



October 31, 2022

Stephanie Valentine
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

Dear Ms. Valentine:

The Center for Learner Equity (“CLE”) is a nonprofit organization dedicated to ensuring students with disabilities have equitable access to high-quality public education. CLE provides research, policy analysis, coalition building, and technical assistance to a variety of stakeholders across the nation as a leading national voice regarding supporting students with disabilities in both the charter and traditional public school sectors.

As a leading national voice advocating for students with disabilities in both the charter and traditional public school sectors, we are writing to provide comments on the Mandatory Civil Rights Data Collection (CRDC) for School Years (SY) 2021-2022 and 2023-2024, as proposed by the Office for Civil Rights (OCR) via the Office of Management and Budget (OMB). CLE provided extensive comments regarding the CRDC on February 9, 2022 which reinforced the tremendous importance and value of the CRDC, and which provided a substantial basis for fact-driven policy discussions with state-determined charter school authorizers, state and federal legislators, the Administration, advocates, and other stakeholders.

CLE’s comments build from that comprehensive response to specifically address OCR’s Directed Questions, and to identify areas of shared agreement or, to further identify and remind OCR of opportunities to improve the CRDC in order to achieve equity for all students. Therefore, we first wish to *support* OCR’s proposal to include all additions [which were originally proposed] to the 2021-2022 CRDC as part of the 2023-2024 collection. Next, we offer the following for OCR’s consideration:

Directed Questions (numbered to match OCR Proposal)

1. Preschool Section 504 Only Student Enrollment.

- Have LEAs enrolled preschool students served only under Section 504 in preschool programs?

CLE Response: As noted in previous comments, we support the collection of enrollment data for preschool students with disabilities who are served under Section 504 for the 2021-22 and 2023-2024 CRDC, disaggregated by sex, race, and English Language (EL) status. CLE also notes that in general, charter schools enroll fewer preschool-aged students due to authorizing requirements and limitations under state charter law(s); however, we do know that children with health conditions (e.g., asthma, diabetes, ADHD, severe allergies, etc.) and children who may exit special education when they transition from Part C of the Individuals with Disabilities Education Act (IDEA) may qualify under Section 504. Having data available via the CRDC regarding these children is valuable.

4. Chemical or Irritant Restraint

- Have LEAs and schools collected data on the use of chemical or irritant restraints in schools, including the use of medication outside of a prescribed use and for the purpose of sedating a student, and the use of pepper spray, tear gas, or other chemical or irritant restraints on students?
 - Should data collection include use of chemical or irritant restraints by a sworn law enforcement officer assigned to a school?
 - What, if any obstacles may LEAs face in collecting such data?

CLE Response: CLE strongly supports data collection regarding the use of chemical or irritant restraints by **any school personnel and/or law enforcement officer, or other security personnel assigned to a school**. Such data must also be reported as follows:

- Number of non-IDEA students subjected to chemical restraint **and irritant restraint** (disaggregated by race, sex including nonbinary, students with disabilities-IDEA, students with disabilities-Section 504 only, EL); (Nonbinary expansion optional for 2021–22 CRDC. See below for more)
- Number of students with disabilities (IDEA) subjected to chemical restraint **and irritant restraint** (disaggregated by race, sex including nonbinary, EL). (Optional for 2021–22 CRDC) (Nonbinary expansion optional for 2021–22 CRDC).

7. Commonwealth, Territories, and Freely Associated States

- Should OCR include LEAs from the seven additional jurisdictions?

CLE Response: CLE supports maintaining data collection in SY 2021-2022 and 2023-2024 from the Commonwealth of Puerto Rico and also supports adding data from all other jurisdictions which include: the Commonwealth of Northern Mariana Islands, American Samoa, Guam, U.S. Virgin Islands, Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau. CLE believes having these data adds great value to the CRDC to: A) understand the status of students in these jurisdictions; and B) understand where further technical assistance and other support can be provided to assure equity for students with disabilities in these jurisdictions.

8. Informal Removals

- How should OCR define informal removals of students?
- 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?
- 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?
- Should OCR only consider including CRDC questions focused solely on students with disabilities who receive informal removals?
- What specific data involving students who receive informal removals should OCR collect?
- What data are school districts and schools currently collecting regarding informal removals?

CLE Response: CLE supports OCR defining informal removals and collecting data on students who receive informal removals. CLE offers the following definition for OCR’s consideration:

“Informal Removal” means: “any removal or pattern of removals from school of a student with a disability due to their behavior that occurs without documenting the removal as a disciplinary incident.”

CLE is aware of several common types of informal removals that schools initiate in response to the misconduct of students with disabilities, often involving behavior related to their disabilities. First, instances where schools send students home in the middle of a school day after an incident has

occurred, necessitating the parent picking up the child. Second, instances where schools recommend that students stay home for one or more “cool down days” after a behavioral incident has occurred. Third, instances where schools ask students with significant behavioral manifestations to stay home after revising a Behavior Intervention Plan or an IEP, while they get the staffing and services in place to implement a new plan, in the name of safety. In all instances, the removal is not documented as a disciplinary removal, but rather logged as an absence, and is not “counted” towards the ten days of removals that constitute a legal change in placement without external advocacy on the issue. These informal removals thwart the triggering of important procedural safeguards designed to ensure FAPE for students with disabilities who experience behavioral manifestations of their disabilities, as well as thwarting basic procedural due process protections codified in most state laws.

