



The Center for Civil Rights Remedies
at The Civil Rights Project | *Proyecto Derechos Civiles*



OPEN SOCIETY POLICY CENTER



August 3, 2015

Stephanie Valentine

Acting Director

Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management
U.S. Department of Education

Re: Docket # ED – 2015 – ICCD - 0074

Dear Acting Director Valentine:

We, the undersigned, strongly endorse the efforts of the U.S. Department of Education (ED) to continue and to expand the collection of the Civil Rights Data Collection (CRDC) from schools and districts across the nation. The CRDC is essential to the public's understanding of the condition of education in the United States. We have relied on CRDC data extensively in writing our national reports, describing the school-to-prison pipeline, developing and implementing interventions to address and reduce disparities in school discipline, filing complaints against individual school districts and raising awareness at the local, state and federal level.

We fully support the CRDC data collection. We believe this data is essential to ensuring the protection of vulnerable children and youth. For this reason, we recommend that the data be reported annually, that CRDC report the data to the public as quickly as possible, and that ED enforce timely and accurate reporting of the data by states, districts and schools. In addition, as explained later in this letter, we feel it is important that ED make mandatory the collection of some specific additional data elements.

COMMENTS AND RECCOMENDATIONS

1. Make The Collection And Reporting Of The CRDC Annual Or At Least Collect With Regard To Discipline Data Annually:

In its statement of support for Part A, ED's Office for Civil Rights (OCR) states: "The transformed 2009-10 CRDC has been heralded as a first-of-its-kind opportunity gap data tool that is allowing citizens and schools nationwide to identify educational equity-related problems and their solutions." The following are specific reasons why the CRDC needs to be conducted annually:

- A. *Annual reporting would help make addressing discipline disparities a priority:*** The Department of Education and the Department of Justice have made addressing excessive school discipline a national priority. Federal law requires that all schools

and districts report annual data in most areas, including test results, graduation rates, and discipline data for students with disabilities. Equal priority should be given to the collection and reporting of the CRDC discipline data, for all students. Collecting and publicly reporting the most fundamental school discipline data for all students is essential to remedying this issue. Moreover, an annual data collection requirement would be a clear way to match the Obama administration's expressed commitment with meaningful and concrete action.

- B. *Annual discipline data are required:*** The Individuals with Disabilities Education Act (IDEA) already requires states to *annually* collect and publicly report a wide range of data, including a great deal of discipline data disaggregated by race/ethnicity, gender, and English Language status (20 U.S.C. Sec. 1418(a)(1)(A)(v) and (D)). This includes suspensions of one day or more. If an annual collection and reporting of CRDC data began with the area of school discipline, the CRDC would ensure that discipline data reporting on students not eligible under IDEA was aligned with the IDEA's extant *annual* state and federal collection and public reporting requirements. Because so much of the discipline data for IDEA already overlaps with CRDC discipline data, annual collection of at least the CRDC's subset of discipline data would not be as costly or burdensome as others have argued.
- C. *Annual comparisons to students without disabilities are required:*** In several places, the IDEA's *annual* monitoring and enforcement requirements also call for states and districts to compare disciplinary rates of students with disabilities and their non-disabled peers. These comparisons are explicitly encouraged at 20 U.S.C. Sections 1412 (a)(22)(A)(ii) and *explicitly required* at 1418(a)(1)(E). Although comparative analysis of data on students without disabilities is not explicitly required everywhere in the statutory text, the IDEA does give the Secretary the explicit authority (at Section 20 U.S.C. section 1416 (a)(4)) to review any data the Secretary deems relevant. The text of the monitoring and enforcement provisions of the IDEA makes it clear that Congress contemplated *annual* discipline data comparisons between students with and students without disabilities. Not only does the Secretary already have the authority to collect annual discipline data, the IDEA provides explicit statutory direction to collect discipline data on students without disabilities for comparison purposes. The CRDC mandated reporting would not pose a sizeable burden if coordinated with [Edfacts](#) collection definitions in this area.
- D. *Effective civil rights enforcement in education requires annual data:*** Finally, the points raised below, which apply to the CRDC collection and reporting generally, are especially true with regard to school discipline. Resolution agreements are helping to address the myriad of disparities in schools and districts, and stepped up OCR and DOJ compliance reviews and numerous complaints have revealed dramatic disparities with grave civil rights implications.

