



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 Consortium for Constituents 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. To support these goals and ensure that students with disabilities have every opportunity to succeed in school and beyond, the CCD Education Task Force is taking the opportunity provided by the Office for Civil Rights (OCR) to comment on data collection under the Mandatory Civil Rights Data Collection (CRDC) for School Years (SY) 2021-2022 and 2023-2024.

As noted in our January 31, 2022 letter¹ CCD supports the additions proposed by OCR and *is pleased these items will also be included in the SY 2023-2024 collection*. Below, we respond to OCR's Directed Questions and offer additional recommendations that CCD believes will enhance the CRDC by providing further transparency regarding the status of students with disabilities in our nation's schools.

DIRECTED QUESTIONS (NUMBERED TO MATCH OCR'S QUERY)

1. Preschool Section 504 Only Student Enrollment.

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

CCD: As noted in January 2022, 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. To support OCR's proposal, CCD is aware 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 data available via the CRDC regarding these children is valuable given the impact of any disciplinary action taken at this stage of development.

3. Nonbinary Students

- What, if any, changes should OCR make to the proposed definition for nonbinary?

CCD: Consistent with our January 2022 letter, CCD supports the proposed definition of nonbinary students as well as OCR's stated goals "to capture data that will provide a greater understanding of the experiences of nonbinary students,

¹ CCD Letter to Valentine, (January, 2022) at: <https://www.c-c-d.org/fichiers/CCD-on-CRDC-2021-2022-Final.pdf>

and will help to further OCR's mission to enforce Title IX's prohibition on discrimination on the basis of sex, which OCR interprets to include discrimination based on sexual orientation and gender identity."

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?

CCD: We strongly support 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**. We support OCR's proposal to eliminate the word 'sworn' from the definition and include security or other personnel. 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).

7. Commonwealth, Territories, and Freely Associated States

- Should OCR include LEAs from the seven additional jurisdictions?

CCD: We support maintaining data collection in SY 2021-2022 and 2023-2024 from the Commonwealth of Puerto Rico and also support 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.

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?

CCD: We support adding a definition of Informal Removal to the CRDC. Such a definition must include the following elements:

- Specify that any action taken to remove a child/student with a disability from school/school-based program, for any period of time without documentation [as required by federal law], qualifies as an informal removal. See list of instances below for examples of what may constitute an informal removal.

- Clarify that informal removal applies to children/students eligible under Section 504 of the Rehabilitation Act of 1973 and/or the IDEA.
- Assure that all children/students, regardless of age and setting (e.g., preschool) are included.

Common types of informal removals include:

- Incidents where schools send children/students home in the middle of a school day/including half-day programs after an incident has occurred, necessitating the parent picking up the child.
- Instances where schools recommend that children/students stay home for one or more “cool down days” after a behavioral incident has occurred.
- Incidents where schools ask children/students with significant behavioral manifestations to stay home [for multiple days] 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.

These situations are very 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.

Helpful data on Informal Removals would include:

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

SPECIFIC RECOMMENDATIONS

COVID-19: Virtual Instruction

Recommendations: As noted in our January 2022 letter, CCD 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, we hope OCR sees the benefit of these data beyond the impact of the current pandemic. Therefore, we urge OCR to reconsider and add these data to the forthcoming collections:

1. Data 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. Data on both the percentage of students and the percentage of the time spent (including the percentage of the day and the percentage of the overall school year) in virtual instruction, disaggregated by race, sex including nonbinary, disability-IDEA, disability-Section 504 only, and EL.

Rationale: We appreciate OCR acknowledging that new CRDC data [on virtual, hybrid and in-person instruction] “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.

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: CCD urges OCR to add elements to measure all experiences, including all disciplinary actions impacting students with disabilities placed by school districts in non-public schools. While the guidance proposed by OCR may be helpful to the schools, the fact that 97 percent of students served under IDEA *in non-*

public schools are placed there and paid for by public school districts means that we have no data on the status of thousands of children with disabilities. We strongly recommend that OCR address this population.

Restraint and Seclusion

CCD appreciates OCR's examination of key definitions related to the discipline of students and supports the changes proposed to the definitions of Mechanical Restraint, Physical Restraint, and Seclusion.

Pathways to College and Career

Recommendation: Add "disability-Section 504 only" to key data elements (e.g., # of students enrolled in dual enrollment, AP courses, Algebra, math, computer science, SAT/ACT etc.) as well as make them mandatory for 2021-2022.

Rationale: CCD is disappointed that OCR has rejected the previous recommendation (which included 25 signing organizations) regarding collecting important data on 504-eligible students' access to important pathway programs. We know too little about 504-eligible students and their access to college and career training. Having an understanding of their status and access to integral pathway programs would help ensure resources and technical assistance could be provided to improve their outcomes.

In conclusion, CCD appreciates 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, including for special educators, we continue to urge OCR to make data collection for these mandatory.

We appreciate this opportunity to comment on important updates and improvements to the CRDC. Please contact any of the CCD Education Task Force co-chairs for further information.

Sincerely,

American Music Therapy Association
American Psychological Association
American Speech-Language-Hearing Association
Association of University Centers on Disabilities
Autistic Self Advocacy Network
Autistic Women and Nonbinary Network
Bazelon Center for Mental Health Law
Center for Learner Equity
Center for Learner Equity
Children and Adults with Attention-
Deficit/Hyperactivity Disorder
CommunicationFIRST
Council for Exceptional Children
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund
Higher Education Consortium for Special Education

Learning Disabilities Association of America
National Association of Councils on Developmental
Disabilities
National Association of School Psychologists
National Association of School Psychologists
National Center for Learning Disabilities
National Center for Parent Leadership, Advocacy, and
Community Empowerment(National PLACE)
National Disability Rights Network (NDRN)
National Down Syndrome Congress
Parent to Parent of Georgia, Inc.
Teacher Education Division of Council for Exceptional
Children
The Advocacy Institute
The Arc of the United States

CCD Education Task Force Co-Chairs:

Bart Devon, NDSS	bdevon@ndss.org
Lindsay Kubatzky, NCLD	lkubatzky@nclld.org
Kim Musheno, Autism Society	kmusheno@autismsociety.org
Laura Kaloi, COPAA, CLE	lkaloi@stridepolicy.com