



September 1, 2021

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Also submitted to: [www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref\\_nbr=202104-1850-007](http://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202104-1850-007)

Re: Common Core of Data (CCD) School-Level Finance Survey (SLFS) 2021-2023  
Docket No. ED-2021-SCC-0066  
OMB Control Number: 1850-0930

Dear Director Schneider and Commissioner Carr:

The National Center for Youth Law (NCYL) urges that the School-Level Finance Survey (SLFS) be made mandatory for all 50 states (and the District of Columbia, and Puerto Rico). Absent such a mandate, the Department and the public will be deprived of these critical data for the 18 states (and D.C. and Puerto Rico) that have indicated that they do not intend to participate in the SLFS if it remains voluntary.

NCYL made this same recommendation in its comment submitted during the 60-day comment period. (We've attached our 60-day comment to this letter). The only two other commenters, EdTrust and the School and State Finance Project, likewise urged that the SLFS be made mandatory.

In its response, the National Center for Education Statistics (NCES) agreed with NCYL that making the collection mandatory would have significant benefits, including improving data quality on the mandatory ESSA report cards and improving inter-state comparisons of school-level data, and would not impose a significant burden on the states. It further noted that the SLFS collects data that is directly analogous to the data Office for Civil Rights (OCR) required school districts to report to the Civil Rights Data Collection from FY 2010 – FY 2018.

And yet, NCES did not make the SLFS mandatory nor did it explain why it was not making the collection mandatory. That unexplained silence leaves NCYL and other members of the public to guess why the Department did not take the commenters' suggestion.

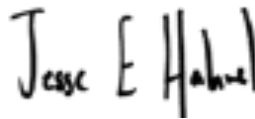
To the extent NCES was concerned about its authority to make the collection mandatory, NCES can rely on the authority granted to OCR to mandate data reporting, assuming OCR consents. As NCYL noted in its 60-day comment (on pages 3-4), OCR has, for decades, allowed NCES to require recipients to respond to NCES surveys in reliance on OCR's authority when OCR determined the questions asked by NCES would promote civil rights.

NCES relied on OCR's authority as recently as July 2019 when it sought and obtained approval to make its collection of race/ethnicity and gender of students and staff in higher education mandatory.<sup>1</sup> There is nothing that would prevent that same authority to be used to make the SLFS mandatory. To the extent NCES was concerned that OCR would somehow have to join the ICR, the July 2019 ICR likewise rebuts that concern.

School-level finance data are crucial to measuring how school-level education resources are distributed across and within school districts. Over the past decade, researchers have begun to document significant funding disparities between schools within the same district (intra-district inequities). They have found that it is not uncommon for schools enrolling students from more affluent, whiter, families to receive equal, or even greater, amounts of resources than schools enrolling students of color and students from poorer families, although the needs of the latter are far greater. Collecting and reporting reliable and unbiased school-level finance data for all schools in the country is critical to detecting and remedying these disparities.

Should you have any questions or wish further input, please contact Miriam Rollin at [mrollin@youthlaw.org](mailto:mrollin@youthlaw.org).

Sincerely,

A handwritten signature in black ink that reads "Jesse E. Hahnel". The signature is written in a cursive, slightly stylized font.

Jesse Hahnel  
Executive Director  
National Center for Youth Law

cc: Suzanne Goldberg, Acting Assistant Secretary, Office for Civil Rights  
Monique Dixon, Deputy Assistant Secretary for Policy, Office for Civil Rights

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<sup>1</sup> NCES, *Integrated Postsecondary Education Data System (IPEDS) 2019-20 through 2021-22: Supporting Statement Part A* at 6 (March 2019, revised July 2019), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=113221201>; OMB, *Notice of Approval* (July 29, 2019), <https://www.reginfo.gov/public/do/DownloadNOA?requestID=349302>.



