



August 6, 2020

Submitted via www.regulations.gov

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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: Docket ID ED-2019-SCC-0119, Comments in Response to Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; 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 220 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 37 undersigned organizations, we write in response to the notice published in the Federal Register on July 7, 2020 regarding the Civil Rights Data Collection (CRDC).

The civil and human rights community has relied on these data since the collection began in 1968. We believe it is vitally important that we preserve the scope, frequency, and public accessibility of the information so as to support the Department of Education's work, and the work of others, in ensuring equal educational opportunity and compliance with federal law. The CRDC plays an important role in ensuring the Department of Education's Office for Civil Rights (OCR) takes its civil rights responsibilities seriously and provides schools with the tools they need to address disparities. Disaggregated data reported in the CRDC by race, ethnicity, native language, socioeconomic status, English learner (EL) status, disability status, disability type, and sex (including sexual orientation and gender identity) help us to know about students' experiences in schools and whether all students have equal access to education. Effective data collection and dissemination are necessary for evaluation and review of all other programs and activities. Any change to limit the scope, frequency, or public accessibility of the CRDC would hamper the ability of the department to fulfill its legal obligations and undermine our shared interest in the best education for every child.

In response to the proposed changes submitted to the Office of Management and Budget (OMB), and on behalf of the civil and human rights community, we offer the following feedback:

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AAJC

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Collect data for both the 2020-21 and 2021-22 school years

The CRDC should collect data for the next two school years to ensure that the Department of Education, families, educators, and the civil and human rights community have meaningful data that capture the experiences of diverse students during the COVID-19 pandemic. The COVID-19 pandemic and long-term school closures have demonstrated that access to educational opportunity is not equally available to all in this country and that the inequity in resources, support, and funding available for children in marginalized communities must be documented and made transparent. It is clear that the educational consequences of school closures and inequitable remote learning opportunities will impact students' educational experiences for years to come. Without data showing the experiences of students in both this imminent school year, when in-person school closures in many communities are still needed, and the following year when school systems will hopefully be addressing the barriers to learning students faced before and during the pandemic, it will be difficult to understand the context for students' learning in the years ahead. This data will allow the Department, states, and districts to better structure support needs and for Congress to carefully direct funds where needed.

Collect and report data on an annual basis

Children spend a short period of time in school from preschool through 12th grade, so it is critically important that data be available for every year. 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 — even if only for a year. The most recent data available to the public is the 2015-2016 CRDC — released in April 2018 — and the 2017-2018 CRDC has not yet been released.

Retain the collection of data on *all* schools

The CRDC should, as it has for several years, include the experiences of children in *all* schools through a universal collection instead of a sample. Students, families, educators, advocates, and policymakers have come to rely on the ability to find data for their own school and the schools in their community and across the country. Limiting the scope of the collection to a sample would miss the considerable variability among schools and districts. A narrower collection would also make it more difficult to represent the experiences of smaller student groups such as Asian American and Pacific Islander or Native American students (or cross-tabulated groups by race, gender, and disability, for example), who often are left out of data reports at the school or district level. With a universal collection, these smaller groups can be more easily aggregated. Since the CRDC is often the only source of disaggregated school level data about students' experiences, loss of the data provided by a universal collection would be significant.

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

As schools have adjusted to long term closures, there has been significant variability in the number of hours of instruction provided to children. Anecdotally, it is clear that some children are receiving access to the curriculum and content in a scope comparable to their time before the crisis began, while others are receiving only a few hours of instruction per week. To understand the extent to which this access to instructional time varies based on student characteristics, it is vital that the collection in the 2020-2021 school year include questions about instructional time.

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

As schools grapple with the difficult decision to either open their doors or to provide all instruction remotely, it is critical that there be an understanding of what manner of instruction was provided to

students.¹ To understand the extent to which various methods of instruction were provided to students based on race, ethnicity, disability, language status, and other student characteristics, the CRDC must collect and report this data for the 2020-2021 school year.

Include information about schools' support for remote learning

The well-documented digital divide, often contributing to what has been described as the “homework gap,” has limited the educational success of marginalized students for years.² This inequity in access to the internet and connected devices has had catastrophic consequences for marginalized students who have lost significant educational opportunity during long term school closures. The CRDC should collect and report data about what schools did to identify barriers to connectivity and what they did to provide students with the connections and devices they needed to ensure continuity of learning. In collecting these data, there can be a better understanding of any differences to connectivity based on race, ethnicity, disability, language status, sex, and other student characteristics.

Retain all school finance items

The current CRDC school finance data is central to identifying inequities. School spending matters. More money leads to better outcomes, especially if spent well and spent in schools serving students with the highest needs.³ We urge OCR to keep all of the current data elements in the school finance section.

