



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

November 18, 2019

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Information Collection Clearance Program  
Office of the Chief Information Officer  
U.S. Department of Education  
550 12th Street SW, PCP, Room 9089  
Washington, DC 20202-0023.

RE: Mandatory Civil Rights Data Collection  
Docket ID: ED-2019-ICCD-0119

Dear Ms. Valentine,

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Education Task Force appreciate the opportunity to comment on the proposed changes to the Office of Civil Rights (OCR) Mandatory Civil Rights Data Collection (CRDC) for FY 2019-2020. 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.

CCD greatly values the CRDC as a critical part of OCR's overall enforcement and monitoring strategy to ensure that recipients of the Department of Education's federal financial assistance do not discriminate on the basis of disability and other factors. CCD has advocated for a comprehensive CRDC addressing all forms of discrimination against students with disabilities for many years.

On behalf of the nation's nearly seven million students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) and over 500,000 students eligible for 504 plans under the Rehabilitation Act of 1973, we encourage you to consider the following regarding the proposed changes in the September 19 proposed agency collection:

First and foremost, we were pleased to see that disaggregation of data by disability status under Section 504 of the Rehabilitation Act was added for some specific topic areas, but we strongly urge you to add "disability-504" status as a disaggregation category for every question. Students with disabilities can

receive services and accommodations under either Section 504 or the Individuals with Disabilities Education Act (IDEA), but the types of challenges they face and the outcomes they experience are not the same. Thus, it is critical to better understand those students who are served only under Section 504. The CRDC is the only federal-level data collection that yields information on these students and we have seen a substantial increase in the number of students served under Section 504 in recent years. We urge you to make the data collection more robust by disaggregating the results by disability status under Section 504.

Additionally, we have specific feedback to the proposed changes in various topic areas:

## **SCHOOL AND DISTRICT CHARACTERISTICS**

**PROPOSED CHANGE:** Remove disaggregation of “disability-IDEA” for the number of English Language (EL) students enrolled in EL programs.

**RECOMMENDATION:** **Oppose.**

**RATIONALE:** It is a widespread misconception that a student cannot be both an English learner in an EL program as well as a student with a disability receiving special education services. In fact, an English Learner enrolled in an EL program cannot be denied special education services, and a student can be enrolled in both types of services at the same time. It is essential that the CRDC continue to collect data that examines how well schools are serving the more than 700,000 public school students who are both English learners and students with disabilities. Removing this disaggregation from the data collection will severely undermine public access to information about this often overlooked and underserved population. ED has made significant investments in helping researchers, practitioners, school leaders and teachers refine and improve the identification of English Learners with disabilities.<sup>1</sup> It is critical that we have the ability to track and analyze trends with regard to ELs who also are IDEA eligible

## **DISCIPLINE**

**PROPOSED CHANGE:** Combine questions on the number of preschool students who received one out-of-school suspension and those who receive more than one out-of-school suspension (disaggregated by race, sex, disability-IDEA, EL).

**RECOMMENDATION:** **Oppose.**

**RATIONALE:** There is value in being able to distinguish between preschools with single incidences of out-of-school suspensions and those with higher rates. Combining pre-school suspension for one day with more than one day eliminates the information that may be used to determine cause of suspension for high rate LEAs. Short and long term suspension often have different cause, especially for young children. This information is especially useful for LEAs to consider their discipline policies as it affects all students, including preschool students in protected classes. Eliminating the requirement to disaggregate students

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<sup>1</sup> See Guidance Manuals for Educators of English Learners with Disabilities: Ideas and Lessons from the Field, National Center for Educational Outcomes, 2019. Available at: <https://nceo.umn.edu/docs/OnlinePubs/NCEOReport410.pdf>

ages 3-5 as proposed under Early Childhood Education will also make it impossible to analyze discipline data for this group of students, thus we oppose that change as well.

