



October 31, 2022

Stephanie Valentine
Office of Planning, Evaluation and Policy Development
U.S. Department of Education
Washington, DC 20002

RE: The Federal School Discipline and Climate's (FedSDC) Comments on the Mandatory Civil Rights Data Collection: OMB 1870-0504, ICR 202111-1870-001; Docket No. ED-2021-SCC-0158

Submitted via RegInfo.com

Dear Ms. Valentine,

We, the Federal School Discipline and Climate Coalition, write this letter in response to the U.S. Department of Education's (ED) Request for Comment on the Mandatory Civil Rights Data Collection. Our purpose in writing this is to hold the ED Office for Civil Rights accountable to its mission.

Since it was created in 1966, the mission of the Office for Civil Rights (OCR) has been ***"to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights."*** OCR was created to address unequal educational opportunities, not through simple enforcement, but through *vigorous enforcement*. During the Obama Administration, especially the latter years, OCR recommitted itself to that standard of vigor, accelerating its enforcement and issuing important guidance on disparities in discipline.

Not surprisingly, with the change in administration in 2016, the intensity and quality of civil rights enforcement withered. However, President Biden's campaign and his inaugural address seemed to signal a return in the new administration to a higher standard of civil rights enforcement and protections for marginalized communities and impacted individuals, which absolutely includes Black and Brown students, and youth and children with and without disabilities. That has not happened however, leaving the FedSDC, directly impacted students and youth on the frontlines, and the civil rights community angered, confused, and disappointed.

The documents posted for this Request for Comment show an emphasis on data definitions and data categories. That is important—careful definition is part of the job of any functioning bureaucracy. But it does not constitute vigorous enforcement. Nor does it signal a real commitment by OCR to do all that it can to fully exercise its powers, influence, and enforcement

authority to protect the lives, well-being, and educational opportunities of Black and Brown children.

Where OCR ought to be showing vigor—in the timely release of data that can assist local advocates in holding their communities to a high standard of educational equity—it fails. Clearly, OCR does not have sufficient resources to directly pursue all the civil rights enforcement that is needed across the nation. What it can *and must* do, however, is to provide data *in a timely manner*, so that communities and local advocates can use that data, as close to real time as possible, to hold SEAs and LEAs accountable.

ED fails, once again, to recommend a yearly data collection. This means that advocates, LEAs, the media reporting the data, and citizens who are becoming increasingly vocal in demanding an end to years of inequity in school discipline and school policing do not have the data they need to understand the *current* extent of disproportionality. Yearly data collection also supports federal enforcement actions.

ED also continues to create problems and unnecessary obstacles by recommending states delay publishing data submitted to the CRDC.¹ Guidance issued in the previous administration advised that for collection years, states should wait to populate their report cards with the required CRDC data until OCR had completed its process and released the official data on OCR’s website. As an example, the guidance states that the annual report cards containing academic information from 2017-2018 and the 2018-2019 report cards would use the CRDC data from the CRDC collection from the 2015-2016 academic year. It is unclear why that part of the guidance has not yet been rescinded. Although the guidance does not prohibit states from publishing their CRDC data before OCR makes it public, in several places the guidance encourages states to wait for “the most recently available data provided by the Department,” in order to meet this requirement and warns at section F-6 that if a state or LEA does not wait for the department’s release [of the CRDC], “it will be difficult, if not impossible, to avoid an inadvertent disclosure [of personally identifiable information] when using the data released by the SEA or LEA in combination with the data released by the Department.”

The guidance reflects the fact that it can take OCR *more than two years* to collect and complete the processing of a given year’s CRDC data. In other words, OCR takes nearly a year to collect the data and another year, or more, before it publishes the data on the federal website. To make matters worse, because the data are only collected every other year, unless a state creates its own annual collection of the CRDC data, the old data from 2015-16 will also be used to meet the ESSA reporting requirements for the state and district report cards that otherwise contain information about the 2018-19 school year and are published during the next school year. This is equivalent to a three-year lag.

¹ This is referencing the section of the guidance at F-10 on page 35-36, as well as F-6.
<https://www2.ed.gov/policy/elsec/leg/essa/report-card-guidance-final.pdf>

This begs the question, why shouldn't the data that districts certify as accurate when they submit it to OCR also be expected to go directly to the states for publication in the state and district report cards? It is unconscionable to make those seeking equity at the local level wait several years after a school year has ended before they can understand the details of local inequities in discipline.

The process of addressing inequity at the local and state level begins with the analysis of data—otherwise districts, schools, parents, advocates, and community members cannot understand the key areas that need attention and the depth of the current problems. These delays in the collection of data, and the inability of states to use their own CRDC data in current state report cards, abetted by ED's recommendations, guarantee that parents and advocates challenging inequity in their community's schools will lack the information they need as a first step in demanding more equitable school practices.

In its failure to ensure the timely release of civil rights data, OCR, far from engaging in vigorous enforcement, is placing a considerable roadblock in the way of those who are seeking greater equity in their schools, districts, or states and a removal of exclusionary discipline policies and practices.