Retain teacher experience, teacher absenteeism, and teacher retention items

Removing teacher experience, teacher absenteeism, and teacher retention data items, along with the school finance items discussed above, would send a strong signal that OCR is no longer interested in addressing resource inequities. We urge OCR to keep all the current data elements regarding first- and second-year teachers, teacher absenteeism, and teacher churn.

Retain school support staff data

The public has relied on OCR's continued collection of data elements concerning the full time equivalent (FTE) counts of school counselors, psychologists, social workers, and nurses. These data elements are crucial in helping the public determine how school districts are prioritizing students' mental health. Over the years, numerous organizations — including some of the below signatories to this letter — have published reports and analyses on student mental health that largely rely on this data. Without these data, our stakeholders would be left in the dark about how districts are staffing their schools to best support the development of healthy schools. We urge OCR to continue collecting all the current data elements regarding school support staff.

¹ Questions could include: 1) Tracking, at the school level, number of students who were instructed on-line or in-person, 2) Whether students were under a staggered or hybrid school plan, and/or 3) The length of time (measured in weeks or school days) students were instructed under the methods listed above (hypothetical scenario example that could be supported through CRDC data collection: “9th graders at X High School were instructed in the 2020-21 school year under a hybrid plan for 180 days, 20 students were taught in person for 180 days, 100 students were taught in-person for 50 days and 130 days online, 300 students were taught online for 180 days).

² Turner, Derek. “[Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption.](#)” *Freepress.net*. December 2016.

³ Jackson, Kirabo, Rucker C. Johnson, Claudia Persico (2016). “The Effects of School Spending on Educational & Economic Outcomes: Evidence from School Finance Reforms”. *The Quarterly Journal of Economics* 131(1): 157-218; Lafortune, J., Rothstein, J., & Schanzenbach, D. W. (2018). School finance reform and the distribution of student achievement. *American Economic Journal: Applied Economics*, 10(2), 1-26. <https://doi.org/10.1257/app.20160567>

Retain all early childhood education items

It is important to continue to require the collection and reporting of preschool enrollment data disaggregated by race, ethnicity, sex, disability-IDEA, and EL status. Absent the disaggregated enrollment data, there will be no effective way of determining whether exclusionary discipline continues to fall more harshly on particular groups of students. It is essential that we have the data that can help us measure progress in ensuring that all children remain in and benefit from quality early childhood settings.

OCR should also continue to require the collection and reporting of early childhood education program data. Early education is offered and supported by a variety of government programs, including public schools. It is important to understand the types of early childhood programs used by public schools that are currently serving children, including by collecting data regarding whether early childhood programs are full-day versus part-day, whether there is a cost for participation in the program, and whether services for children birth to age 2 are offered for children not identified for services under the IDEA. Without these data, it will be impossible to create an accurate picture of the early education landscape and potential discrimination in early education across the country. We urge the OCR to keep all of the current data elements regarding preschool education.

Retain Advanced Placement (AP) test-taking items

Measuring AP enrollment without measuring AP test taking ignores the fact that taking the examination seems to solidify the benefits of an AP course, and that this is true even if the student fails the examination.⁴

Include students' experiences of harassment based on gender identity and sexual orientation

The CRDC must include data on gender identity harassment for the 2020-21 school year, as well as continue to collect data on sexual orientation harassment. Although released in early July 2020, OCR's discussion of the data items to be collected was clearly drafted prior to the Supreme Court's decision in *Bostock v. Clayton County*, which held that prohibitions against sex discrimination necessarily include prohibitions against discrimination based on sexual orientation or gender identity. The definition previously used in the CRDC, which expressly incorporated gender identity, accurately predicted the outcome of *Bostock* and all future collections should continue to utilize this inclusive definition.

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

Disaggregating experiences of religion-based harassment may help us to understand students' experience of school and to ensure that all students have access to equal education, but it is essential that this data be handled with sensitivity and confidentiality. Investigation and reporting on student religious beliefs has the potential to result in religious discrimination and coercion, particularly for students who are religious minorities or atheists. The proposed new item should be paired with additional training and best practices for school districts to ensure sensitivity and confidentiality regarding student religious beliefs and affiliations.

Retain item related to the number of EL students enrolled in EL programs by disability status

It is a widespread misconception that a student cannot be both an English learner in an EL program, as well as a student with disability receiving special education services. In fact, an English learner enrolled in an EL program cannot be denied special education services, and a student can and should be enrolled in

⁴ Russell T. Warne, Ross Larsen, Braydon Anderson & Alyce J. Odasso, The Impact of Participation in the Advanced Placement Program on Students' College Admissions Test Scores, *J. of Educ. Research*, 108:5, 400 (2015), <https://www.tandfonline.com/doi/full/10.1080/00220671.2014.917253>.

both types of services at the same time when the student qualifies for both services. It is essential that the CRDC continue to collect data that examines how well schools are serving the nearly 700,000 public school students who are both English learners and students with disabilities. Removing this disaggregation from the data collection will severely undermine public access to information about this often overlooked and underserved population.

