



# AMERICAN ATHEISTS

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Office of Planning, Evaluation and Policy Development  
U.S. Department of Education  
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*Submitted via email to ICDocketmgr@ed.gov*

**Re: Comment from American Atheists on “Agency Collection Activities; Comment Request; Mandatory Civil Rights Data Collection” and “Mandatory Civil Rights Data Collection; Correction” (Docket No. ED-2021-SCC-0158; Doc. Nos. 2022-20754 & 2022-21317)**

Dear Ms. Valentine:

American Atheists writes to comment on the proposed Department of Education ("Department") data collection titled "Agency Collection Activities; Comment Request; Mandatory Civil Rights Data Collection,"<sup>1</sup> later corrected to "Mandatory Civil Rights Data Collection; Correction."<sup>2</sup> These comments are limited to the three data elements for the 2021-22 Civil Rights Data Collection (CRDC) relating to religion: 1) the number of reported allegations of harassment or bullying of K-12 students on the basis of perceived religion;<sup>3</sup> 2) whether a Local Education Agency (LEA) has a written policy prohibiting harassment or bullying on the basis of religion, and; 3) web link to the policy prohibiting harassment or bullying of students on the basis of religion.<sup>4</sup>

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between

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<sup>1</sup> Office for Civil Rights, Department of Education; Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection; 87 Fed. Reg. 58342; Doc. No. 2022-20754; Dkt. No. ED-2021-SCC-0158. [Hereinafter, “proposed collection.”] Available at <https://www.federalregister.gov/documents/2022/09/26/2022-20754/agency-information-collection-activities-comment-request-mandatory-civil-rights-data-collection>.

<sup>2</sup> Office for Civil Rights, Department of Education; Mandatory Civil Rights Data Collection; Correction; 87 Fed. Reg. 59405; Doc. No. 2022-21317; Dkt. No. ED-2021-SCC-0158. [Hereinafter, “proposed collection.”] Available at <https://www.federalregister.gov/documents/2022/09/30/2022-21317/mandatory-civil-rights-data-collection-correction>.

<sup>3</sup> This data element was optional for the 2020-21 CRDC, and mandatory for the 2021-22 CRDC. [Hereinafter, “disaggregated religious harassment data.”]

<sup>4</sup> These two data elements are proposed as optional for the 2021-2022 CRDC. [Hereinafter, “religious harassment policy collection.”]

government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation's communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for religious liberty and equality, American Atheists supports robust enforcement of civil rights laws and opposes exemptions that would allow discrimination against vulnerable individuals and communities based on religious beliefs.

Data showing the extent of bullying and harassment against various religious and nonreligious communities in public schools would be valuable, and we are encouraged by the Department's continuing commitment to protecting civil rights through the collection of accurate data. However, we have significant concerns about the ability of schools to successfully gather such data accurately, whether such data would be kept confidential, and whether such data collection may result in further discrimination against religious minority and nonreligious students.

Together with several organizations representing religious minority groups, American Atheists previously recommended that the collection of religious harassment allegations should remain optional for the 2021-22 CRDC and that the Department should take additional steps before making the collection of disaggregated religious harassment data mandatory. Since these recommendations were not adopted in this proposal, we reiterate that more needs to be done to enhance the quality of the data on religious harassment, ensure that schools are using appropriate methods to gather this data, and minimize the burden of the collection process.

## Background

Despite laudable efforts to address bullying and harassment in American public schools, it is an unfortunate fact that bullying and harassment on the basis of actual or perceived religion continue to be far too prevalent.<sup>5</sup> Such bullying and harassment has a significant detrimental impact on students, their families, peers, the school environment, and on the broader communities that share their religious or nonreligious beliefs. Moreover, bullying and harassment on the basis of religion is not evenly distributed. Religious minority and nonreligious students are far more likely to be targeted because of their beliefs, particularly in religiously homogenous areas and for students whose religious tradition is visibly identifiable.

