



**The Council of Parent Attorneys and Advocates, Inc.**  
*Protecting the Legal and Civil Rights of Students with Disabilities and Their Families*

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:

As a leading voice for our nation's children with disabilities and their families, the Council of Parent Attorneys and Advocates (COPAA) is writing to provide comments on data collection under the Mandatory Civil Rights Data Collection (CRDC) for School Years (SY) 2021-2022 and 2023-2024.

As COPAA detailed in our letter dated February 2, 2022, we are *in full support of the addition of all items proposed by the OCR*, including the restoration of items eliminated by the previous Administration.<sup>1</sup> We are pleased OCR has proposed to add these questions for both the 2021-2022 and 2023-2024 school years. Additionally, we specifically thank OCR and are in full support of the following additions:

- Proposed revisions and final wording regarding the definitions of *Mechanical Restraint*, *Physical Restraint*, and *Seclusion*. We are particularly pleased to see the helpful language OCR has added about 'egress' in *Seclusion* and 'transport' for *Physical Restraint*.
- The addition of a new collection(s) 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, including for special educators, we continue to urge OCR to make data collection for these mandatory.

Below is our response to several of the Directed Questions as posed by OCR, followed by additional recommendations COPAA believes OCR must consider.

**Directed Questions (Numbered to Match OCR's Proposal)**

**Directed Question 1: Preschool Section 504 Only Student Enrollment**

**Question:** Have local educational agencies (LEA) enrolled preschool students served only under Section 504 in preschool programs?

**Response:** COPAA supports and encourages collection of preschool enrollment data for preschool students with disabilities who are served under Section 504 for the 2021-22 CRDC, disaggregated by sex, race, and EL status. Specific to OCR's query, COPAA and its members urge OCR to consider that children with health conditions (e.g., asthma, diabetes, ADHD, severe allergies, etc..) and children who may exit Part C services provided under the Individuals with Disabilities Education Act (IDEA) and transition to preschool may qualify under Section 504. Having CRDC data regarding these children is valuable, especially when we know that too many young children are reported to experience informal removals and other disciplinary actions.

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<sup>1</sup> COPAA Letter to Valentine, (February 2, 2022).

### Directed Question 3: Nonbinary Students

**Question:** What, if any, changes should OCR make to the proposed definition for nonbinary?

**Response:** COPAA supports the expansion of the sex category to include nonbinary students in the CRDC.

### Directed Question 4: Chemical or Irritant Restraint

**Question:** 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?

**Response:** COPAA supports the addition of data collection on the use of chemical and irritant restraint by a sworn/other law enforcement officer, **including school security guard and/or school personnel assigned to/employed by a school**, beginning with the 2021-2022 CRDC and included in the 2023-2024 CRDC. Additionally, consistent with OCR's proposal, these new data elements are recommended, including disaggregation as specified:

- Students (K-12) subjected to chemical restraint **and irritant restraint**.
  - Number of non-IDEA students subjected to chemical restraint **and irritant restraint** (disaggregated by race, sex, nonbinary, students with disabilities-IDEA, students with disabilities-Section 504 only, EL);
  - Number of students with disabilities (IDEA) subjected to chemical restraint **and irritant restraint** (disaggregated by race, sex, nonbinary, EL).

### Directed Question 7: Commonwealth, Territories, and Freely Associated States

**Question:** Should OCR include LEAs from the seven additional jurisdictions?

**Response:** COPAA 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. 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.

### Directed Question 8: Informal Removals

**Questions:**

- 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?

**Response:** COPAA urges OCR to define Informal Removal and require data collection on its use.

**Proposed Definition:** Informal Removal.

**Informal Removal is:** 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 Constitution, state, or federal law and/or regulation.

Common types of informal removals include:

- Incidents where children/students, of any age, including preschool, are sent home in the middle of a school day as a result of an incident involving the student’s behavior or health/medical/other need.
- Instances where schools recommend that students stay home for one or more days as a result of a behavior/other incident.
- Incidents when the school/district calls an emergency line (e.g., 211, 911) to request emergency medical support and/or mobile mental health support to remove the child.
- Instances where schools ask students with significant behavioral manifestations to stay home [for any length of time] after revising a Behavior Intervention Plan or an IEP, while they put the staffing and services in place to implement a new plan, in the name of safety, and without formally documenting this as required by the IDEA.

Necessary and helpful data on Informal Removals would include:

- Number of removals reported by: Grade (e.g., Preschool, K-12)
- Disaggregated by: race/ethnicity, sex, including nonbinary, limited English proficiency, and disability-IDEA and disability-504.

As reported by the nation’s protection and advocacy network as well as key researchers, there is widespread anecdotal data to support that the practice of informal removal appears to impact children of color with disabilities in the same disproportionate manner that formal removal (suspension and expulsion) does, if not more so.<sup>2</sup> No matter the form, informal removals deny students with disabilities a free appropriate public education in the least restrictive environment by removing them from their designated placement. OCR must collect data on these incidents.

