

February 28, 2017

Director of the Information Collection Clearance Division
U.S. Department of Education
400 Maryland Avenue SW
L.B.J.
Room 224-82
Washington, DC 20202-4537

RE: Docket ID ED-2016-ICCD-0147

Dear Ms. Olmeda:

The undersigned organizations strongly support the U.S. Department of Education's continuing collection of data through its Civil Rights Data Collection (CRDC). The CRDC provides students, parents, educators, advocates, policy makers, and the press with transparent, understandable information about our nation's schools necessary to ensure equal opportunities to all students. The CRDC is critically important to the Department's statutory responsibility to hold schools, districts, and states accountable for compliance with our civil rights laws. It also gives families the information they need to make informed choices and to advocate for their children's educational rights. We expect that, as authorized and required by federal law, including the Every Student Succeeds Act (ESSA), the Department will continue to collect data for the CRDC at least biannually, and will disseminate that data through prompt, regular, and complete publications. We write to comment on proposed changes to the CRDC published December 30, 2016, and to respond to the directed questions found in Attachment A-5.¹

Collection and Publication of CRDC Data Must Continue.

We appreciate the Department's continued commitment to the CRDC as an integral component of its mission. The CRDC is necessary to support the Department's statutory mandate to prevent discrimination and to ensure equal opportunity in public education. The collection is also vital to keeping the public informed about how schools fare on quantifiable measures of school climate and resource equity, including academic performance, school discipline, harassment and bullying, college and career readiness, school finance, and teacher and staffing levels. Parents need the information presented in the CRDC's user-friendly interface so that they can gauge which schools are likely to be the best fit for their children. Through regular review of CRDC data, parents and other members of the public, including the media, can

¹ Research cited in this letter was provided by the ACLU and the Judge David L. Bazelon Center for Mental Health Law"

examine trends among schools, and can identify which schools provide equal educational opportunities, and which schools face continuing challenges.

We also appreciate the changes the Department has made, after consulting with a wide variety of stakeholders, to improve the CRDC over time. For example, the Department now collects key data about student discipline, including the use of suspensions and expulsions, referrals to law enforcement, arrests, and unsafe practices such as seclusion or restraint. The data collected on these practices reveal significant disparities among historically marginalized students, including students of color, English-language learning students, and students with disabilities, and have spurred reform efforts. Similarly, the Department now collects critical data on the number of allegations of bullying and harassment on the basis of race, sex, disability, religion, and sexual orientation. And the Department also collects data that permits stakeholders to make evidence-based comparisons about financial and human resources among schools, including in the number and types of advanced courses offered and the number of teachers and other professional staff in schools.

To advance compliance with civil rights laws, the Department depends upon stakeholders such as parents and their advocates who use the CRDC to identify problems that may require federal attention. For example, advocates in Alabama used CRDC data to evaluate whether concerns about discipline reported by parents indicated a pattern of systemic district-wide disparities. As a result, parents made a systemic complaint to the Department about the overuse of discipline and the denial of a free and appropriate public education (FAPE), as required by Section 504 of the Rehabilitation Act of 1973, to students with disabilities. The CRDC discipline data was a key tool these parents and their advocates used to determine whether Department intervention was necessary.

Parents, students, and their advocates also use the CRDC's data to help state and local policy makers design locally-grown remedies for challenges facing schools. In the District of Columbia, advocates have advised the District councilmembers responsible for oversight of its public schools about CRDC data showing the disproportionate application of discipline to students of color and students with disabilities (and students of color with disabilities). In Michigan, advocates for parents and students used CRDC data on incidents of restraint and seclusion in the state's public schools to inform the state legislature of the need to adopt new laws regulating these dangerous practices. After advocates advised state senators that Michigan schools had reported 3,000 separate incidents of restraint and seclusion, the state senate overwhelmingly approved legislation aimed at reducing the use of these practices.

