



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

August 6, 2020

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
Washington, DC 20202

RE: Mandatory Civil Rights Data Collection
Docket No.: ED-2019-SCC-0119

Dear Ms. Valentine:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Education Task Force appreciate the opportunity to comment on the proposed changes to the Office for Civil Rights (OCR) Mandatory Civil Rights Data Collection (CRDC) for FY 2020-2021. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

CCD greatly values the CRDC as a critical part of OCR's overall enforcement and monitoring strategy to ensure that recipients of the Department of Education's federal financial assistance do not discriminate based on disability and other factors. CCD has advocated for a comprehensive CRDC addressing all forms of discrimination against students with disabilities for many years.

On behalf of the nation's seven million students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) and over one million students eligible under 504 of the Rehabilitation Act of 1973, we encourage you to consider the following regarding the proposed changes in the July 7, 2020 proposed agency collection, which are consistent with the comments we submitted dated November 18, 2019.¹ We acknowledge and support OCR's decision to shift the 2019-20 CRDC to the 2020-21 school year and understand that our comments will now apply to the 2020-21 CRDC. Given this shift, there is now additional time during which to consider data elements for the next collection. Also, considering the significant impact the coronavirus pandemic is expected to have on public education, further review of data elements appears to be in order.

DISAGGREGATION OF 504-ONLY STUDENTS

CCD again strongly urges disaggregation of data by disability status under Section 504 of the Rehabilitation Act for every question. ED stated that the department "always weighs whether an element's removal or addition will improve efficiency in data collection; whether an element is necessary to inform current civil rights enforcement; whether an element represents a pressing civil rights concern; and whether the data can be obtained from other sources." The types of challenges students receiving services or accommodations under Section 504 face and the outcomes they experience are not the same as students who receive services under

¹ <http://c-c-d.org/fichiers/CCD-Education-TaskForce-Sign-on-letter-re-CRDC-Nov18-2019.pdf>

IDEA. It is a civil rights concern to better understand the experiences of students with disabilities served only under Section 504.

Furthermore, unlike students served under the IDEA, the CRDC is the only federal-level data collection that yields information on Section 504-only students. We have seen a substantial increase in the number of Section 504-only students in recent years. According to the CRDC, between 2011-2012 and 2015-2016, the number of Section 504-only students increased 53.8%, compared to an increase of just 4.5% in the number of students served under the IDEA. In 2015-2016, 2.3% of students were served under 504 compared to 1.5% in 2011-2012. In one of the nation's largest states, Texas, the number of Section 504-only students is more than half (56%) the number of students served under IDEA in 2015-2016. Several states report more Section 504-only students than English Language Learners as a percent of overall enrollment (LA, ME, NH, VT, WV). **Given the substantial growth in this category of students, we urge OCR to make the data collection more robust by disaggregating the results by disability status under Section 504.**²

Additional comments on specific proposed, revised, and continuing collections of information follow.

ADDITION OF DISAGGREGATED SECTION 504-ONLY STUDENTS

As in our comments submitted in November 2019, we are pleased to see the addition of disaggregation of students served under Section 504 by sex for number of students enrolled in the IB Diploma Programme and the number of students enrolled in at least one AP course. However, we continue to request that all questions be disaggregated in this manner to provide insights into the differences between important groups of students.

SCHOOL AND DISTRICT CHARACTERISTICS

PROPOSED CHANGE: Remove disaggregation of "disability-IDEA" for the number of English Language (EL) students enrolled in EL programs.

COMMENT/RECOMMENDATION: ED states that "these data will continue to inform the public of how many EL students enrolled in school have been identified as having a disability under IDEA or under Section 504-only, ..." However, this leaves out an important data trend that is a civil rights concern—the percentage of EL students with disabilities who are (and are not) in English language instructional programs. Without these data, the public would not have an idea of whether the number of students with disabilities in these programs is increasing or decreasing. **Therefore, as we did in our November 2019 comments, we ask that these data continue to be collected.**

DISCIPLINE

PROPOSED CHANGE: Combine questions on the number of preschool students who received one out-of-school suspension and those who receive more than one out-of-school suspension (disaggregated by race, sex, disability-IDEA, EL).