To assess the prevalence of bullying and harassment on the basis of actual or perceived religion, the Department began collecting the number of allegations of such bullying and harassment as an optional data element for the 2013-14 CRDC and made collection mandatory for the 2015-16 CRDC. During the 2017-18 CRDC, LEAs reported about 6,000 allegations of bullying or

<sup>5</sup> According to one survey, 18% of surveyed students experienced verbal harassment on the basis of religion within the past year. Greytak, E.A., Kosciw, J.G., Villenas, C. & Giga, N.M. (2016). *From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary School Students and Teachers*. New York: GLSEN. Available at [https://www.glsen.org/sites/default/files/2019-12/From\\_Teasing\\_to\\_Torment\\_Revised\\_2016.pdf](https://www.glsen.org/sites/default/files/2019-12/From_Teasing_to_Torment_Revised_2016.pdf).

harassment on the basis of religion.<sup>6</sup> For the 2019-20 CRDC, the Department proposed to optionally collect disaggregated religious harassment data based on the 14 categories<sup>7</sup> used to collect disaggregated data regarding hate crimes motivated on the basis of religion.<sup>8</sup> However, because of the COVID-19 pandemic, the majority of American public schools closed, delaying the 2019-20 CRDC. The Department later added this optional data element for the 2020-21 CRDC, the collection of which concluded earlier this year.<sup>9</sup>

Although the CRDC generally takes place biennially, as a result of the pandemic, the proposed 2021-22 CRDC followed directly after the conclusion of the 2020-21 CRDC. This timing was especially unusual because the open comment period on the proposed 2021-22 CRDC occurred before the deadline for LEAs and SEAs to submit their data (February 28, 2022) and far in advance of the scheduled data quality review of the data submitted during the 2020-21 CRDC.

Generally, new CRDC data elements are made optional for one CRDC cycle and then made mandatory during the following cycle. However, this pattern anticipates a biennial CRDC. According to the CRDC guide provided by the Department of Education, "[i]t may take up to two years before LEAs are able to report accurate data for a new data element."<sup>10</sup> This is especially true for the 2020-21 collection cycle, where, due to the unprecedented strain that the COVID-19 pandemic placed on school systems, at least some schools skipped all optional data collection elements.<sup>11</sup>

Further, the biennial structure normally allows the Department to assess the data quality of the new optional data element, and school districts and student advocates have the opportunity to assess the accuracy and utility of the data gathered, as well as any resulting problems or concerns. Because of the compressed timeline, these usual steps and safeguards were not possible for the collection of optional data on alleged religious harassment, disaggregated by religion (or any of the other new data elements) before the 2021-22 CRDC collection cycle.

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<sup>6</sup> Department of Education; Paperwork Reduction Act Submission: Mandatory Civil Rights Data Collection Dec. 2021: Supporting Statement, Part A: Justification, 23 (Dec. 13, 2021). [Hereinafter, "Supporting Statement, Part A."]

<sup>7</sup> The 14 categories are: atheism/agnosticism; Buddhist; Catholic; Eastern Orthodox; Hindu; Islamic (Muslim); Jehovah's Witness; Jewish; Mormon; multiple religions, group; other Christian; other religion; Protestant; and Sikh.

<sup>8</sup> Office for Civil Rights, Department of Education; Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection, 84 Fed. Reg. 49,277 (Sept. 19, 2019) (Docket No. ED-2019-ICCD-0119; Doc. No. 2019-20292).

<sup>9</sup> Office for Civil Rights, Department of Education; Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection, 85 Fed. Reg. 130, 40628 (July 7, 2020) (Docket No. ED-2019-SCC-0119; Doc. No. 2020-14486).

<sup>10</sup> Department of Education, Institute of Education Sciences, National Center for Education Statistics, Forum Guide to Reporting Civil Rights Data, at 8, <https://nces.ed.gov/pubs2017/NFES2017168.pdf>.

<sup>11</sup> See, e.g., North Carolina Department of Public Instruction, Civil Rights Data Collection CRDC Overview 20211119 1510 4, (instructing all North Carolina Schools not to collect optional data for 2020-21 due to the COVID-19 pandemic), <https://www.youtube.com/watch?v=Foy2ssSIA0> (at 24:05).

## **New Optional Data Collection on Written Policies Prohibiting Discriminatory Harassment**

We commend the Department for moving forward with the proposed optional religious harassment policy collection for the 2021-22 CRDC. This data element will be helpful to determine which schools have policies that specifically address bullying and harassment based on religion, and there are no concerns about inaccuracy or student privacy. The collection of web links to these policies is a commonsense way to gather information and will give the Department valuable insight into the anti-harassment efforts at our nation's schools. We urge the Department to make these data elements mandatory for the 2023-24 CRDC cycle.