The Department's own reports about the activities of the OCR, including the CRDC, demonstrate the continuing need for robust collection and dissemination of this data. Over the eight years between 2009 and 2016, the OCR received more than 76,000 complaints of

violations of the laws it enforces,² and resolved 66,000.³ Still, the 2013-2014 CRDC indicates continuing challenges in our nation's public school system. There are still significant disparities in out-of-school suspensions among students of color and students with disabilities.⁴ English learners, students with disabilities, and students of color are more likely to be retained one or more grades in high school.⁵ Students of color are more likely to attend schools with higher concentrations of inexperienced teachers.⁶ The continued collection and publication of data on these and other disturbing trends will tell us whether schools are correcting them.

As the Department notes in its request for comment, existing federal law already requires, or will require, states, school districts, and schools to report much of the data that the OCR collects for the CRDC. The 1979 Department of Education Organization Act authorizes OCR to collect data necessary to ensure compliance with the civil rights laws listed above.⁷ The Individuals with Disabilities Education Act of 1975 (IDEA) requires states to report data from schools about incidents of discipline of students with disabilities.⁸ And, beginning in 2018, the ESSA will require states and school districts to report annually on suspensions, expulsions, law enforcement referrals (including arrests), chronic absenteeism, acts of bullying or harassments, and the number and percentage of students in preschool programs and advanced courses.⁹ The requirement that schools regularly submit this important data to the Department for the CRDC is not burdensome, given these statutory mandates.

For all of these reasons, we urge the Department to allocate the resources necessary to continue its collection and publication of this important data. In addition, the Department should increase its grants and technical assistance to support states and school districts in their data collection efforts to ensure the collection is both efficient and accurate.¹⁰ We expect that the 2015-2016 CRDC, for which schools have already reported their responsive data through the Department's user-friendly Web-based (and "pre-populated") survey tool, will be published

² Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and the Boy Scouts of America Equal Access Act of 2001.

³ U.S. Dep't of Educ., *Achieving Simple Justice: Highlights of Activities, Office for Civil Rights 2009-2016* (Dec 8, 2016), at 2.

⁴ U.S. Dep't of Educ., *2013-2014 Civil Rights Data Collection: A First Look* (Oct. 28, 2016), at 3.

⁵ *Id.* at 7.

⁶ *Id.* at 9.

⁷ 20 U.S.C. § 3413(c)(1).

⁸ 20 U.S.C. § 1418.

⁹ 20 U.S.C. § 6311(h)(1)(c)(viii).

¹⁰ Data collection improvement grants and technical assistance assist states and school districts in providing all CRDC data publicly in a readily available format, including to the following audiences: families without ready internet access, those with limited English proficiency, and individuals with disabilities.

as soon as possible. And we expect that the 2017-2018 CRDC, the subject of the rest of these comments, will be conducted and published by 2020.

We have one suggestion in addition to our responses to the Department's Directed Questions, which we believe will make the 2017-2018 CRDC more efficient and more accurate. First, we recommend that two currently distinct categories, (1) referrals to law enforcement agency or official, and (2) arrests for school-related activity, be combined into one category. By OCR's definition, all arrests result from referrals to law enforcement. Many districts, however, report zero law enforcement referrals, but some arrests. Other districts report referrals but no arrests, which is possible but unlikely if the school reports a high number of referrals. Perhaps because of some confusion about the OCR definition, or for some other reason, this data are not accurate. This undermines the credibility of the collection.

Rather than permitting conflicting data, which is not meaningful for the purposes of analysis, the Department should combine the two distinct categories into one category that seeks the total numbers of referrals to law enforcement and school based arrests. This will provide a more accurate count of the prevalence of law enforcement involvement with students in each school and school district.

Comments on Directed Questions.