Retain item regarding participation in credit recovery programs

Nearly 7,000 students drop out (are pushed out) of high school every day for various reasons, and most if not all return to complete their educational credits.⁵ Removing data on the number of students who are participating in credit recovery programs will limit information about the experiences of this marginalized group of students. Additionally, removing this item would forgo an opportunity to reinforce the responsibility of school districts to ensure the success of *all* students.

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

Students with disabilities vary from one another in a multitude of ways. While the majority of students with disabilities are served under IDEA, we are seeing an increasing number of students who receive accommodations and support through Section 504 of the Rehabilitation Act. However, there is no federal data collection on students with 504 plans; CRDC remains the sole source of information available about their educational experiences and outcomes. For many items collected through CRDC, data are disaggregated by disability status. In each of those items, disability status should be further differentiated by “disability-IDEA” and “disability-504” so the public can better understand how the experiences of students with disabilities differ based on this factor.

Include the experiences of children with disabilities placed by school districts in nonpublic schools in the CRDC

While tens of thousands of students with disabilities who are placed by their school districts into nonpublic schools can be subjected to exclusionary discipline, restraint and seclusion, and other adverse actions, or can be denied access to experienced teachers, those students’ experiences are not tracked by the CRDC. The Department’s claim that it currently collects data from school districts on these students is insufficient. 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. The current scope of the CRDC fails to encompass a substantial proportion of the restraint and seclusion being experienced by students with disabilities placed in nonpublic schools — as the best available data show that these students experience levels of restraint and seclusion that are magnitudes higher than those experienced by other publicly educated students with and without disabilities.

Disaggregate race and ethnicity data by the American Community Survey categories

Existing disaggregation categories obscure significant diversity within communities. Asian Americans and Native Hawaiian / Pacific Islanders (AANHPIs) are tremendously diverse. The U.S. Census Bureau reports data annually on at least 22 distinct, self-identified AANHPI groups, each with unique linguistic, cultural, and historical differences. When government agencies report only averaged aggregate data under the “Asian” category, they conceal significant differences and inequities among the many distinct AANHPI groups. For example, for Southeast Asian Americans, the mass collective trauma from war,

⁵ Miller, Tony. ["Partnering for Education Reform."](#) U.S. Department of Education. July 7, 2011.

genocide, displacement, and the stressors associated with relocation — like English language difficulties and cultural conflicts — affect student outcomes.⁶ Disaggregated data would help address this issue.

Provide information regarding district and school level Civil Rights Coordinators

Civil Rights Coordinators serve as a critical resource to ensure compliance with nondiscrimination laws and ensure equal opportunity for all students in schools. Information about how to contact these individuals should be available in the CRDC at the school level, where students and families have the most direct engagement, as well as at the school district level.

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 U.S. Department of Education so that students, families, and the community at large can see information about public schools all in one place without requiring duplicate reporting by schools, districts, or states makes sense. 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.

As organizations 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 nondiscrimination laws. Our children deserve no less. Thank you for your consideration of our views. If you have any questions or need additional information, please contact Steven Almazan, K12 Education Program Analyst at The Leadership Conference on Civil and Human Rights, at almazan@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
Alliance for Excellent Education
American Association of University Women (AAUW)
American Atheists
American Civil Liberties Union
Association of University Centers on Disabilities
Augustus F. Hawkins Foundation
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
Children's Defense Fund
Clearinghouse on Women's Issues
Disability Rights Education & Defense Fund (DREDF)
Education Law Center-PA
Feminist Majority Foundation
Girls Inc.
GLSEN
Hispanic Federation
Human Rights Campaign

⁶ Data Disaggregation General Factsheet. SEARAC. March 26, 2019.
<https://www.searac.org/education/datadisaggregation-general-factsheet/>.

Japanese American Citizens League
Lambda Legal
Lawyers' Committee for Civil Rights Under Law
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Alliance for Partnerships in Equity (NAPE)
National Center for Learning Disabilities
National Center for Lesbian Rights
National Center for Special Education in Charter Schools
National Disability Rights Network
National Down Syndrome Congress
National Education Association
National Urban League
Shriver Center on Poverty Law
Southern Poverty Law Center
The Arc of the United States
The Education Trust
TNTP
UnidosUS
Young Invincibles