Current data for discipline of preschoolers shows a shocking use of suspension and expulsion for young children with totally unacceptable disproportionate use according to race/ethnicity and gender. Despite this, these data are significantly underestimated for a number of reasons. These data only include children served in public education programs, leaving out many preschoolers served in private community-based early care and learning programs. In addition, there is a lack of consistent definitions of the terms suspension and expulsion by entities serving young children. We strongly recommend that OCR/ED confer with the OCR within Health and Human Services as well as with programs under the Administration for Children and Families to determine how valid and reliable data can be collected to provide an accurate data profile of the actual use of suspension and expulsion with young children. Only then will it be possible to use these data to make critically needed improvements in evidence-based practices at the local level.

### **HARASSMENT OR BULLYING**

PROPOSED CHANGE: Remove question on whether an LEA has a web link to policy or policies prohibiting harassment or bullying of students on the basis of all of the following: sex; race, color, or national origin; disability (LEA).

RECOMMENDATION. **Oppose.**

RATIONALE: The current CRDC collects data on whether a school has a policy, whether they publish the policy, and include the website link, which are all helpful indicators of whether schools actually know about LEA policy on the topic and their adherence to that policy.

### **EARLY CHILDHOOD EDUCATION**

PROPOSED CHANGE: Remove questions on whether local education agencies (LEAs) early childhood and preschool programs serve all young children; select program characteristics (free, partial/full day, partial/full charge); and disaggregation by race, sex, disability-IDEA, EL from the question on the number of students ages 3-5 years enrolled in preschool.

RECOMMENDATION: **Oppose.**

RATIONALE: Information about the costs and availability of preschool for low income children and children with disabilities is important so that information can be used to determine resource equity and the availability of inclusion options for children with disabilities. Similarly, day length is also essential to that analysis as many young children with disabilities require full day preschool to meet their needs. In addition, we recommend that these child count collections also include reporting by each year of the child's age (e.g., birth to one, one to two, two to three, three to four, four to five and kindergarten). This additional level of detail is essential for planning for improvement at the state and local level.

### **PATHWAYS TO COLLEGE AND CAREER**

PROPOSED CHANGE: Remove only question on the number of participating students in credit recovery programs that allow them to earn missed credit to graduate from high school.

RECOMMENDATION: **Oppose.**

RATIONALE: Students with disabilities have among the lowest rates of high school graduation of any group, with only a 67.1 % four year adjusted cohort graduation rate compared to 84.6% for all students.<sup>2</sup> Credit recovery programs (including in person or online courses or other instruction) can be particularly valuable to students with disabilities who lose more instructional time due to co-occurring health and other challenges and have less exposure to the general education curriculum than their peers without disabilities. As noted in the supporting documentation for the proposed collection, the flexibility provided by credit recovery programs allow students to work on their credit recovery classes over the summer, on school breaks, after school, on weekends, at home on their own, at night in school computer labs, or even during the school day.

PROPOSED CHANGE: Remove questions on advanced placement (AP) courses related to “other” subjects (including world languages and cultures) and taking AP exams for each course (disaggregated by race, sex, disability-IDEA, EL).

RECOMMENDATION: **Oppose.**

RATIONALE: Participation in AP courses related to “other” subjects beyond math, science, and computer science can confer significant benefit to all students, including those with disabilities. The CRDC should be as inclusive as possible, particularly of students whose disabilities particularly affect their ability to participate in STEM subject AP classes. Further, collecting data on students who actually take the AP is important as it speaks to their performance expectations and general sense of mastery, even when they do not pass the exams.

PROPOSED CHANGE: Add “disability-504 only” to the list of disaggregation categories for the questions on the number of students enrolled in the International Baccalaureate (IB) Diploma Programme or at least one AP course.

RECOMMENDATION: **Support.**

RATIONALE: As noted above, the CCD Education task force supports the additions of “disability-504” status as a disaggregation category for every question.

## **SCHOOL FINANCE**

PROPOSED CHANGE: Remove all questions related to preschool through grade 12 personnel full time equivalent (FTE) positions and salaries and non-personnel expenditures at the school level.