CLE is also aware of planned informal removals, where IEP teams agree to shorten a student’s school day in the name of being in the student’s best interest. Relatedly, this can take the form of a homebound placement to facilitate a drastically shortened school day. These situations are exceedingly difficult for families, who may feel that disagreeing and asking for their student to have a full, in-person school day like their non-disabled peers could harm them, or put them in a vulnerable position of not having sufficient support. No matter the form, informal removals deny students with disabilities a free appropriate public education by removing them from their IEP placement.

Lastly, CLE has reviewed and agrees with the data and findings carefully documented in the National Disability Rights Network (NDRN)’s 2022 report, [“Out From the Shadows: Informal Removal of Children with Disabilities From Public Schools.”](#) This report serves as a comprehensive documentation of the problem of informal removals, and why focused attention and data collection on the issue is necessary.

Recommendations as Follow-up to February 9, 2022 Letter to OCR

COVID-19: Virtual Instruction

Recommendations: As noted in our February 9, 2022 letter, CLE fully supports OCR’s proposed additions to the school survey relating to virtual, hybrid, and in-person instruction. While these were originally proposed specifically due to the impact of COVID-19, CLE encourages OCR to see and understand the benefit of these data beyond the impact of the current pandemic. Therefore, we are re-up our recommendations regarding data collection which OCR has declined to include in the forthcoming collection(s).

1. CLE recommends the addition of data collection on the ***percentage of time (including the percentage of the day and the percentage of the overall school year) students spent in virtual instruction.***
2. Both the percentage of students and the percentage of the time spent (including the percentage of the day and percentage of the overall school year) in virtual instruction should be disaggregated by race, sex/nonbinary, disability-IDEA, disability-Section 504 only, and EL.

Rationale: CLE agrees and appreciates OCR acknowledging that new CRDC data [as proposed by OCR] “are essential to understanding how the ongoing pandemic has affected students’ access to education and the efforts by educators nationwide to meet the needs of students in public schools. The data would also enable us to understand disparities in the occurrence of pandemic-related remote learning.” As previously mentioned, we believe that students with disabilities are at particular risk of being intentionally placed in virtual classrooms as a means to manage behavior/and or other learning needs that are challenging to provide in the general classroom setting. This has the effect of segregating them from their peers and limiting their access to the general curriculum. Having access to disaggregated data is essential to understanding which students participated in virtual instruction and the percentage of time - including of the day and of the overall school year- are spent in that educational environment. Additionally, we remind OCR that there is a growing subset of public schools, including public charter schools, which are designed to be fully virtual instruction. We respectfully request that CRDC add a field

that permits a school to indicate if it is purposely designed to offer full-time virtual instruction. This will enable researchers to disaggregate and analyze the data to appropriately account for intentionally designed fully virtual schools.

Definition: Referral to Law Enforcement

Recommendation: OCR must ensure the definition of “Referral to Law Enforcement” clarifies that any referral resulting from a school’s use of a threat assessment system/program/activity, by any school official, designee etc. must also be considered a referral. See below for recommended definition (edits in **bold** and strikethrough)

Referral to law enforcement – An action by which a student is reported *by a school official or that official’s designee* to any law enforcement agency or official, ~~including such as~~ a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken. Citations, tickets, court referrals, ~~and~~ school-related arrests, **and referrals for threat assessment processes including law enforcement** are considered referrals to law enforcement.

Rationale: Threat assessment programs often include law enforcement officers in the process of determining whether the student poses a threat, thus subjecting the student to their scrutiny. Threat assessments, like many forms of “zero tolerance” school discipline, disproportionately harm students with disabilities including Black, Indigenous, People of Color (BIPOC). These systems can have severe negative consequences for students, including suspension, loss of class time, and early involvement with law enforcement. The CRDC must capture data from any school using such system(s).

Discipline: Non-Public Schools

Recommendation: OCR must **add the requirement for non-public schools to collect all discipline data** as required by the CRDC.

Rationale: CLE continues to recommend the addition of elements to measure all experiences, including all disciplinary actions impacting children with disabilities placed by school districts in non-public schools. While the guidance proposed by OCR may be helpful, the fact that 97 percent of students served under IDEA *in non-public schools are placed there and paid for by public school districts, rather than being placed there by parents* means that we have no data on the status of thousands of children with disabilities. We strongly urge OCR to address this population in the CRDC.

Restraint and Seclusion

Recommendation: CLE appreciates OCR’s examination of key definitions related to the discipline of students and supports the changes OCR proposes to the definitions of Mechanical Restraint, Physical Restraint, and Seclusion.

Finally, we thank OCR for restoring all data elements eliminated by the previous Administration. In particular, we appreciate the addition of a new collection of FTE counts of teachers certified to teach in mathematics, science, special education, and English as a second language. Given the importance of the Teachers and Other Personnel Data, we continue to urge OCR to work toward making these data collection mandatory.

We appreciate this opportunity to comment on important updates and improvements to the CRDC.

Sincerely,



Lauren Morando Rhim
Co-Founder and Executive Director
Center for Learner Equity