- i. We believe that many states and districts are failing to adequately address the needs of historically disadvantaged youth in high minority districts where millions of students are isolated in the poorest school districts. As we have repeatedly asserted, collecting data on a biennial basis is simply inadequate for detecting violations of civil rights law because the data comes too late for timely changes. Public reporting of the CRDC often does reveal civil rights problems, and, as such, annual reporting will encourage greater compliance with civil rights law well before OCR initiates an investigation.
- ii. Parents and children who may be experiencing injustice and who are potential complainants have a right to know whether or not the issue they are confronted with is systemic in nature. Without annual data reported in a timely fashion, isolated complainants may confront additional obstacles in their struggle against systemic injustice. For example, there is often no recourse without recent data to establish a claim for unlawful disparate impact of a policy or practice. There is already a serious problem with having public reports made available more than a year after the academic year has concluded, but this problem is exacerbated if an issue or concern arises in a year for which no data were even collected.
- iii. Similarly, the CRDC data are critical for identifying those schools and districts that have been successful in addressing civil rights concerns and to the evaluation of a remedy, especially with monitoring on an annual basis.
- iv. Annual collection will encourage more frequent and effective uses of the data by the public at large as well as researchers and advocates. OCR has noted that CRDC data have also been used by other department offices for monitoring compliance with federal professional development funding, monitoring states under ESEA flexibility waivers, defining program requirements on discipline disparities in the Race to the Top district competition, and evaluating the Office of English Language Acquisition's (OELA) programs and activities. These potential uses of the data can be hamstrung in years for which no data are collected or where the data are too old to accurately describe the status of the applicant. Ultimately, annual collection is more efficient because it increases data usage and therefore increases its value in truly meeting the needs of children in schools.

2. Report The Data In A More Timely Fashion:

Future data releases should be provided to the public within one year of the collection period deadline.

Whether data is collected annually or biennially, we urge ED to use the increased digital collection proficiency to narrow the (September to January) window provided to districts to report the data. We also recommend shifting resources to increase ED's data processing capacity and thereby decreasing the time between the data collection and reporting to the public. If, for example, the collection and public reporting could be completed in the same academic year it would make the data more useful to the public and especially for civil rights and community based advocates.

Specifically, we encourage OCR to release the data to the public in a CD-ROM or other simplified version on-line, and then continue to develop useful on-line presentations. According to the proposal, "The survey submission for the 2015–16 CRDC is anticipated to open no later than September 2016 and is expected to close on or around January 2017."

Currently the collection window closes four months (or more) after the academic year plus summer session concludes, and then reporting have historically been completed nearly a full calendar year after that collection window closed. For example, the data from 2011-12 academic year were not made public until March of 2014, nearly two complete academic years later. In several states, including California, Massachusetts and Maryland, the lag time for discipline data is one year or less, and in most cases data on academic outcomes are reported within a year of their collection.

3. Report on school and district level compliance with each data category:

We appreciate OCR's efforts to date to improve compliance, but more transparent and uniform action is needed.

We know that some schools and districts fail to respond without adequate justification. For example, we know that during the first year of the collection of data on school based arrests and referrals to law enforcement many large districts, including Los Angeles Unified School District (LAUSD), either reported zero, or stated that the data were not available. Other districts reported that they did not have any students falling into either category. OCR reported non-responses as zeroes making them indistinguishable from true zeroes.

Currently because OCR reports non-compliant data cells as zeros, this practice has the unintended consequence of rewarding non-compliance, as the public is left with the false impression that there are no suspensions or expulsions or arrests when the truth may be that suspensions, expulsions or arrests may be in excess, and may reflect unlawful policies and practices.

The fourth collection of these data will begin in 2015-16. OCR should take stronger steps to ensure these data are reported as required. Whenever a district fails to report in any data category

without a satisfactory justification, rather than publish the data with an “N/A,” which might suggest this is an acceptable response, OCR should notify the public that the entity was non-compliant with the data request as a first step toward ensuring future compliance. OCR should also provide incentives such as making complete and accurate CRDC responses qualifying requirements for all federal competitive grant programs.