June 23, 2021

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Also submitted to <https://www.regulations.gov/commenton/ED-2021-SCC-0066-0001>

Re: Common Core of Data (CCD) School-Level Finance Survey (SLFS) 2021-2023  
Docket No. ED-2021-SCC-0066

Dear Director Schneider and Commissioner Woodworth:

Thank you for the opportunity to provide comments regarding the School-Level Finance Survey (SLFS). The National Center for Youth Law (NCYL) applauds the decision of the National Center for Education Statistics (NCES) to seek to extend this critical information collection for another three fiscal years. We urge you to go one step further and require universal participation in the SLFS by all states (and the District of Columbia and Puerto Rico), rather than continuing to make the SLFS a voluntary collection.

NCYL is a non-profit law firm that has worked to improve the lives of low-income children and youth for over four decades. We coordinate campaigns that weave together research, public awareness, policy development, technical assistance and litigation when necessary, to ensure the systems designed to support at-risk children do so effectively. Educational resource equity is a longstanding priority of NCYL, and we appreciate the opportunity to offer our perspective as advocates for marginalized students and their families, including students who are low-income, of color, have a disability, or speak English as a second language.

In our experience, it is critical to know where education dollars – federal, state, and local – are being spent. More money leads to better outcomes, especially if spent well and in schools serving students with the highest needs.<sup>1</sup>

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<sup>1</sup> C. Kirabo Jackson, “Does School Spending Matter? The New Literature on an Old Question” in *An Equal Start: Policy and Practice to Promote Equality of Opportunity for Children* (2020), [https://works.bepress.com/c\\_kirabo\\_jackson/38/](https://works.bepress.com/c_kirabo_jackson/38/); Linda Darling-Hammond, Learning Policy Institute, *Investing in Student Success: Lessons from State School Finance Reforms* 6-7 (Apr. 2019), [http://learningpolicyinstitute.org/sites/default/files/product-files/Investing\\_Student\\_Success\\_REPORT.pdf](http://learningpolicyinstitute.org/sites/default/files/product-files/Investing_Student_Success_REPORT.pdf).

School-level finance data are crucial to measuring how school-level education resources are distributed across and within school districts. Over the past decade, researchers have begun to document significant funding disparities between schools within the same district (intra-district inequities). They have found that it is not uncommon for schools enrolling students from more affluent, whiter, families to receive equal, or even greater, amounts of resources than schools enrolling students of color and students from poorer families, although the needs of the latter are far greater.<sup>2</sup>

These intra-district disparities can sometimes be larger than inter-district disparities and are often of greater concern to local communities and parents, who witness these funding disparities, and the consequences of these disparities, firsthand. These disparities, and their adverse correlation with race and income, are unjust and undermine the mandate of equality of opportunity that underlies both the Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965 (ESEA).

Collecting and reporting reliable and unbiased school-level finance data for all schools in the country is critical to detecting and remedying these disparities. This is not a partisan issue. Indeed, former-Secretary DeVos explained that data about “funding at the building level” is the kind of “actionable information” that parents can and should use “to advocate for reforms,” and used departmental resources to collect and publish publicly-available school-level finance data at [StudentSpending.ed.gov](https://studentspending.ed.gov).<sup>3</sup>

Because of the SLFS items’ intentional alignment with the per-pupil expenditure items required to be published about schools and school districts in their Every Student Succeeds Act (ESSA) report cards,<sup>4</sup> requiring universal participation in the SLFS will result in very little additional reporting burden.<sup>5</sup> In addition, requiring universal participation will promote higher data quality for the school finance elements of the report cards required by ESSA because of the technical support provided by NCES and

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<sup>2</sup> See, e.g., Kristen Murray, *The Problem of Intradistrict Inequality*, 5 Belmont L. Rev. 85 (2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3240746](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3240746); Lauren Webb, *Educational Opportunity for All: Reducing Intradistrict Funding Disparities*, 92 NYU L. Rev. 2169 (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3103200](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3103200); Kenneth Shores & Simon Ejdemyr, *Pulling Back the Curtain: Intra-District School Spending Inequality and Its Correlates*, at 21 (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3009775](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009775).