Questions 1 and 2 – Computer Science Classes and Access to the Internet

We support the Department's proposal to collect information for the 2017-2018 CRDC about the availability of computer science classes, including Advanced Placement (AP) computer science classes, in high school, and the participation of historically underserved students in those classes. There is a consensus in the United States that our society and economy depend on more students achieving proficiency – and excelling – in science, technology, engineering, and mathematics (STEM) education. Expertise in computing, including computer programming, is necessary for academic success in STEM subjects in high school and in postsecondary education. Through the 2013-2014 CRDC, the Department has reported that students of color, English learning students, and students with disabilities experience significant disparities in their enrollment rates in higher level mathematics and science courses.¹¹ It is important for the Department to collect data to evaluate whether such disparities also exist for computer science courses. For many students with disabilities, disparities may result from failures to offer universally designed and accessible equipment and instruction. It is critical for stakeholders, including government stakeholders, to understand whether and how this is a problem, so that more resources can be devoted to ensuring that students have the opportunity to become computer literate. Parents must also have this information, so that they may make informed

¹¹ A First Look, *supra* note 3, at 6.

choices among schools, or can request that such courses be added to the curriculum offered at the school their child attends.

Today no school can effectively instruct students in computer science or any other subject without adequate high-speed Internet access. It is important to understand whether there are inequities among schools in their access to the Internet, so that states and school districts can take steps to correct such inequities, and so that the Department can ensure compliance with civil rights laws prohibiting discriminatory resource inequities. This may become even more important if state departments of education increase the use of virtual educational programs in their required curricula, as the school district's contribution to these programs would need to have an equal reach throughout the state. We support the Department's collection of data regarding school bandwidth for the 2017-2018 CRDC.

Question 3 – Public Schools in the Commonwealth of Puerto Rico and the Outlying Areas

We support the extension of the 2017-2018 CRDC to public schools in the Commonwealth of Puerto Rico and the outlying areas. As discussed above, parents, students, and their advocates use the CRDC to advise the Department and local policy makers about discriminatory disparities, including in discipline and in resource equity. The extension of data collection to Puerto Rico and the outlying areas, which have requirements to comply with federal law, will support civil rights enforcement and reforms in these regions by allowing these interactions to occur. For example, there are civil legal services agencies serving people with disabilities (also known as "Protection and Advocacy" agencies) in every state and the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. The ESSA will require states and school districts in Puerto Rico to report data required by the CRDC in 2018.¹² Schools in Puerto Rico and the outlying areas should be required to respond to the entire list of requested data elements for the 2017-2018 CRDC as they are intentionally included within the nation's public school system.

Question 4 – Treatment of Students with Disabilities Placed in Educational Settings not Operated by the Reporting School District

We strongly support inclusion in the 2017-2018 CRDC of questions on the experiences of students with disabilities placed by public school districts in private or "non-public schools" that segregate students on the basis of disability. This is data that public school districts already receive and maintain, or can access readily. The current scope of the CRDC fails to capture a substantial proportion of the discipline and restraint and seclusion being experienced by public school district students with disabilities.

¹² See, e.g., 20 U.S.C. § 6332(e).

Across the country, public school districts place tens of thousands of students with disabilities into hundreds of private state-approved special education schools.¹³ These public placements occur when school districts conclude that they cannot educate students in their public schools consistent with the IDEA. Although the Department's Office of Special Education Programs (OSEP) does not currently cross-reference its discipline data with its data regarding the use of segregated educational environments, advocates report significant use of suspensions and expulsions, and seclusion or restraint, by private or non-public special education schools. A significant number of the deaths and injuries reviewed by the 2009 General Accounting Office (GAO) report – the report that helped spur the Department's addition of the restraint and seclusion reporting elements to the CRDC in 2009 and the publication of its resource document in 2012 – occurred in such segregated private placements.¹⁴

The CRDC currently only requires discipline and restraint and seclusion data to be reported for students in public schools, and does not require school districts to collect and provide this information from the private and non-public schools to which they send students with disabilities. But we know that these students experience levels of restraint and seclusion, for example, which are magnitudes higher than those experienced by other publicly educated students with and without disabilities. A recent review of restraint and seclusion experienced by California students found that, during the 2011-2012 school year, nonpublic special education schools in California educated about two percent of students served under the IDEA