We appreciate that OCR has responded to this issue when raised in previous comments and already taken important action in some cases. We urge OCR to create a specific plan for responding to non-compliance with data reporting, and provide notice to all CRDC recipients in time for the 2015-16 collection.

4. Important Changes To The CRDC Since The Last Comment Period:

There are a number of changes that we want to be sure to recognize as positive developments.

- A.** We want to recognize that ED’s proposed mandatory collection of new items for justice facilities are extremely important. Far too many students become invisible when they enter the juvenile justice system. It is imperative that advocates, policy makers and the public at large keep track of these children and the education they receive in these facilities. ED’s effort to begin to shine a light on what happens in the juvenile justice systems deserves recognition. Specifically we applaud the addition of the following.
 - i. DG 943--Type of facility (pre-adjudication/conviction; post-adjudication/conviction; or both);
 - ii. DG 940--Number of days that make up the regular school year;
 - iii. DG 942--Number of hours per week that the educational program is offered during the regular school year.

However, we would urge ED to include the number of students who participated in the educational program, disaggregated by number of calendar days (DG 941) as a “*mandatory*” rather than optional measure. This is a particularly important measurement to quantify the amount of lost instruction and for tracking the cumulative impact of short duration suspensions on students with disabilities. Similar to our arguments above, making this mandatory would also align with the federal IDEA requirements.

We greatly appreciate that OCR has maintained the changes first introduced in 2013-14 and its response to our prior comments including:

- B.** Define out-of-school suspensions of “at least half a day” to be the same for students without disabilities to align with IDEA.
- C.** “Referral to law enforcement” has been amended to include “citations, tickets and court referrals.” This change is essential and will likely require additional monitoring and enforcement efforts on OCR’s part to ensure that these data are indeed reported

accurately.

- D.** We support OCR's decision not to drop collection of harassment/bullying policies. Further we applaud the planned collection in this area in cases in which bullying is based on sexual orientation. We encourage further expansion of data collection in this area.
- E.** We also believe that OCR has provided useful clarification regarding when handcuffs are to be counted as a restraint. (i.e., if a student is handcuffed and no arrest is made, it is considered a mechanical restraint).
- F.** We are happy to see that corporal punishment data will be collected for students with and without disabilities, and will include instances down to the pre-K level.
- G.** We commend the clarification that involuntary disciplinary transfers to alternative placements for the remainder of the school year are to be counted as expulsions. We would suggest retaining the term "removal" to help ensure that these reporting requirements are consistent with IDEA's requirements. We agree that the word "transfer" should be used, but suggest also retaining the term "removal."
- H.** We applaud OCR's decision to reinstate collection of teacher certification statistics because of the importance of teacher quality in helping to ensure student engagement and we recommend collecting data on "out-of-field" teachers. We applaud the decision by ED to maintain the data on the number of teachers with one or two years of experience.

5. Law Enforcement Data:

We strongly support the inclusion of more information on school police presence and activity, and appreciate the modifications made to clarify definitions and improve the accuracy of these data. We are encouraged that these collections are mandatory in 2013-14, and will continue to be for 2015-16. Specifically, we endorse the maintenance of the new language:

Security and Referrals to Law Enforcement (Data Groups 921, 922, 923 and 975)

- A.** Security Staff Types and Definitions (Data Group 975): We support the revision of the definition of "sworn law enforcement officer" to encompass school resource officers. ED's proposed changes will make it easier for schools to provide this data.
- B.** 2013 Collection of Security Staff Data (Data Group 975): We support maintaining the count of the number and type of security staff assigned to a school. This is not a burden and should be included in the 2015 collection.

