

student advocacy center

of MICHIGAN

Stephanie Valentine
PRA Coordinator, Strategic Collections and Clearance,
Office of the Chief Data Officer
Office of Planning, Evaluation and Policy Development
U.S. Department of Education
Washington, DC 20002
RE: Mandatory Civil Rights Data Collection: OMB 1870-0504, ICR 202111-1870-001
Submitted via Reginfo.gov at:
https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202111-1870-001

Dear Ms. Valentine:

The Student Advocacy Center of Michigan writes in response to the United States Department of Education, Office for Civil Rights (OCR) request for public comments to consider changes in the Civil Rights Data Collection (CRDC) process.

The Student Advocacy Center of Michigan is a nonprofit that believes every child is worthy of a quality education. We work with students with and without disabilities with a special focus on school discipline. We provide a statewide helpline and support hundreds of Michigan families every year as they navigate our harsh school discipline landscape and other challenges in school. We also provide one on one education advocacy at discipline hearings, IEPs and other school meetings, as well as mentoring. We were founded in 1975 and today have offices in Detroit, Ypsilanti and Jackson, Michigan. Last school year, we served more than 800 children.

Data collection and analysis can drive change at the local level and spark changes to make schools more loving, caring, responsive places for young people, so we appreciate the efforts done to improve data collection. Over the past 10 years, we have watched more and more informal ways students are being removed from the support they need. This only accelerated after the year and a half of “home school” most Michiganders endured. Students — including students with IEPs and 504 Plans — are being unilaterally placed in virtual schools with very little support. We must start tracking this damaging practice and shining a light on it.

Informal Removals

How should OCR define informal removals of students?

Answer;

We support the response of The National Disability Rights Network.

“Informal Removals can occur in many ways, but often have the same root cause: the lack of behavioral services and supports that permit the child to stay in school, access extra-curricular or non-academic activities, learn with their peers, and learn skills to address the behaviors as they arise.

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Students who are subjected to informal removals cannot access teachers, support staff, direct or related services providers, peers with and without disabilities, instruction, supports and services, extracurricular and non-academic activities, transition services, and are effectively denied access to the help they need to address behavioral concerns and needs.

“The remedy for the harm caused by these removals: the provision of behavioral services and services needed to make up for lost time is the same in all cases.

“NDRN proposes that OCR should define informal removals as “Any time a child with a disability is removed from school for a sufficient period of time to constitute a “change of placement” without the rights extended to them under the U.S. Constitution, state or federal law and/or regulation.”

“For CRDC data collection purposes, each and every form of school disciplinary action should be counted, regardless of the amount of time the student was removed from school, instruction, or school sponsored activities. The underlying concern is to capture data on school actions to remove students from school services and activities. NDRN proposes that the CRDC be expanded from only collecting the current forms of in-school suspensions, out-of-school suspensions, expulsions, etc, to also include the forms of school disciplinary removals such as shortened school days, various forms of “send homes” or “parent pick ups,” homebound and **virtual placements**, threat assessment and law enforcement-based actions, and conditioning school attendance on presence of others or meeting school-imposed behavioral requirements.

SAC notes that virtual placements are continuing to evolve and further definition may be necessary. A school that uses virtual curriculum but offers daily labs and teacher support is a far cry from a school that only requires student to send a text weekly to count as 100% attended. We fear that more and more children are being forced into settings where they have very little access to adult support. This has been going on for YEARS and the data is just not there, even as it accelerates, leaving too many children frustrated to the point they drop out.

For students with disabilities, should the definition draw a distinction between 1) an informal disciplinary exclusion due to a student’s disability-based behavior and 2) a determination, made consistent with free appropriate public education requirements under Section 504 or IDEA, that a student needs to attend classes for only part of the school day due to a disability such as for health-related reasons?

SAC agrees with NDRN:

“No. Under NDRN’s proposed definition, no such distinction is necessary. NDRN suggests the OCR collect data on school and school district use of shortened school days and other ways students attend classes for only part of the school day or school year for health and other related reasons. Based on our knowledge, schools and school district must already collect and maintain information on how much time a student attends classes for state financial aid claims and reimbursements.

“NDRN is primarily concerned about informal removals that are behavioral in nature, not those that are medically-based or required and that have sufficient medical or health documentation. Rationales for shortened school days based on “lack of stamina” or “needing to take a break” would need valid medical support. IEPs

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and Section 504 proposals made by school districts must adhere to least restrictive environmental and free appropriate public education requirements and should not be based on assumptions about a student's ability to attend a full school day –exceptions to full school days should be premised on valid medical documentation.

What are the common types of informal removals you are aware of, for instance repeated “sent homes” by the school, shortened school days, or homebound placements?

SAC is seeing virtual placements becoming more and more common (homebound is not the language that is used). This may be the result of a more formal process, but we are also seeing districts say to families you can go to an expulsion hearing or you can attend this school. Or they say you need to go to this virtual school until you can earn your way back to in-person school.

Should OCR only consider including CRDC questions focused solely on students with disabilities who receive informal removals?

No. While informal removals appear to happen more with students with disabilities and have more severe consequences, we see many general education students impacted by these strategies. Sometimes, they are students with suspected disabilities and the families have been asking for help with no response from the school for years. We see this so often.

What specific data involving students who receive informal removals should OCR collect?

SAC agrees with NDRN:

“The data OCR collects should include:

- how often in a school year a student is subjected to informal removals
- how much instructional time in the school year was lost due to the informal removals
- how much instructional time in the school year was lost due to the informal removals in addition to time lost due other removals already identified in the CRDC
- how the district categorized, explained or justified the removal
- the same demographic information as collected for discipline and restraint and seclusion

Additionally, to capture a clearer picture on school actions to remove students from school services and activities, OCR should also collect data on instructional time lost due to other forms of discipline and to restraint/seclusion.”

What data are school districts and schools currently collecting regarding informal removals?

In Michigan, we cannot get information about even formal suspension of students without individually filing a FOIA to the district. We know districts are required by state law to consider alternatives to removal but data collection requirements are minimal in Michigan. We do not know of informal removal data, although districts would have to track who is placed in alternative settings, including students in virtual settings, as they would have to secure a “seat time waiver.”



Other Notes

1. SAC encourages OCR to collect data on an annual basis. Annual data collection allows for true tracking of trends in student civil rights.
2. In addition, OCR should seek to shorten the time from data collection to release so that the CRDC can inform decision-making in a timely manner both on the ground in schools and district level, but also at the level of state and federal policy.

Thank you for the opportunity to comment on the proposed regulations. If you have any questions, please contact me.

Sincerely,

Peri Stone-Palmquist, LMSW, MPP
Executive Director
Student Advocacy Center
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