We support the points made in FedSDC's response to OCR's Request for Information on the non-discriminatory Application of School Discipline, our Comments on Proposed Changes to 2021-2022 CRDC, and the Request for Comments on this current Mandatory Civil Rights Data Collection made by long-standing FedSDC partners and members including the Center for Civil Rights Remedies (CCRR), the National Women's Law Center (NWLC), and the National Disability Rights Network (NDRN). FedSDC joins them and many students, youth and children in demanding OCR rouse itself from the torpor and non-enforcement of the previous administration to fulfill its primary mission: vigorous enforcement.

We continue, as we have for some time, to express our concerns about the disparities, violence, and trauma that Black and Brown students, youth, and children face in schools as a result of racist and discriminatory policies, practices, and procedures. Those who are concerned about the welfare of our nation's Black and Brown students have been greatly disappointed in ED and OCR's persistent failure to vigorously pursue and oppose education inequities. It is completely unacceptable, offensive and a gross injustice for OCR to shirk its responsibility to ensure equity in educational opportunity for all students, especially the most marginalized in our nation's schools.

We assume that OCR is not incompetent in failing to meet its basic obligation; thus we have to assume that the agency is willfully ignoring the many thousands of Black students who have courageously protested calling for the removal of police in schools, an end to the criminalization of students through exclusionary discipline, and abolition of the physical violence visited upon

students through corporal punishment and restraint and seclusion, again disproportionately targeting Black and Brown students.

Disproportionate use of out-of-school suspension against Black and Brown students peaked at 3.5 times greater than White rates around 2006 and has remained constant for nearly 20 years. Obviously, then OCR monitoring and enforcement efforts have done little or nothing to change the culture of coercion and punishment that is rampant in our nation's public schools. The ineffectual efforts, or perhaps even non-efforts, of OCR in school discipline send a clear signal to LEAs and SEAs that disciplinary disparities are unimportant, and they can continue acting in a way that consistently creates disproportionality.

By allowing these disparities to persist, OCR does nothing to counter the belief, prevalent in many districts with disproportionality, that the problem is not the structural racism that creates these extreme disparities; it is rather the “troubling misbehavior” of Black and Brown students that causes disparate rates of discipline. Without the vigorous enforcement required of OCR by law, districts with even severe disparities are allowed to continue in the corrosive and evidence-free belief that exclusionary discipline policies, police in schools, corporal punishment, and seclusion and restraint are necessary; necessary because Black and Brown students are incorrectly perceived to be inherently more likely to be disruptive and violent, and that their behavior, rather than school disciplinary choices, is what creates unsafe environments.

Meaningful enforcement and oversight would require using the power of the federal purse to disincentivize the regular use of police in schools in favor of funding other professionals who can provide social, health, and non-criminal interventions appropriate for a marginalized population. It would require a return to the kind of statements made in earlier guidance about the need to minimize² coercive discipline, maximize preventive strategies, and rely on disparate impact analysis to guide decisions about disparities. It would require taking a firm stand on disciplinary disproportionality by rescinding unhelpful and ultimately harmful executive orders from the previous administration. It would require the timely collection, analysis, and release of CRDC data so that those advocating for needed disciplinary changes are backed and supported by Federal data in showing exactly why such reform is needed.

The murder of George Floyd created a new awareness of the enduring intransigence of structural racism in our society and educational system, and of the undeniable harms that causes Black and Brown students. If there is to be any hope of real disciplinary reform, it is up to the Office for Civil Rights to model, not just rhetorically and with occasional action, but full and vigorous anti-racist efforts demonstrating that this Administration truly understands and is a partner in the struggle against racism and inequity.

² FedSDC argues and demands full elimination, not just efforts to minimize such atrocities and disparities levied at Black and Brown students, youth, and children.

As civil rights and disability rights organizations committed to holding SEAs and LEAs to high standards of educational equity, we request a meeting with senior staff of the Office for Civil Rights at your earliest convenience. The purpose of the meeting will be to examine the mechanisms of OCR enforcement, and to think together about how the OCR can reclaim its status as a beacon of civil rights, supporting those on the frontlines fighting against educational injustice.

ABOUT FEDSDC

The Federal School Discipline Coalition (FedSDC) is a diverse group of organizations and individuals committed to advocating for legislative and federal action to protect the interests and educational rights of Black and Brown students and youth through a racial justice and educational equity lens. We advocate that all children deserve to go to schools that create environments and experiences that help them to succeed. Establishing police-free schools and ending the use of seclusion, harmful and dangerous restraints, and corporal punishment while implementing effective, non-punitive, and culturally sustaining practices in schools and alternatives to school discipline is a core value for FedSDC.

If you have any questions about the issues raised in this letter, please contact Christopher Scott, The Open Society Policy Center at Christopher.Scott@opensocietyfoundations.org, or Breon Wells, The Daniel Initiative at Breon.Wells@thedanielinitiative.com.

Sincerely,

The Federal School Discipline and Climate Coalition (FedSDC)

cc: Catherine Lhamon
Department of Justice, Civil Rights Division
White House Domestic Policy Council