6. Specific Recommendations Regarding Changes And Additional Data Elements:

We continue to raise a number of concerns and encourage the following changes and additions to the CRDC:

A. Collect and report data on the “incidence and duration” out-of-school suspensions in 2015-2016: We point out that no delay should be needed for schools to collect and report this information as part of the CRDC because IDEA, at 20 U.S.C. Section 1418 (a) already requires that states report these same data to the public, annually, with regard to students with disabilities. Specifically, the IDEA requires public reporting of disaggregated data on both the “incidence and duration” of school discipline for students with disabilities. In order to comply, states must collect these data from districts and districts from schools, each year.

The statute *mandates* in the relevant parts:

“(a) In general each State that receives assistance under this subchapter, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on the following:

(1)

(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:(v)(III) The number of children with disabilities who are subject to long-term suspensions or expulsions....

(D) The *incidence and duration* of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.

(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as *compared to children without disabilities* who are removed to alternative educational settings or expelled.”

Therefore, the data should at least be mandatory with regard to students with disabilities and a parallel requirement added in the CRDC that would apply to all students. This would not add a significant burden. Instead, it would help ensure that these currently mandated annual data collection and reporting obligations are met.

- **Duration:** With regard to duration, the OCR proposal asks schools and districts to provide a total count of days lost due to suspension. Currently, the IDEA collection reports on the number of students suspended for one day, between two and ten days, and separately for more than ten days. In order for a school or district to calculate these IDEA-required sums it must count the days of lost instruction, at least for students with disabilities. Although the proposed OCR reporting of counts as proposed differs slightly from the end report the state must produce pursuant to the IDEA guidance and regulations, the same underlying collection and calculus needed to comply with the new

CRDC count is already required by these IDEA “duration” reporting requirements. Further efforts to align the CRDC duration data with the IDEA’s statutory requirements may call for modifying IDEA’s guidance, or closer coordination between the CRDC data and Edfacts, but doing so should not delay the proposed CRDC mandated reporting on duration for 2015-16. Certainly, this should not be described as “optional” when it is a required reporting element as it pertains to students with disabilities. If circumstances call for any kind of option, it should be mandatory for students with disabilities, or else it risks undermining the IDEA’s mandatory collection and reporting requirements.

- **Incidents:** With regard to incidents, often those who use the OCR data assume that they are counts of suspensions rather than the unduplicated numbers of students suspended. The unduplicated counts are extremely valuable. However, they do not fully capture the overuse of suspensions, and the degree of racial disparity. While the data on students suspended two or more times is very helpful, the total count of out-of-school suspensions can sometimes reveal problems. It may suggest an extraordinary overreliance on this form of punishment and its possible use to disproportionately target certain subgroups. This may not be as evident when only the unduplicated student numbers are provided. Therefore, a count of suspensions should be added to the CRDC.

B. Make The Following Collections Mandatory In 2015-16:

- i. DG 922--Number of K-12 students with disabilities who were transferred for disciplinary reasons (to alternative school; to regular school) (disaggregated by race, sex, disability-504 only, LEP)
- ii. DG 923--Number of K-12 students without disabilities who were transferred for disciplinary reasons (to alternative school; to regular school) (disaggregated by race, sex, LEP)
- iii. DG 966--Number of school days missed by students who received out-of-school suspensions (disaggregated by race, sex, disability-IDEA, disability-504 only, LEP).

C. Report Discipline Data In A More Understandable Fashion: We commend the Department for choosing to break the data on out of school suspensions down into two categories: students who were suspended just once, and separately, students suspended two or more times. However, it is essential to add these two exclusive categories together so the public knows how many students were suspended out of school at least once. We believe this change is underway but could not confirm that this particular change will be made. We encourage OCR to reach out to the

signatories to these comments and the field as part of its ongoing efforts to improve their public reporting.

D. Keep Offense Data Not Clearly Connected To Discipline Actions Separate from School Discipline Data: We understand that many in the public want information about school safety and so adding in elements of the National Center for Education Statistics (NCES) survey on Crime and Safety will help provide a clearer picture. However, the NCES reporting of criminal offenses committed on school property includes all crimes, whether committed by adults or children, and including all incidents on school property, those committed after hours and those unrelated to school activities. These data are not school discipline data and should be reported in a distinct and separate area of the CRDC. While adding this data might help the public see that serious crimes and school discipline are not equivalent, our concern is that it will encourage (heuristically) an association between suspension and criminal behavior, and encourage readers to associate the misbehaving students with criminal misconduct or worst label students who have been suspended or expelled as criminals.