<sup>3</sup> U.S. Department of Education, Press Release (Sept. 16, 2020), <https://www.eSeanetwork.org/news-and-resources/blogs/used/ed-launches-new-web-tool-with-federal-state-and-local-per-pupil-expenditure-data>.

<sup>4</sup> 20 U.S.C. § 6301(h)(1)(C)(x) (requiring states to produce report cards that include “per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual non-personnel expenditures of Federal, State, and local funds, disaggregated by source of funds, for each local educational agency and each school in the State for the preceding fiscal year”); Supporting Statement Part A at 5 (Apr. 2021) (“variables have been added to make the SLFS directly analogous to the F-33 Survey and to the Every Student Succeeds Act (ESSA) provisions on reporting expenditures per-pupil at the LEA and school-level”), [https://downloads.regulations.gov/ED-2021-SCC-0066-0002/attachment\\_1.pdf](https://downloads.regulations.gov/ED-2021-SCC-0066-0002/attachment_1.pdf).

<sup>5</sup> See Supporting Statement Part A at 7 (“The SLFS reporting burden on SEAs is expected to be reduced given that SEAs are currently reporting total current expenditures at the state level on NPEFS and at the district level on F-33 and are now also obligated by law to report expenditures per pupil at the school level.”); *id.* at 11 (“There are no additional recordkeeping costs to the responding SEAs beyond their time to respond. All SLFS data are extracted from administrative record systems already collected by the state for its own purposes and are of the type and scope normally included in government records. The added burden for SLFS is limited to the SEA’s effort taken in extracting data from files, transferring them to NCES, and responding to edit reports.”); *id.* (estimating a maximum total burden time cost to all states, if all states participated, of \$189,491).

the Census Bureau.<sup>6</sup> Requiring universal participation in the SLFS – with further federal guidance, definitions, training and technical assistance, as appropriate – will also permit more accurate inter-state comparisons of school-level spending.<sup>7</sup>

We recognize that universal participation is achieved for the National Public Education Financial Survey and the School District Finance Survey (F-33) without legal mandate, but that is apparently because the data collected there is critical to the states receiving their full allocation of funds under Title I and other federal grant programs. We are aware of no similar financial incentive for participating in the SLFS. To the contrary, NCES reports that only 30 states have said they intend to voluntarily participate in the SLFS for some or all of their schools.<sup>8</sup> That is certainly many more than in past years, but we are concerned about the lack of quality, publicly-available, and comparable information from the other 20 states and the District of Columbia and Puerto Rico – both of which are considered states for purposes of the ESSA report card requirements.<sup>9</sup> It would promote equity and data quality to require all states to participate in the SLFS.

We believe NCES has the authority to make this collection mandatory. The Department has previously relied on 20 U.S.C. §§ 1221e-3, 1231a, and 3474, either individually or in various combinations, to require various disclosures by recipients of federal funds even when not specifically required by the underlying grant program, and courts have sustained those requirements.<sup>10</sup>

Second, and perhaps more appropriate given the importance these data have to civil rights compliance and enforcement, NCES could require participation in the SLFS in reliance on the Office for Civil Rights' (OCR's) mandatory data collection authority.<sup>11</sup> This approach would be consistent with NCES's past practice. For 45 years, NCES has relied on OCR's authority to require colleges and universities to report certain student data.<sup>12</sup> Similarly, almost 30 years ago, NCES took over administration of the EEO-6 collection of employment data in higher education, and continues to collect that data and make them available to the Equal Employment Opportunity Commission (to enforce Title VII of the Civil Rights Act) and OCR (to enforce Title VI of the Civil Rights Act and Title IX of the Education

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<sup>6</sup> See Supporting Statement Part A at 3 (“Technical help from NCES and Census will likely improve data quality at school level”); Supporting Statement Part B and C, at 2-3 (Apr. 2021) (describing comprehensive review and technical assistance), [https://downloads.regulations.gov/ED-2021-SCC-0066-0002/attachment\\_2.pdf](https://downloads.regulations.gov/ED-2021-SCC-0066-0002/attachment_2.pdf).

