

February 11, 2022

Stephanie Valentine
PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division,
Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development
U.S. Department of Education,
550 12th Street SW, PCP, Room 9089
Washington, DC 20202-0023

Re: Proposed Changes to the Mandatory Civil Rights Data Collection; Docket No.: ED-2021-SCC-0158

Dear Ms. Stephanie Valentine:

On behalf of the Center for American Progress (CAP) and representing the interest of providing a high-quality education for every child, we write to offer comments on the proposed revisions to the Civil Rights Data Collection (CRDC) pursuant to the Paperwork Reduction Act of 1995. We appreciate the opportunity to comment on the proposed changes to this data collection which is a critical resource used to highlight opportunity gaps that create barriers to providing all students with the high-quality education they deserve and is promised by the United States Constitution. The CRDC has been a valuable tool providing a snapshot of educational opportunity across the country. We applaud the U.S. Department of Education (ED) for the changes that are proposed to this collection which will provide us with a more accurate picture of the educational services that students have access to nationally.

We commend ED for proposing changes that provide more information about access to preschool services, access to quality teaching, access to rigorous coursework, and discipline methods across the country. Particularly for the most underserved students in this country, it is important that we understand where there are gaps in service and how to meet their needs more adequately. Wherever these changes appear throughout the dataset, we support the proposal to include nonbinary as a disaggregated category under sex. We also appreciate the new data points that shed light on access to wireless internet and virtual learning during the pandemic.

Below we offer some additional commentary as well as suggestions for proposed revisions to the 2021-2022 CRDC collection. The suggestions below combined with the current changes already proposed by ED will provide advocates and policymakers with

the data they need to address gaps in education access and opportunity to ensure that all students have access to a high-quality education.

Collection of data on LGBTQI+ populations

The Department's commitment to K-12 education systems free from victimization and discrimination on the basis of sexual orientation and gender identity (SOGI) is evident in many of the new and revised measures in the CRDC. We commend the Department for these measures and urge revisions to further improve our understanding of school conditions for LGBTQI+ students and to strengthen accountability for anti-LGBTQI+ discrimination, harassment, and bullying. Specifically, we respectfully request that the Department define "on the basis of sex" to encompass harassment or bullying based on transgender status, gender expression, and sex characteristics (including intersex status), in addition to the existing SOGI measures. We also strongly support the continued inclusion of a measure of allegations of bullying or harassment based on sexual orientation and the introduction of a new measure of allegations of bullying or harassment based on gender identity (Data Group 933).

Finally, we urge the Department to include measures related to opportunities to participate in athletic programs that vary across students' genders. This is especially crucial given the well-being benefits of participating in school sports, gender disparities in students' participation, and the increase in discriminatory bans or invasive barriers that prohibit transgender students' participation in athletic programs that align with their gender identity.¹ For example, the Department could amend and retain Data Groups 937 and 938 to capture the number of "boys' sports" and "girls' sports" and "boys' teams" and "girls' teams," respectively, that schools offer. In this case, boys' sports and boys' teams and girls' sports and girls' teams should be defined as inclusive of students who participate in sports or teams that primarily serve boys and girls, respectively, and replace prior CRDC references to "male-only" and "female-only" sports and teams.² Data Group 939 should also be revised to capture student participation counts in "boys'," "girls'," and "all other" athletic programs by sex (membership), including nonbinary where available, and race/ethnicity.

Solitary Confinement in Juvenile Detention Settings

ED has been collecting data on education in juvenile detention facilities since the 2013-2014 CRDC collection. This data collection has highlighted the gaps in education services for students in juvenile detention facilities, and is a key resource for advocates seeking to better serve this student population. Students in detention centers struggled with learning during the pandemic like most students. However, they were subject to a unique set of conditions where quarantine to prevent the spread of COVID looked similar to solitary confinement. Reporting throughout the pandemic revealed that some youth in detention were placed in lockdown up to 24 hours a day to prevent the spread

of the coronavirus.^{1 2 3} In some facilities, these students only had self-study packets or virtual instruction with limited access to support for their disability status during this time. The Department of Justice, Office of Juvenile Justice and Delinquency Prevention, released guidance in June 2021 noting the distinct mental and developmental risks of solitary confinement for minors.⁴ For these reasons, we suggest some additional questions in the section noted “For justice facility only.”

Related to learning during the pandemic: 1) whether students were quarantined in solitary confinement conditions, and 2) whether students had access to self-study packets, virtual learning, or support related to their IDEA status. These questions should be asked for at least the next two CRDC cycles, and they will provide a more targeted snapshot of the gaps in education services that students in juvenile detention may have experienced during the pandemic. ED should consider including the following questions moving forward: 1) how many students were placed in solitary confinement during the calendar year 2) how long was each student in solitary confinement and 3) the Race/Ethnicity and gender of students who were in solitary confinement. This information will highlight the facilities that overuse solitary confinement, and will bring attention to the supports that students need when they return home from detention centers.

Collection of Race and Ethnicity Data

In the 2021-2022 CRDC collection ED proposes to restore the count of teachers employed during the previous school year, and disaggregate that data by race. This is a very important revision that will ultimately provide a picture of racial diversity in the U.S. teaching workforce. Research shows that a diverse teaching workforce benefits all students, and particularly students of color.⁵ It is important to have a teaching workforce that reflects the diversity of our nation’s changing student population. More

¹ Anya Kamenetz, “COVID-19 Lockdowns Have Been Hard On Youth Locked Up,” NPR, March 29, 2021, available at <https://www.npr.org/2021/03/29/979986304/covid-19-lockdowns-have-been-hard-on-youth-locked-up>.