Finally, this data group fails to capture the more minor acts for which students are arrested, ticketed or referred to law enforcement or juvenile and family courts. Data from Florida suggests that these more minor acts account for over two-thirds of court referrals from school. We recommend establishing a data group on offenses resulting in referral to law enforcement, school-based arrest, or other law enforcement action. This data group should include separate categories for misdemeanor offenses such as “disorderly conduct” and “disrupting public school” versus more serious offenses. Such a data group would certainly capture the serious offenses in the proposed “offenses” category and should be easier to collect as data on referral to law enforcement and school-based arrest has been included in the CRDC since the 2009 collection. Finally, the offenses data does not disaggregate by race, LEP status, or disability status for victim or offender, making it much harder for the reader to draw an equity impact from the data. If this category is added as mandatory for 2015 it should include the subgroup breakdown and offenses not connected to school discipline should be reported separately. Meanwhile, the delay in required reporting should provide ample time to work out some of the issues we raised in August which we repeated above. We look forward to any opportunity to help clarify this collection further.

E. Collect And Report On Both Transfers To An Alternative School (Optional For 2013-2014) And A Regular School (Dropped For 2015-2016 CRDC) For Disciplinary Reasons:

We support the Department’s continued collection of data on transfers to an alternative school for disciplinary reasons, and its mandatory collection in 2015-2016.

However, we have concerns that removing the question on transfers to a regular school for disciplinary reasons (dropped in 2015-2016; was optional in 2013-2014) will not allow proper reporting of schools and districts using transfers as a means of disciplinary action for students. While the decision to drop this question was made, in large part, because the question was confusing; we would like to see this question collected as a mandatory category in 2015-2016. In order to address any confusion, we propose OCR change the question from “Transferred to a regular school for disciplinary reasons” to the following:

- i. Transferred to any school for disciplinary reasons

If an LEA collects all transfers for disciplinary reasons, it could then subtract transfers to alternative schools, and the result would be transfers to regular schools.

F. CRDC Data Collection Suggestions with Regard to Informal Removal:

Anecdotally, we have learned that school officials may fail to designate a removal from school in response to a behavioral issue as a suspension. In some cases students have been barred from attending during the regular school day and in-school suspensions must be served after regular school hours. In other cases, students are told to take a “leave” of a day or more, but are not officially suspended. The use of “informal” removal of students is particularly troubling when it results in a loss of the discipline protections, including but not limited to those of the IDEA and Section 504, as well as constitutionally required due process protections for all students. Anecdotal evidence suggests that this is extremely prevalent and appears to be increasing, in particular for children with disabilities who are provided a shortened school day as a result of their disabilities, on a continual or repeated basis, resulting in a loss of significant school time. We would like to see CRDC begin to collect data on this problem so we have a clearer understanding of its scope. Additional guidance is warranted to ensure that such informal removals are tracked but not condoned.

Ideally, we would like to see the inclusion of a new data element for students with and without disabilities: The issue here is students who are repeatedly sent home early each day (usually at about 11 am) either informally or as a result of an illegal change in the IEP or 504 plans, which is a different issue than transferring them to a different school.

- i. We would prefer the new data element be the “Number of students “removed” from school, but not listed as “suspended.”
 - a. “Number of students who attend school for less than 50% of the school day (with the length of school day as defined for all students by local

policy in accordance with state law) for more than **30** school days in a school year. This data to be disaggregated by those students who attend a partial day for: **a)** medical reasons as ordered by the student’s treating medical provider; and **b)** any other reason including LEA or school placement determinations.”

- ii. In the alternative, we recommend amending the current school form as follows:
 - a. Add the following data element to Page 11, Section II. Item #10 (“Enrollment of Students with Disabilities Served under the IDEA and Students with Disabilities Served Under Section 504 Only):
 - i. “Students who attend partial days for 15 or more school days.” This data to be disaggregated by those students who attend a partial day for: **a)** medical reasons as ordered by the student’s treating medical provider; and **b)** any other reason including LEA or school placement determinations.
 - b. “Partial Day” to be defined as “Students who attend school for less than 50 percent of the school day (with the length of school day as defined for all students by local policy in accordance with state law).”