<sup>7</sup> See Supporting Statement A at 6.

<sup>8</sup> See Supporting Statement B and C at 2.

<sup>9</sup> See 20 U.S.C. § 6332(e).

<sup>10</sup> See, e.g., *Ass'n of Priv. Sector Colleges & Universities v. Duncan*, 110 F. Supp. 3d 176 (D.D.C. 2015), *aff'd*, 640 F. App'x 5 (D.C. Cir. 2016); *Ass'n of Private Sector Colls. & Univs. v. Duncan*, 870 F. Supp.2d 133 (D.D.C. 2012).

<sup>11</sup> See 20 U.S.C. § 3413(c)(1) (authorizing OCR “to collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights”). In addition, OCR has adopted regulations that require recipients of federal financial assistance to provide information upon request. See 34 C.F.R. §§ 100.6(b), 106.71, 104.61.

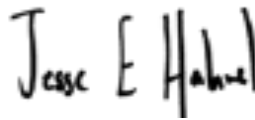
<sup>12</sup> See NCES, *NCES Handbook of Survey Methods: Integrated Postsecondary Education Data System (IPEDS)*, at 1-2 (updated Apr. 2019) (“The U.S. Department of Education’s Office for Civil Rights (OCR) has collaborated with NCES since 1976 on the collection of data from postsecondary institutions through compliance reports from postsecondary institutions mandated pursuant to Title VI of the Civil Rights Act of 1964, first through HEGIS and then through IPEDS.”) <https://nces.ed.gov/StatProg/handbook/pdf/ipeds.pdf>; see *id.* at 3, 5 (noting OCR’s “support” to collect disaggregated data in higher education).

Amendments of 1972).<sup>13</sup> There is no reason why NCES could not, with OCR's agreement, use that same authority to mandate universal participation in the SLFS.

Regardless of what authority NCES relies on to require universal participation in the SLFS, we urge NCES to work closely with OCR on this data collection. It is critical that the school finance information reported is made available as quickly as possible to OCR for enforcement purposes and that the information is integrated into the public-facing Civil Rights Data Collection dataset and website, so that it can be accessed by parents, communities, and advocates along with other measures of school equity.

Should you have any questions or wish further input, please contact Miriam Rollins at [mrollin@youthlaw.org](mailto:mrollin@youthlaw.org).

Sincerely,

A handwritten signature in black ink that reads "Jesse E. Hahnel". The signature is written in a cursive, slightly stylized font.

Jesse Hahnel  
Executive Director  
National Center for Youth Law

cc: Suzanne Goldberg, Acting Assistant Secretary, Office for Civil Rights  
Monique Dixon, Deputy Assistant Secretary for Policy, Office for Civil Rights

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<sup>13</sup> NCES, *IPEDS 2020-21 Data Collection System Survey Materials: Human Resources: FAQ* (Question 8), <https://surveys.nces.ed.gov/ipeds/public/survey-materials/faq?faqid=2>; NCES, *History and Origins of Survey Items for the Integrated Postsecondary Education Data System*, at 8 n.5, HR-1 (March 2018, 2016-17 update), [https://nces.ed.gov/ipeds/pdf/NPEC/data/NPEC\\_Paper\\_IPEDS\\_History\\_and\\_Origins\\_2018.pdf](https://nces.ed.gov/ipeds/pdf/NPEC/data/NPEC_Paper_IPEDS_History_and_Origins_2018.pdf); see also 29 C.F.R. § 1602.48.