² Performance-based Standards, “Responding to the Pandemic,” (PbS Learning Institute, Inc: Boston), available at https://pbstandards.org/media/1458/respondingtothepandemic_issuebrief2_preventionandprotectionstrategies.pdf.

³ Josh Rovner, “COVID-19 in Juvenile Facilities” (Washington: The Sentencing Project: 2021), available at <https://www.sentencingproject.org/publications/covid-19-in-juvenile-facilities/>.

⁴ Office of Juvenile Justice and Delinquency Prevention, “Office of Juvenile Justice and Delinquency Prevention Guidance for Juvenile Justice Facilities During COVID-19 Pandemic,” (Washington: U.S. Department of Justice, 2021), available at <https://ojjdp.ojp.gov/library/publications/OJJDP-COVID-Guidance-for-Juvenile-Justice-Facilities-June-2021.pdf>.

⁵ David Figlio, “The Importance of a Diverse Teaching Force” (Washington: Brookings Institution, 2017), available at <https://www.brookings.edu/research/the-importance-of-a-diverse-teaching-force/>.

than half of the U.S. public school student population is nonwhite,⁶ while approximately 80% of the U.S. teaching workforce identifies as white.⁷ We propose disaggregating this data by ethnicity. Additionally, we propose further disaggregating data of students' race/ethnicity. We suggest that this data both disaggregates the Asian American and Pacific Islander category by providing the option to select Pacific Islander, Middle Eastern, South Asian, East Asian and Southeast Asian,⁸ in addition to allowing for selection of race to precede selection of nationality/ethnicity to the extent Latino/Hispanic is not a racial classification, with the goal of ensuring we are accurately catching gaps in representation and experiences.

Religious Affiliation and Harassment/Bullying

In this set of proposed changes ED seeks to again collect data on bullying related to religious affiliation based upon the offender's motive. We support collection of this data because it is important to know whether students are being targeted because of their actual or perceived religious identity. However, student privacy should remain a top priority and this data must be collected in a manner that does not put the privacy of students and their families at risk. We propose that ED continue to collect this data as optional for the 2021-2022 CRDC Collection as it was done for the 2020-2021 CRDC collection. Collecting this information as optional for another year will allow ED to assess whether this data presents a privacy risk for students and families. Mandatory collection of this information should only happen once it is clear that the students and parents can maintain their privacy and are not subjected to further harassment. Additionally, we recommend the data only be collected from parents and guardians to avoid younger children inadvertently documenting information their family chooses to keep private.

Safer School Infrastructure

In the face of a persistent COVID-19 pandemic and in preparation for future natural disasters or health crises, we are suggesting ED collect new data points about school infrastructure. This data is directly correlated to accessing a quality education, understanding the educational opportunities of our students, and being able to readily determine if students and educators are in facilities contributing to poor health

⁶ William H. Frey, "The nation is diversifying faster than predicted, according to new census data," (Washington: Brookings Institution, 2020), available at <https://www.brookings.edu/research/new-census-data-shows-the-nation-is-diversifying-even-faster-than-predicted/>.

⁷ Katherine Schaeffer, "America's public school teachers are far less racially and ethnically diverse than their students," (Washington: Pew Research Center, 2021), available at <https://www.pewresearch.org/fact-tank/2021/12/10/americas-public-school-teachers-are-far-less-racially-and-ethnically-diverse-than-their-students/>.

⁸ Roby Chatterji, Jessica Yin, "Education Policies Need to Address the Unique Needs of Asian American and Pacific Islander Communities," (Washington: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/education-policies-need-to-address-the-unique-needs-of-asian-american-and-pacific-islander-communities/>.

outcomes.⁹ Particularly in communities with limited resources, school buildings are dilapidated and not in a condition conducive to high-quality learning.¹⁰ We propose each school district provide the following information about each of its school buildings: 1) when the building was constructed, 2) has the building had a major renovation since it first opened, and if so, when, 3) what is the age of the HVAC system, 4) does every classroom have windows that completely open and shut, 5) whether and when it was determined if there are elevated lead levels in the water system, 6) whether and when it was determined there are asbestos materials in the school, 7) is there a pool and if so, is it in full working condition, and 8) are there gymnasium locker rooms, and if so, are they in full working condition.

We support the collection of this dataset for a second consecutive year, while the country continues to navigate challenges from the ongoing coronavirus pandemic. Further, we appreciate the updates to this important data collection and hope that you will consider our additional recommendations to ensure that we get an accurate picture of the quality of education that students receive. We are also happy to speak further about any of these recommendations. Please feel to contact Khalilah Harris, Managing Director of K-12 Education, at kharris@americanprogress.org or (202) 478-6336.

Thank You,

Center for American Progress
American Atheists, Inc.
Educators for Excellence
National Black Justice Coalition
National Center for Learning Disabilities
National Parent Teacher Association
National Urban League
New Leaders

⁹ Elise Gout, Jamil Modaffari, Kevin DeGood “The Compound Benefits of Greening School Infrastructure,” (Washington: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/compound-benefits-greening-school-infrastructure/>.

¹⁰ Laura Jimenez, “The Case for Federal Funding for School Infrastructure,” (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/article/case-federal-funding-school-infrastructure/>.