## **Mandatory Data Element Regarding Disaggregated Religious Harassment Allegations**

When the Department first proposed the collection of disaggregated religious harassment allegations by type, stakeholders raised numerous concerns about the accuracy of the data collected, student privacy and confidentiality, and whether the data collection may put religious minority and nonreligious students at increased risk. The Department addressed these concerns by stating that the "harassment and bullying questions are not intended or expected to elicit private information about students." Instead, these data elements are "intended to record, for any reported harassment, the schools' understanding of the harasser's perceived motivation." Moreover, "LEAs will not be required to include religious affiliation... of students as part of their administrative record."<sup>12</sup>

In line with these statements, the instructions included with the 2020-21 survey forms<sup>13</sup> clarify that "In classifying the allegations, use the likely motives of the alleged harasser, and not the actual characteristics of the alleged victim."<sup>14</sup> The instructions further clarify that:

"This item is about allegations of harassment or bullying and not about the religious affiliation of the alleged victim. Do not ask the alleged victim about his or her actual religion, but only collect and enter allegations data based on the likely motives of the alleged harasser. This item is not intended to have a school record on the alleged victim's religious affiliation, and the school should not ask the alleged victim about his or her religious affiliation."<sup>15</sup>

These instructions are extremely important to ensure that schools do not inappropriately require students to disclose their religious or nonreligious beliefs or create a record of such information. We commend the Department for including such clear and unequivocal

<sup>12</sup> Supporting Statement, Part A, 24.

<sup>13</sup> U.S. Department of Education, Civil Rights Data Collection (CRDC), <https://www2.ed.gov/about/offices/list/ocr/data.html>.

<sup>14</sup> Office for Civil Rights, 2020–21 Civil Rights Data Collection –School Form, at 92, <https://www2.ed.gov/about/offices/list/ocr/docs/2020-21-crdc-school-form.pdf>.

<sup>15</sup> *Id.*

instructions to protect the privacy of the victims of harassment. We strongly encourage the Department to retain these instructions in the 2021-22 survey form.

However, these instructions beg several questions:

- How is the school administrator supposed to determine the likely motives of the alleged harasser targeting a specific religion without asking the student making the allegation about their religion?
- What if the alleged victim volunteers information about their religious or nonreligious beliefs? Should the administrator take that to mean that the alleged harassment was motivated on this basis?

The lack of clarity around these questions creates privacy concerns and calls into question the accuracy of the data. The Department is not asking for verified incidents of harassment, where a school administrator might have had an opportunity to speak with the alleged harasser to determine their motivation. Instead, this collection is seeking data about allegations, for which there is likely to be very little information other than the perception and beliefs of the alleged victim of harassment. With no clear alternative for finding the “likely motive,” schools may resort to asking students about their religious or nonreligious beliefs, despite the instructions to the contrary, or taking volunteered information about religious beliefs as the motivating factor.

This concern is particularly pressing since the Department has not updated the guidance provided on the Civil Rights Data Collection website to address questions about this new data element.<sup>16</sup> The website links to the Forum Guide to Reporting Civil Rights Data provided by the National Center for Education Statistics.<sup>17</sup> This guide has not been updated since 2018, before the disaggregated collection of religious harassment was added as an optional data collection point. Similarly, the “Questions and Answers” document provided for the 2020-2021 data collection has no guidance on determining “the likely motives of the alleged harasser.”<sup>18</sup> If school administrators are unsure about how to accurately collect the disaggregated data on religious harassment by type without asking students about their religious or nonreligious belief, where should they look for guidance?

This lack of sufficient training materials clearly shows that the decision to make disaggregated data on religious harassment a mandatory data element for the 2021-22 collection cycle was premature. Appropriate training materials should be available *before* complex new data elements are made mandatory.

<sup>16</sup> U.S. Department of Education, Civil Rights Data Collection (CRDC), <https://www2.ed.gov/about/offices/list/ocr/data.html>.

<sup>17</sup> Department of Education, Institute of Education Sciences, National Center for Education Statistics, Forum Guide to Reporting Civil Rights Data, <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=NIES2017168>.

<sup>18</sup> Office for Civil Rights, 2020–21 Civil Rights Data Collection –School Form, at 92, <https://www2.ed.gov/about/offices/list/ocr/docs/2020-21-crdc-school-form.pdf>.