COMMENT/RECOMMENDATION: CCD firmly believes that there is value in being able to distinguish between preschool children with single incidences of out-of-school suspensions and those with higher rates. Combining pre-school suspension for one day with more than one day eliminates the information that may be used to determine the cause of suspension for high rate LEAs. Short- and long-term suspension often have different causes, especially for young children. This information is a civil rights concern that should be made publicly available to allow for LEAs to address harmful discipline policies that impact protected classes. **Therefore, as we did in our November 2019 comments, we ask that these data continue to be collected.**

² See 2011-12 State and National Estimations at https://ocrdata.ed.gov/StateNationalEstimations/Estimations_2011_12 which reported the number of 504-only students as 738,477 (1.5% of total enrollment) and 2015-16 State and National Estimations at https://ocrdata.ed.gov/StateNationalEstimations/Estimations_2015_16 which reported the number of 504-only students as 1,136,544 (2.3% of total enrollment).

HARASSMENT OR BULLYING

PROPOSED CHANGE: Remove question on whether an LEA has a web link to policy or policies prohibiting harassment or bullying of students on the basis of all of the following: sex; race, color, or national origin; disability (LEA).

COMMENT/RECOMMENDATION. CCD maintains that whether a school has a policy, whether they publish the policy, and whether they are able to include the website link are all helpful indicators of whether schools actually know about LEA policy on the topic and their adherence to that policy. **We again urge ED to maintain this question.**

EARLY CHILDHOOD EDUCATION

PROPOSED CHANGE: Remove questions on whether local education agencies (LEAs) early childhood and preschool programs serve all young children; select program characteristics (free, partial/full day, partial/full charge); and disaggregation by race, sex, disability-IDEA, EL from the question on the number of students ages 3-5 years enrolled in preschool.

COMMENT/RECOMMENDATION: CCD appreciates that ED found comments persuasive and now proposes to continue to collect preschool enrollment data by race, sex, disability-IDEA, and EL status. However, we continue to oppose the removal of questions around select program characteristics and other student demographic information such as age and family income. Information about the costs and availability of preschool for low income children and children with disabilities is important so that information can be used to determine resource equity and the availability of inclusion options for children with disabilities. Similarly, day length is also essential to that analysis as many young children with disabilities require full day preschool to meet their needs. In addition, we recommend that these child count collections also include reporting by each year of the child's age (e.g., birth to one, one to two, two to three, three to four, four to five and kindergarten). This additional level of detail is essential for planning for improvement at the state and local level. **Therefore, as we did in our November 2019 comments, we ask that these data continue to be collected.**

PATHWAYS TO COLLEGE AND CAREER

PROPOSED CHANGE: Remove question on the number of participating students in credit recovery programs that allow them to earn missed credit to graduate from high school.

COMMENT/RECOMMENDATION: CCD continues to oppose the retirement of this question from the CRDC. In light of the COVID-19 crisis, it is now more important than ever to know the number of students in credit recovery programs. This data will be critically important in understanding the impact of the pandemic on students.

PROPOSED CHANGE: Remove questions on advanced placement (AP) courses related to "other" subjects (including world languages and cultures) and taking AP exams for each course (disaggregated by race, sex, disability-IDEA, EL).

COMMENT/RECOMMENDATION: CCD does not agree that the proposed data collection around AP course enrollment is sufficient "to ascertain disparities in access where present, and work towards their eradication when they result of civil rights violations." ED provides no rationale on how it will work to eradicate disparities on indicators on which there is no data. Knowledge of exam participation rates is also important because it speaks to student's performance expectations and general sense of mastery, even when they do not pass the exams. **Therefore, as we did in our November 2019 comments, we ask that these data continue to be collected.**

SCHOOL FINANCE

PROPOSED CHANGE: Remove all questions related to preschool through grade 12 personnel full time equivalent (FTE) positions and salaries and non-personnel expenditures at the school level.

COMMENT/RECOMMENDATION: CCD once again urges ED to retain items related to school finances. It is a civil rights concern if schools are not funded equitably, particularly if it disproportionately impacts historically disadvantaged communities. School spending has been shown to positively affect student outcomes, particularly when spent well and in schools serving students with the highest needs. Unfortunately, there continue to be significant education funding disparities across schools, districts, and states. Schools with larger populations of students of color and students from low-socioeconomic status are “under-resourced relative to schools attended by wealthier peers in the same district.” In addition, the CRDC is the only data source that shows school level expenditures across the country and allows the public to analyze school spending from one district to the next. Even though the public may access data in some states around school financing, no other source provides information on all states and districts, which is one of the criteria ED identified for inclusion of an item on the survey. **Therefore, as we did in our November 2019 comments, we ask that these data continue to be collected.**

TEACHERS AND OTHER PERSONNEL (FUNDED WITH FEDERAL, STATE, AND/OR LOCAL FUNDS)

PROPOSED CHANGE: Remove three questions on inexperienced teachers and those with high absence rates.

