



August 21, 2017

Director of the Information Collection Clearance Division
U.S. Department of Education
Lyndon Baines Johnson (LBJ)
400 Maryland Avenue SW
Room 224-82
Washington, DC 20202-4537

RE: Docket ID ED-2016-ICCD-0147

Dear Ms. Olmeda:

On behalf of the National Disability Rights Network (NDRN) and the American Civil Liberties Union, we wish to thank the Education Department (ED) for its continued support for the Civil Rights Data Collection (CRDC). We have reviewed the documents posted on July 21, 2017, responding to the first round of public comment on the CRDC data set for SY 2017 – 2018, and include our thoughts below. With one exception, discussed below, we are pleased with ED's response to the concerns we raised in our February 28, 2017 letter (attached).

Our comments herein are limited specifically to the changes to the SY 2017-18 CRDC data collection discussed in Docket ID ED-2016-ICCD-0147 in the area of disability.

NDRN is the national membership association for the Protection and Advocacy (P&A) and Client Assistance Program (CAP) systems, the nationwide Network of congressionally-mandated agencies that advocate on behalf of persons with disabilities in every state, the District of Columbia, Puerto Rico, U.S. territories (American Samoa, Guam, U.S. Virgin Islands, and the Northern Mariana Islands). There is also a P&A affiliated with the Native American Consortium which includes the Hopi, Navaho and San Juan Southern Paiute Nations in the Four Corners region of the Southwest.

NDRN and the P&A / CAP Network promote a society where people with disabilities exercise informed choice and self-determination. For over thirty years, the P&A / CAP Network has worked to protect the human and civil rights of individuals with disabilities of any age and in any setting. Collectively, the P&A / CAP Network is the largest provider of legally - based

advocacy services for persons with disabilities in the United States. In 2016, the P&As handled nearly 14,000 individual education cases, as well as hundreds of systemic cases, on behalf of students with disabilities and their families.

For nearly 100 years, the American Civil Liberties Union (ACLU) has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. With more than 2.5 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law.

The CRDC provides families crucial information needed to make informed choices about their children's education. Parents need the information presented in the CRDC's user-friendly interface to gauge which schools are likely to be the best fit for their family. Through regular review of CRDC data, parents and other members of the public, including the media, can examine trends among school. They can identify which schools are more likely to provide equal educational opportunities, and which face continuing challenges. The Department collects data that permits stakeholders to make evidence-based comparisons about quantifiable measures of school climate and resource equity, including restraint and seclusion, school discipline, academic proficiency, harassment and bullying, and others.

The CRDC data is critically important to the Department's statutory responsibility to hold schools, districts, and states accountable for compliance with our civil rights laws. The Department's own reports about the activities of the Office for Civil Rights (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,¹ and resolved 66,000.² The 2013-2014 CRDC indicates very real and 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.³ English learners, students with disabilities, and students of color are more likely to be retained one or more grades in high school.⁴ Students of color are more likely to attend schools with higher concentrations of inexperienced teachers.⁵ The continued collection and publication of

¹ 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.

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

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

⁴ *Id.* at 7.

⁵ *Id.* at 9.

data on these and other topics will tell the public whether schools are correcting these or not and whether they are facing new disturbing trends.

The 1979 Department of Education Organization Act authorizes OCR to collect data necessary to ensure compliance with civil rights laws.⁶ Although some commenters have stated otherwise, 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. For example, the Individuals with Disabilities Education Act (IDEA) requires states to report data from schools about incidents of discipline of students with disabilities.⁷ Beginning in 2018, the Every Student Succeeds Act (ESSA) will require states and school districts to report annually on suspensions, expulsions, law enforcement referrals (including arrests), chronic absenteeism, acts of bullying or harassment, and the number and percentage of students in preschool programs and advanced courses.⁸

We appreciate the changes the Department has made, after consulting with a wide variety of stakeholders, to improve the CRDC over time and to ensure it is maximally efficient. The Department acts as a responsible steward of public funds when it reviews the collection regularly to cull out elements that are less useful and add those that have become necessary.

For these reasons, we are pleased that the Department continues the CRDC with its full support.

In our letter dated February 28, 2017, we noted the following issues/elements as significant to those we serve.

- **Experiences Of Students In Non-Public Schools**
- **Bandwidth**
- **Computer Science Classes**
- **Puerto Rico**

Each of our concerns was addressed in the Department's July 21, 2017 response. We have concerns about one them.

Experiences of Students In Non-Public Schools:

We are concerned that while the Department agreed to study the issue, it did not make the changes necessary to begin data collection on the experiences of students in non-public schools. The changes initially proposed in Directed Question #4 (number of students, student

⁶ 20 U.S.C. § 3413(c)(1).

⁷ 20 U.S.C. § 1418.

⁸ 20 U.S.C. § 6311(h)(1)(c)(viii).

experiences) are critical, and we are pleased that the Department recognizes their importance, especially given the number of students with disabilities placed in non-public schools by their LEAs, using public funds. It is the questions very importance however, that causes us to be concerned about this delay.

In keeping with ED's stated commitment to explore and evaluate what data to collect, we wish to offer our time and experience to the process of completing the selection of data elements. We specifically recommend that ED commit to a meeting or series of meetings with key stakeholders (parents, students, members of the civil rights community, educators and others) to obtain feedback on which data elements are most important to collect from non-public schools who serve these students. Then to follow up with regular updates on its progress through phone calls or meetings with civil rights advocates, education data experts, and SEAs and LEAs, about how to obtain the essential data in an effective manner.

Bandwidth

We are pleased with the alternative that ED chose for this data element. The questions selected (home use of school devices, Wi Fi in classrooms, etc.) to replace the proposed amount of Megabits per second, will provide much richer information about the experiences of students with disabilities.

Many students with disabilities are able to be more fully integrated into the regular education setting, and to be more independent, due to their use of smartphones, tablets, and laptops. These devices need both a strong and accessible Wi Fi signal and LEA support in order for students with disabilities to rely upon them.

Computer science classes

We are also pleased that ED has decided to add this critical element for all of the reasons stated in our February 28th letter. Parents of both students with and those without disabilities need to have this information so that they may make informed choices among schools or can request that such courses be added to the curriculum offered at the school their child attends. We no longer have the option of waiting for another generation of our students to be able to program and problem solve.

Puerto Rico

We support the extension of the 2017-2018 CRDC to public schools in the Commonwealth of Puerto Rico and the outlying areas, and greatly appreciate that ED has recognized the importance of the CRDC's data collection to stakeholders there. 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


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support civil rights enforcement and reforms in these regions by allowing these interactions to occur.

In conclusion, we appreciate the opportunity to comment on the SY 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:

A handwritten signature in blue ink, appearing to read "Curt Decker".

Curt Decker, J.D.
Executive Director
National Disability Rights Network

A handwritten signature in black ink, appearing to read "Claudia Center".

Claudia Center
Senior Staff Attorney
American Civil Liberties Union
Disability Rights Program