Further, determining exactly which religion motivates alleged harassment is notably different from other types of motive determinations for alleged harassment that the Department is asking of school administrators.<sup>19</sup> We have significant concerns about the ability of school administrators to distinguish between bullying and harassment motivated against different religious groups. Failure to do so accurately will result in underreporting and misreporting of harassment against certain religious groups and incorrect assessment of prevalence. The Department derived the 14 religious categories used for this assessment from the Federal Bureau of Investigation's Uniform Crime Reporting Program, used to track the prevalence of hate crimes. However, even seasoned investigators can have difficulty determining when crimes are motivated against specific religious groups, resulting in inconsistent data and significant gaps.<sup>20</sup> School administrators are not investigators, and yet they are being called upon to make similar distinctions based merely on allegations of bullying and harassment.

Particularly in communities that are predominantly of one religion, the very places where religious discrimination and harassment are most likely to occur, educators and administrators may have difficulty due to a lack of familiarity with various religious and nonreligious beliefs or communities. The 2020-21 instructions do describe each of the 14 religious categories.<sup>21</sup> These descriptions are helpful, and we encourage retaining them in the 2021-22 survey instructions. However, these descriptions do not contain any information about common types of harassment against each group. Simply knowing what the 14 religious categories are will not necessarily help school administrators determine the motive behind a particular slur or attack.

To address these concerns, the Department should decide exactly how it wants school administrators to make these ephemeral determinations, how "likely motives" should be determined, and how schools should maintain this information and protect student privacy. It is critical that the Department work with stakeholder religious and nonreligious groups to develop appropriate guidance and training materials to help school officials to discern when bullying and harassment is directed toward particular religious or nonreligious identities or beliefs. If this data collection remains mandatory (see below), it is essential that the Department provide additional training resources prior to the 2023-34 CRDC cycle.

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<sup>19</sup> For example, because of the multitude of ways that religious exercise affects individual appearance, dress, and activities, anti-LGBTQ harassment and other forms of harassment may be more easily determinable based on the words and actions of alleged harassers than specific religions being targeted.

<sup>20</sup> Thompson, A.C., Naik, R., and Schwenke, K. (2017). "Hate Crime Training for Police Is Often Inadequate, Sometimes Nonexistent." *ProPublica*, Nov. 29, 2017. Available at <https://www.propublica.org/article/hate-crime-training-for-police-is-often-inadequate-sometimes-nonexistent>; Davis, R.L. and O'Neill, P. (2016). "The Hate Crimes Reporting Gap: Low Numbers Keep Tensions High." *The Police Chief*, 83, May 2016: web-only article. Available at <https://www.policechiefmagazine.org/the-hate-crimes/>; Movement Advancement Project. (2021). *Policy Spotlight: Hate Crime Laws*. Available at [www.lgbtmap.org/2021-report-hate-crimes](http://www.lgbtmap.org/2021-report-hate-crimes).

<sup>21</sup> Office for Civil Rights, 2020–21 Civil Rights Data Collection –School Form, at 91-92, <https://www2.ed.gov/about/offices/list/ocr/docs/2020-21-crdc-school-form.pdf>.

Further, the 2021-22 survey instructions should clarify that the total number of allegations of harassment based on religion does not need to match the total number of allegations disaggregated by religious group. If schools assume that they are required assign a religious category to every allegation of harassment based on religion (whether or not a motive is apparent), they are more likely to probe victims of alleged harassment about their religious identity in order to check the box. Clarifying that the disaggregated data should only be added *when clearly established* will increase the accuracy of the data and reduce the chances of improper questioning of the victim's beliefs.

### **Ultimately, this Construct Is Flawed and the Department Should Collect Disaggregated Religious Harassment Data Through Other Means**

Our review of the accuracy and potential negative impact of this method of collecting disaggregated data about harassment based on religious belief demonstrates that this construct is inherently flawed. Schools are supposed to report on allegations of harassment — not proven incidents — and school administrators learn about allegations when the victim of the harassment (or a teacher or parent) reports them. Therefore, in most cases, the only place they can get information is from the person making the allegation. But the instructions for the collection clearly instruct school administrators not to ask about victim's beliefs, so the administrator is left with limited choices: 1) make an assumption about the harasser's motivation based on the victim's description of the incident, 2) make an assumption about the harasser's motivation based on what is known or assumed about the victim's beliefs, 3) use information that the student volunteers about their beliefs, or 4) ask the victim about their beliefs anyway. Not only is this not a structure that will not produce accurate data, in most cases the focus will *necessarily* be on the victim's beliefs.