¹³ See, e.g., Nat'l Ctr. For Educ. Statistics, Characteristics of Private Schools in the United States: Results from the 2013-2014 Private School Universe Survey 6 & Table 1 (Nov. 2016), <https://nces.ed.gov/pubs2016/2016243.pdf> (in 2013-2014, 99,280 students were enrolled in 1,607 private, nonsectarian, special education schools); U.S. Dep't of Educ., 29th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, Vol. 2 160 (2007) (in fall 2005, the last year such data was collected by Department's Office of Special Education Programs, school districts placed 70,751 students with disabilities in private separate facilities); Cal. Dep't of Educ., Enrollment/Number of Schools by Grade Span & Type (Apr. 18, 2016), <http://www.cde.ca.gov/ds/sd/cb/ce/enrollgradetype.asp> (in 2014-2015, public school districts placed 10,655 students "with exceptional needs" in 393 nonpublic nonsectarian schools); N.Y. State Educ. Dep't, Approved Private, Special Act, State-Operated and State-Supported Schools in New York State (July 9, 2013), <http://www.p12.nysed.gov/specialed/privateschools/home.html> (state approved approximately 120 private "853" schools, created by Chapter 853 of the Laws of 1976, which "are operated by private agencies and provide day and/or residential programs for students with disabilities."); Maryland State Dep't of Educ., Nonpublic School Approval, Special Education Schools Approved Under COMAR § 13A.09.10 (last visited Feb. 20, 2017), http://nonpublicschoolsdb.marylandpublicschools.org/nonpublic/nsab_directory/ApprovedSchoolLocations.asp?Condition=SpecialEducation (listing approximately 87 approved private special education schools); Maryland Ass'n of Nonpublic Special Educ. Schools (last visited Feb. 20, 2017), http://mansef.org/PDF/MANSEF_Overview.pdf (over 3,000 students served in Maryland's nonpublic special education schools).

¹⁴ See U.S. Gov't Accountability Office, GAO-09-719T, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers 6 (May 19, 2009), <http://www.gao.gov/assets/130/122526.pdf> (describing restraint-related deaths of two children with disabilities placed in private settings, 13-14 (describing death following prone restraint of 14-year-old boy attending private special education school), 30-31 (describing restraint-related death of 12-year-old boy in private placement for emotional disturbance), 31-32 (describing restraint-related death of 16-year-old youth with bipolar disorder in private placement)).

in the state, but filed 66 percent of the “behavioral emergency reports” memorializing the use of restraint and seclusion in California schools.¹⁵ This data prompted an investigation by the California attorney general’s office.¹⁶

The children with disabilities who are placed in these settings are often those with the most significant behavioral needs, who may be unable to describe their experiences effectively. They are more likely to be black.¹⁷ Many are also receiving services through the child welfare system.¹⁸ It is critical that data be collected about these vulnerable students because they are placed away from the regular oversight that public school placements provide.

So that the Department can more effectively perform its statutory responsibility to prevent discrimination, we recommend that the 2017-2018 CRDC collect and publish the following information from private or non-public schools in which public school students are placed, in order to ensure their safety and educational success:

- Total number of students enrolled by the Local Education Agency (LEA) in private or non-public schools, disaggregated by race, sex, disability, and Limited English Proficiency (LEP) status. Collecting this information will ensure that specific categories of public school students with disabilities are not overly segregated outside of public schools.
- Total number of students enrolled by the LEA in private or non-public schools who received one or more in-school suspension, one out-of-school suspension, more than one out-of-school suspension, or expulsion, disaggregated by race, sex, disability, and LEP status. Collecting this information will help ensure that public school students with disabilities are not removed from private and non-public schools due to behaviors related to their disabilities.