RECOMMENDATION: **Oppose**

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<sup>2</sup> National Center for Education Statistics. Public high school 4-year adjusted cohort graduation rate, by race/ethnicity and selected demographic characteristics. Available at: [https://nces.ed.gov/ccd/tables/ACGR\\_RE\\_and\\_characteristics\\_2016-17.asp](https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2016-17.asp)

RATIONALE: School spending has been shown to positively affect student outcomes, particularly when spent well and in schools serving students with the highest needs. Unfortunately, there continue to be significant education funding disparities across schools, districts, and states. Schools with larger populations of students of color and students from low-socioeconomic status are “under-resourced relative to schools attended by wealthier peers in the same district.”<sup>3</sup>

### **TEACHERS AND OTHER PERSONNEL (FUNDED WITH FEDERAL, STATE, AND/OR LOCAL FUNDS)**

PROPOSED CHANGE: Remove three questions on inexperienced teachers and those with high absence rates.

RECOMMENDATION: **Oppose.**

RATIONALE: Evidence shows that underprepared, out-of-field, and substitute teachers typically depress student achievement and have higher attrition rates.”<sup>4</sup> The CRDC should continue to collect data on first- and second-year teachers and those with high absence rates so that progress (or the lack thereof) on the equitable distribution of new and reliable teachers can be determined. This is of particular importance to students with disabilities due to the severe shortage of special education teachers and the growing use of “emergency **credentials**” programs for teachers who are willing to take hard-to-fill positions.

### **EXPERIENCES OF CHILDREN WITH DISABILITIES PLACED BY SCHOOL DISTRICTS IN NONPUBLIC SCHOOLS**

RECOMMENDATION: **ED must meet prior commitments to measure experiences of children with disabilities placed by school districts in non-public schools subject to exclusionary discipline, restraint and seclusion, and other adverse actions**

RATIONALE: Tens of thousands of students with disabilities who are placed by their school districts into nonpublic schools can be subjected to exclusionary discipline, restraint and seclusion, and other adverse actions, yet those students’ experiences are not tracked by the current CRDC. In 2017-2018, ED asked and received comments supporting for collection of data on the treatment of students with disabilities placed in private or non-public schools by the reporting LEAs. Following that query, OCR committed that it would “consider options to gather input from key stakeholders to help determine the full range of data that can be collected, and how to best collect quality data from these districts” about the treatment of such students.<sup>5</sup> However, the current proposal does not offer a way to address this issue. This is despite ED’s new “Initiative to Address the Inappropriate Use of Restraint and Seclusion,” where it will use a “proactive approach” to “protect students with disabilities” from “the possible inappropriate

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<sup>3</sup> Lauren Webb, Educational Opportunity for All: Reducing Intradistrict Funding Disparities, 92 NYU L. Rev. 2169, 2173 (2017). Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3103200](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3103200).

<sup>4</sup> Learning Policy Institute, 2017. Available at <https://learningpolicyinstitute.org/product/ca-district-teacher-shortage-brief>

<sup>5</sup> Office for Civil Rights, CRDC Data Set for School Year 2017–18: Attachment C: Response to Second Round Public Comment, at C-16 (Oct. 2017). Available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=77541801>

use of restraint and seclusion.”<sup>6</sup> CCD argues that by state law, state practice, and contractual right, states and school districts already receive and maintain this data or have the right of ready access to it. Therefore, it is imperative that the full range of data is collected through the CRDC from all schools educating students with disabilities.

We appreciate this opportunity to comment and look forward to OCR’s timely data collection for the FY 2019-2020 CRDC.

Sincerely,

American Dance Therapy Association  
American Physical Therapy Association  
American Speech-Language-Hearing Association  
Autism Society of America  
Bazelon Center for Mental Health Law  
Brain Injury Association of America  
Children and Adults with Attention-Deficit/Hyperactivity Disorder  
Council for Learning Disabilities  
Council of Administrators of Special Education  
Council of Parent Attorneys and Advocates  
Division for Early Childhood of the Council for Exceptional Children  
Easterseals  
Higher Education Consortium for Special Education  
Learning Disabilities Association of America  
National Association of School Psychologists  
National Center for Learning Disabilities  
National Disability Rights Network  
School Social Work Association of America  
Teacher Education Division of the Council for Exceptional Children  
The Advocacy Institute  
The Arc of the United States

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<sup>6</sup> U.S. Department of Education press release. January 2019. Available at <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>