In the best-case scenario, this structure will collect data on what religious beliefs the administrator or victim think harassment is based on, but this is often inaccurate. For example, a 2017 study found that 57% of white evangelical Protestants believe that they are more likely to face discrimination than Muslims.<sup>22</sup> In fact, the federal hate crimes data from 2020 shows that there were almost four times more proven hate crimes incidents against people for their Muslim belief than against Protestants.<sup>23</sup> There were twenty-two times more proven anti-Jewish hate crimes than anti-Protestant hate crimes in 2020.<sup>24</sup> While data on people's beliefs about religious harassment might potentially be useful to social scientists, the CRDC is not well-suited to collect such data, nor is collection of such data the intended goal of this construct.

<sup>22</sup> Emma Green, *White Evangelicals Believe They Face More Discrimination Than Muslims*, The Atlantic (March 10, 2017), <https://www.theatlantic.com/politics/archive/2017/03/perceptions-discrimination-muslims-christians/519135/>.

<sup>23</sup> Statista, *Number of anti-religion hate crime incidents in the United States in 2020, by religion*, (Oct. 14, 2022), <https://www.statista.com/statistics/737660/number-of-religious-hate-crimes-in-the-us-by-religion/>.

<sup>24</sup> *Id.*

Considering the inherent flaws in this method of data collection for harassment by religious type, the lack of appropriate training materials to help administer to data collection, and the lack of quality controls on the data, this data element should be reassessed for inclusion in the 2023-24 CRDC. While the goal of collecting this data is laudable, the method may be untenable. We recommend that the Department should collect this data through other means, such as anonymous surveys like the Youth Risk Behavior Surveillance System.

## Recommendations

1. **Work with religious minority and nonreligious organizations to develop clear guidance for school administrators about how to implement the collection of disaggregated religious harassment data in a manner that is accurate, respectful, and confidential.** In particular, these training materials should address how school administrators should determine the likely motives of the alleged harasser without focusing on the religious or nonreligious beliefs of the alleged victim and provide descriptions of the common types of harassment against each of the 14 groups.
2. **Clarify in the survey instructions that not every allegation of harassment based on religion needs to be identified with one of the 14 religious categories.** For example, if a school administrator receives a complaint from a student saying that “I was bullied because I prayed.” This complaint should be counted towards the total number of allegations, but not disaggregated into any of the 14 religious categories because there is nothing specific to indicate that the bullying was motivated against a specific religion, and there would be no way of identifying it with a particular religion without asking the student about their religious identity.
3. **Investigate the data integrity of any disaggregated religious bullying and harassment data provided during the optional period (2020-21 CRDC) and examine any issues that may arise as a result of the collection of this data.** As part of these efforts, we encourage the Department to meet with various schools that reported the optional data and those that did not to determine: 1) how relevant data is collected, maintained, and kept confidential; 2) what steps are taken to assess the motivation for alleged bullying and harassment and to determine whether it is targeted towards a particular religion; and 3) what resources, training, and guidance are needed to assist administrators in collecting this data in an accurate and confidential manner.
4. **Consider any risks to student confidentiality and privacy that may arise from the collection of disaggregated religious harassment data and develop a plan to minimize these risks.** The Department is best positioned to have a clear view of the

entire data collection and reporting process, to consult with institutional stakeholders, and to identify where problems with privacy and confidentiality may arise.

- 5. Given the inherent flaws in this methodology of determining frequency of harassment against students based on their religious beliefs or lack thereof, reassess whether this data element should be included in the 2023-24 CRDC.** The Department should consider using other methods to acquire data on the frequency of bullying and harassment on the basis of religion that protect student anonymity and provide greater accuracy. For example, the Department might work with other federal agencies to propose appropriate survey items for the Youth Risk Behavior Surveillance System or another relevant survey of school-age youth.

## Conclusion

American Atheists thanks the Department for its dedication to protecting all students from bullying and harassment, including those who are targeted because of their beliefs or religious or nonreligious identities. We appreciate that the Department seeks appropriate data in order to address discrimination and harassment based on religion, and we agree that such data would be helpful if it is accurately and safely collected. However, the Department's decision to make the collection of disaggregated religious bullying and harassment data mandatory for 2021-22 CRDC was premature. We urge the Department to work with stakeholder groups to develop and provide additional training materials in order to ensure that the collection of this data is accurate, respectful, and confidential. Further, we ask the Department to reassess whether it makes sense to include this data element in future CRDC cycles.

If you should have any questions regarding American Atheists' comment, please contact me at [agill@atheists.org](mailto:agill@atheists.org).

Sincerely,



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