RESPONSE TO CONCERNS ABOUT DATA BURDENS:

Naturally, over time, some data collection categories become unnecessary or fall out of alignment with current school practices and policies. Meanwhile, some new data collection items become necessary. We do understand, therefore, that some of the new areas of data collection began as a voluntary collection in 2013-2014 and will be mandatory in 2015-16. Given the critically important role that these data play in supporting the mission of the Department of Education’s Office of Civil Rights, of ensuring compliance with anti-discrimination laws, the way to relieve the burden of information collection and reporting should be by providing more technical assistance and support for these activities.¹ In no case should the data reporting challenges faced by some districts, or the fact that many states have failed to comply with IDEA’s explicit data collection and public reporting requirements, drive reductions or delays in collection and reporting that would shortchange the public of this vital information.

CONCLUSION:

¹ As stated by OCR in its Part A Supporting statement: Since 1968, the CRDC (and its predecessor surveys) have served as the cornerstone for federal enforcement of children’s civil rights in public schools. OCR relies on CRDC data as it investigates complaints alleging discrimination, determines whether the federal civil rights laws it enforces have been violated, initiates proactive compliance reviews to focus on particularly acute or nationwide civil rights compliance problems, and provides policy guidance and technical assistance to educational institutions, parents, students, and others.

The Center for Civil Rights Remedies of the Civil Rights Project at UCLA, the Open Society Policy Center, the National Disability Rights Network, and the undersigned strongly support the efforts of the U.S. Department of Education to maintain the new information collected through the Civil Rights Data Collection and encourage the Department to consider additional changes to make the data available to the public annually and in a more timely manner. An expanded and improved CRDC is essential to ensuring the enforcement of federal law and the protection of students' civil rights.

Thank you for considering these comments. If you have any questions, please feel free to contact Dan Losen, Director of the Center for Civil Rights Remedies, at losendan@gmail.com; Diane Smith Howard, Senior Staff Attorney for Juvenile Justice and Education Issues, National Disability Rights Network, at diane.smithhoward@ndrn.org; or Christopher Scott, Senior Policy Analyst, Open Society Policy Center, at Christopher.Scott@opensocietyfoundations.org.

Sincerely,



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Director
The Center for Civil Rights Remedies²



Curt Decker
Executive Director
National Disability Rights Network



Christopher L. Scott
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Open Society Policy Center

As well as the following undersigned organizations who support these comments:

Access Living of Metropolitan Chicago
Advocates for Equity in Schools (Henrico Coalition)
Alliance for Excellent Education
American Civil Liberties Union
Association of University Centers on Disabilities
Center for Civil Rights Remedies
Center for Community Alternatives
Coleman Advocates for Children and Youth

² CRP at UCLA is a research center that produces and commissions studies on civil rights that has been utilized in improving the design and implementation of education policy at many levels of government.

References

Balfanz, R., Byrnes, V., & Fox, J. (2013, January). *Sent home and put off-track: The antecedents, disproportionalities, and consequences of being suspended in the ninth grade*. Paper presented at the Closing the School Discipline Gap: Research to Practice conference, Washington, DC.

Council of Parent Attorneys and Advocates, Inc
Disability Rights Arkansas
Disability Rights Education and Defense Fund
Disability Rights North Carolina
Education Law Center
Equal Justice Society
Equip for Equality
Futures Without Violence
Legal Aid Justice Center's JustChildren Program
Minnesota Education Equity Partnership
National Disability Rights Network
New York Civil Liberties Union
Nollie Jenkins Family Center, Inc
Open Society Policy Center
Parent Education Organizing Council
Poverty & Race Research Action Council
Restorative Schools Vision Project
Student Advocacy Center of Michigan
University of the District of Columbia David A. Clarke School of Law Juvenile and Special Education
Law Clinic and the Took Crowell Institute for Youth
Professor Sarah Redfield, University of New Hampshire