement,"¹⁶ the Office should ensure that its data collection method is as accurate and practicable as is reasonably possible.

Collecting religious bullying data through anonymous self-reporting would make the proposed data collection more accurate and efficient. In many cases, it will be very difficult for school officials to discern the likely basis of discrimination for incidents of religious bullying. 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. As such, anonymous self-reporting would "enhance the quality, utility, and clarity" of the religious bullying data.

Additionally, to prevent confusion and further reduce unnecessary paperwork, the Office should clarify for schools and local educational agencies that restrictions on religiously motivated harassment and discrimination do not constitute religious bullying.¹⁷ With proper clarification regarding what religious bullying is, and what it is not, school officials will be able to more easily focus on legitimate reports of religious bullying incidents and avoid frivolous investigation and reporting.

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. Congress, citing "religious liberty and privacy rights" and "constitutional boundaries separating church and state," has banned religious questions on the U.S. Census.¹⁸ These concerns apply perhaps even more to student religious beliefs than to the broader population because young people are more vulnerable to religious coercion and harassment than adults. The Office should not create a precedent of school faculty considering, investigating, and recording student religious beliefs when Congress has established a desire to avoid such inquiries. Moreover, Congress has not explicitly included discrimination on the

¹⁴ Frazer, et al., at 34-36.

¹⁵ 44 U.S.C.S, §§ 3501(1), (3).

¹⁶ Statement A at 2.

¹⁷ 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.").

¹⁸ *A Brief History of Religion and the U.S. Census*, Pew Research Center (Jan. 26, 2010), available at <https://www.pewforum.org/2010/01/26/a-brief-history-of-religion-and-the-u-s-census/>.

basis of religion within the authority of the Office.¹⁹ Anonymous self-reporting would ameliorate many of these concerns by protecting students' privacy and religious freedom and disentangling schools from direct questioning of student religious beliefs.

Moreover, a system requiring school staff to discern and record student religious beliefs can easily be abused for proselytization and religious coercion. If school officials are encouraged to consider, investigate, and report students' religions, certain faculty may choose to use such information inappropriately. Children are uniquely vulnerable to religious indoctrination and coercion, and the Office should be very sensitive to the unique influence schools have on the wellbeing and beliefs of children. For instance, nonreligious young people who faced negative experiences in school based on their nonreligious identity were more than twenty percent more likely to develop depression.²⁰ Protocols for ensuring 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 sensitive information regarding private student religious information.

Conclusion

American Atheists supports collecting disaggregated religious bullying data in the CRDC if and only if the Office adopts safeguards to protect student privacy and religious equality. As such, American Atheists urges the Office for Civil Rights to reconsider 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.

Sincerely,



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

¹⁹ "None of the laws that OCR enforces expressly address religious discrimination." Office for Civil Rights, Dept. of Education, Religious Discrimination, available at <https://www2.ed.gov/about/offices/list/ocr/religion.html>.

²⁰ Frazer, et al., at 30.