COMMENT/RECOMMENDATION: Instead of taking seriously the concerns of the majority of commenters, including CCD, who opposed the retirement of these items, ED decided to propose additional questions to retire. CCD remains opposed to the removal of these items as well as the additional items. As mentioned in our November 2019 comments, evidence shows that underprepared, out-of-field, and substitute teachers typically depress student achievement and have higher attrition rates. The CRDC should continue to collect data on first- and second-year teachers and those with high absence rates so that progress (or the lack thereof) on the equitable distribution of new and reliable teachers can be determined. This is of particular importance to students with disabilities due to the severe shortage of special education teachers and the growing use of “emergency credentials” programs for teachers who are willing to take hard-to-fill positions. Additionally, considering the coronavirus pandemic and its estimated impact on teachers, these data will become even more important.

EXPERIENCES OF CHILDREN WITH DISABILITIES PLACED BY SCHOOL DISTRICTS IN NONPUBLIC SCHOOLS

Our November 2019 comments included the following recommendation:

“ED must meet prior commitments to measure experiences of children with disabilities placed by school districts in non-public schools subject to exclusionary discipline, restraint and seclusion, and other adverse actions.”

COMMENT/RECOMMENDATION: ED did not respond to CCD’s recommendation that ED meet prior commitments to measure experiences of children with disabilities served under IDEA placed by school districts in non-public schools subject to exclusionary discipline, restraint and seclusion, and other adverse actions. However, ED did respond to one commenter who requested the same data be collected for preschool children. Despite being “very concerned” about restraint and seclusion issues, ED decided that it will not collect any additional data at this time. CCD, again, argues that ED is not taking a “proactive approach” to protect students with disabilities from harmful restraint and seclusion practices and should collect data on students in nonpublic schools. As we pointed out in our November 2019 comments, this recommendation is particularly salient given ED’s “Initiative to Address the Inappropriate Use of Restraint and Seclusion,” announced in January 2019, which uses a “proactive approach” to “protect students with disabilities” from “the possible inappropriate use of restraint and seclusion.”³

According to data reported to ED as required by IDEA Section 618, 3% of students served under IDEA are educated in separate schools (not parentally placed). While this is a miniscule percentage, these schools

³ U.S. Department of Education press release. January 2019. Available at <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>

account for the majority of restraint and seclusion incidents in an entire state, according to a recent first-of-its-kind study by Teacher Project and the USA TODAY Network. The study also found that just 10 states and Washington, D.C., were able to provide complete information on restraint and seclusion in special-education private schools. Therefore, It is critical for OCR to fill this void in data collection.⁴

The IDEA is the only Federal education law that provides for students to be placed by school districts in a nonpublic school as a remedy when the public school cannot provide the student with a free appropriate public education. Given this, it is critical that OCR expand data collection to cover these children. **We continue to urge OCR to address this population in the CRDC.**

We appreciate this opportunity to comment.

Sincerely,

American Dance Therapy Association
American Music Therapy Association
American Physical Therapy Association
American Speech-Language-Hearing Association
Association of University Centers on Disabilities
Autism Society of America
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
Brain Injury Association of America
Children and Adults with Attention-Deficit/Hyperactivity Disorder
CommunicationFIRST
Council for Exceptional Children
Council for Learning Disabilities
Council of Administrators of Special Education
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund

Division for Early Childhood of the Council for Exceptional Children
Easterseals
Higher Education Consortium for Special Education
Learning Disabilities Association of America
National Association of School Psychologists
National Center for Learning Disabilities
National Center for Parent Leadership, Advocacy, and Community Empowerment
National Center for Special Education in Charter Schools
National Disability Rights Network
National Down Syndrome Congress
School Social Work Association of America
Teacher Education Division of the Council for Exceptional Children
The Advocacy Institute
The Arc of the United States

Education Task Force Co-Chairs:

Annie Acosta, The Arc of the United States
Amanda Lowe, National Disability Rights Network
Kim Musheno, Autism Society of America
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The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The Education Task Force monitors federal legislation and regulations that address the educational needs of children with disabilities.

⁴ The Teacher Project. 'It hurts your bones': Private special ed schools can restrain kids with disabilities 1,000s of times. Parents might not know. July 26, 2020. Available at <https://www.usatoday.com/story/news/education/2020/07/25/disability-special-education-private-school-restraint/4737971002/>