¹⁵ Cal. Educ. Code § 56521.1 (describing emergency interventions and associated behavioral emergency reports); Jane Meredith Adams & John C. Osborn, Little oversight of restraint practices in special education, EdSource (Apr. 19, 2015), <https://edsource.org/2015/little-oversight-of-restraint-practices-in-special-education/78040> (“The vast majority of these emergencies involve the use of restraint and seclusion . . .”).

¹⁶ See Jane Meredith Adams, Discipline in private special education schools under investigation by California attorney general, EdSource (June 9, 2016), <https://edsource.org/2016/discipline-in-private-special-education-schools-under-investigation-by-california-attorney-general/565577>.

¹⁷ Compare Characteristics of Private Schools, *supra* note 13, 14 & Table 9 (in 2013-2014, 20.4% of students enrolled in private special education schools were black) and U.S. Dep’t of Educ., IDEA Section 618 Data Products: Static Tables (in 2015-2016, 42,376 out of 171,294 IDEA students educated in separate schools were black – almost 25%) with U.S. Dep’t of Educ., 38th Annual Report to Cong. on the Implementation of the Individuals with Disabilities Education Act 42 & Exh. 25 (2016) (in 2014-2015, 1,097,252 out of 5,825,680 children served under IDEA were black – about 19%).

¹⁸ See Vanessa X. Barrat & BethAnn Berliner, The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California’s Public Schools 19 & fig. 8 (2013), https://www.wested.org/wp-content/uploads/2016/11/1400283692Invisible_Achievement_Gap_Full_Report-3.pdf (finding that California foster children are 3 times more likely to be placed in nonpublic special education schools as are other children).

- Total number of students enrolled by the LEA in private or non-public schools referred to law enforcement or arrested for school-related activities, disaggregated by race, sex, disability, and LEP status. Collecting this information will help ensure that public school students with disabilities in private and non-public schools are not inappropriately involved with law enforcement and criminal justice systems.
- Total number of students enrolled by the LEA in private or non-public schools who received corporal punishment, and the total number of instances of corporal punishment in private or non-public schools, disaggregated by race, sex, disability, and LEP status. Collecting this information will help ensure that public school students with disabilities are receiving safe and effective behavioral interventions in private and non-public schools.
- Total number of students enrolled by the LEA in private or non-public schools subjected to restraint or seclusion, and the total number of instances of restraint or seclusion in private or non-public schools, disaggregated by race, sex, disability, and LEP status. Collecting this information will help ensure that public school students with disabilities are receiving safe and effective behavioral interventions in private and non-public schools.
- Total number of teachers in private or non-public schools contracting with the LEA meeting all state licensing/certification requirements. Collecting this information will help ensure that public school students with disabilities enrolled in private and non-public schools receive quality instruction from teachers trained to work with students with disabilities.

By state law, state practice, and contractual right, states and school districts already receive and maintain this data, or have the right of ready access to this data. As discussed above, the Department has the authority to request this data from school districts.¹⁹

In conclusion, we appreciate the opportunity to comment on the 2017-2018 CRDC. For any questions or for additional information about this letter and its recommendations, please contact Diane Smith Howard at National Disability Rights Network. [(207) 522-2817; diane.smithhoward@ndrn.org]

Sincerely:

Advocacy Institute

Association of University Centers on Disabilities

American Civil Liberties Union

Autistic Self Advocacy Network

Center for Public Representation

Civil Rights Project at UCLA

¹⁹ See *supra* note 6.

Council of Parent Attorneys and Advocates, Inc.
Education Law Center – PA
GreatSchools
Judge David L. Bazelon Center for Mental Health Law
National Center for Learning Disabilities
National Center for Special Education in Charter Schools
National Disability Rights Network
National Down Syndrome Congress
Native American Disability Law Center
National Association of Councils on Developmental Disabilities
National Lawyers' Committee for Civil Rights
Public Interest Law Center
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