### **Additional Recommendations**

#### **COVID-19 Virtual Instruction**

**Comment:** COPAA is pleased with the addition of data collected on students receiving virtual, hybrid, and in-person instruction. **We continue, however, to recommend the addition of data collection on the percentage of time students spent in virtual instruction.** Both the percentage of students and the percentage of the time spent in virtual instruction should be disaggregated by race, sex, nonbinary, disability-IDEA, disability-Section 504 only, and EL.

**Rationale:** As noted in COPAA’s [April 2022 Statement on Distance Learning](#),

As schools have re-opened for in-person learning, states like Maryland, Minnesota, Indiana, and others have taken steps to expand distance learning options in K-12 schools. There exist too few guardrails to ensure protections for students with disabilities. In the rush to manage personnel staffing shortages, family expectations, budget challenges and more, states and districts may be offering new synchronous and asynchronous learning options in K-12 settings without also ensuring they can meet the full requirements of federal law under the IDEA, Section 504 of the Rehabilitation Act of 1973 (Section

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<sup>2</sup> Daniel J. Losen, Paul Martinez & Grace Hae Rim Shin (2021). Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies, at: <https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies/final-Report-03-22-21-v5-corrected.pdf>, as reported by the National Disability Rights Network, (2022) at: <https://www.ndrn.org/resource/out-from-the-shadows-informal-removal-of-children-with-disabilities-from-public-schools/>

504), and the Americans with Disabilities Act (ADA) for all eligible students. See: *How Has the Pandemic Affected Students with Disabilities: A Review of the Evidence to Date*, Center for Learner Equity, (October 2021) at: <https://www.centerforlearnerequity.org/resource/how-has-the-pandemic-affected-students-with-disabilities-a-review-of-the-evidence-to-date/>

Given the ongoing and unknown future impact of COVID-19 on all students and students with disabilities in particular, we believe these data and their disaggregation are essential to understanding which students and the percentage of time such students spent in virtual instruction.

### **Definition: Referral to Law Enforcement**

**Comment:** 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**)

**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, **referrals through a threat assessment process**, and school-related arrests are considered referrals to law enforcement.

**Rationale:** COPAA remains concerned about the lack of data on the use of threat assessment systems that lead directly to referrals to law enforcement, especially as it relates to students with disabilities and students of color. We urge OCR to specifically clarify that any referral (by school official, designee, law enforcement) that come as a result of a school/district use of a threat assessment program/system are considered referrals to law enforcement. The CRDC provides the only comparable data gathering mechanism to capture the impact of such systems.

### **Discipline: Non-Public Schools**

**Comment:** COPAA is concerned that OCR continues to ignore the need for data on elements that measure all experiences, **including any and all disciplinary actions impacting children with disabilities -placed by school districts- in non-public schools**. COPAA continues to recommend and urge OCR to add the requirement for non-public schools to collect all discipline data as required by the CRDC.

**Rationale:** As we noted in our January 2022 comments, according to data reported to the U.S. Department of Education as required by IDEA Section 618, 97 percent of students served under IDEA in non-public schools are placed there/paid for by public school districts (not parentally placed). 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. It is unacceptable that we have no data on the status of public-placed students in non-public schools. COPAA believes it is essential and critical that OCR expand the CRDC data collection to cover these children. Again, we strongly urge OCR to address this population in the CRDC.

### **Pathways to College and Career**

**Comments:** COPAA is concerned that OCR will not add the much-needed data on “disability-Section 504 only” students as it applies to important ‘pathway’ programs known to increase the likelihood that students will attend college and/or receive career training. COPAA urges OCR to add the following elements and make each mandatory for 2021-2022 and 2023-2024 respectively:

- # of students (preschool-12) enrolled in gifted & talented programs
- # of students (grades 9-12) enrolled in distance education courses
- # of students (grades 9-12) enrolled in at least one dual enrollment/dual credit program
- # of students ages 16-19 who participated in high school equivalency exam preparation program

- # of students enrolled in at least one AP course in specific subject area
- # of students enrolled in Algebra I in grades 7-8
- # of students who passed Algebra I in grades 7-8
- # of students enrolled in Algebra I in grades: 9-10; 11-12
- # of students who passed Algebra I in grades: 9-10; 11-12
- # of students enrolled in math courses in grades 9-12
- # of students enrolled in science classes in grades 9-12
- # of students enrolled in computer science classes in grades 9-12
- # of students enrolled in data science classes in grades 9-12
- # of students who took SAT, ACT, or both, anytime during school year.

**Rationale:** The CRDC is the only federal-level data collection that yields information on Section 504-only students. Therefore, disaggregating data elements to include 504-only students provides critical information regarding their access to and ability to matriculate via these programs.

We appreciate this opportunity to comment and look forward to an updated and improved CRDC.

Sincerely,



Denise Marshall  
CEO

The Council of Parent Attorneys and Advocates (COPAA) is an independent, nonprofit organization of 3000+ parents, attorneys, advocates, and related professionals; over 90% of whom identify as having a disability or are parents or family members of individuals with disabilities. COPAA members nationwide work to protect the civil rights and secure excellence in education on behalf of the nearly 8 million students ages 0-21 with disabilities in America. COPAA serves as a national voice for these children and their families. Our actions are grounded in the belief that every child deserves the right to a quality education that prepares that child for meaningful employment, higher education, and lifelong learning, as well as full participation in their community.

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