



January 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-Docket No: ED-2021-SCC-0158

Submitted via regulations.gov

Dear Ms. Valentine:

The Consortium for Citizens 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 FY 2021-2022.

CCD appreciates and supports the addition of data collection as proposed by the OCR. We especially support the proposal to restore key data elements that were removed by the previous Administration. CCD is in full support of restoring *all of these* data elements. More specifically, and consistent with input provided by CCD in previous queries, we offer the following recommendations and comments:

Directed Question 1: Preschool Section 504 Only Student Enrollment

Question: OCR proposes to start collecting preschool enrollment data for preschool students with disabilities who are served only under Section 504 of the Rehabilitation Act of 1973 (Section 504). The data would be collected by sex, race, and English learner (EL) status.

Response: CCD 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.

Directed Question 3: Nonbinary Students

Question:

- OCR proposes to expand the sex category (currently male and female) to include nonbinary for the 2021-22 CRDC.

- OCR is also proposing to define nonbinary as follows: Nonbinary refers to a student who does not identify exclusively as male or female. Nonbinary does not refer to a transgender student who identifies exclusively as either male or female.

Response: CCD does not oppose the expansion of the sex category to include nonbinary students in the 2021-22 CRDC. CCD does not recommend that OCR make any changes to its proposed definition of nonbinary. Finally, CCD understands that Local Education Agencies (LEA) will have the option to include data on nonbinary students in data elements disaggregated by sex for the 2021–22 CRDC and will be required to include such data for future CRDCs.

Directed Question 4: Data on Chemical Restraints.

Question: Should data collection include use of chemical or irritant restraints by a sworn law enforcement officer assigned to a school?

Response: We urge OCR to collect data on the use of chemical restraint by a sworn law enforcement officer and/or by school staff assigned to/employed by a school, beginning with the 2021-2022 CRDC. The following new elements are recommended:

- Students (K-12) subjected to chemical restraint:
 - Number of non-IDEA students subjected to chemical restraint and/or irritant (disaggregated by race, sex, 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 (disaggregated by race, sex, nonbinary, EL). (Optional for 2021–22 CRDC) (Nonbinary expansion optional for 2021–22 CRDC)

Proposed definition: The term “chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement that is not—

(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional’s authority under State law, for the standard treatment of a student’s medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority under State law.

Source: [H.R.3474 - Keeping All Students Safe Act](#) (117th Congress).

COMMENTS TO PROPOSED DATA ELEMENTS

COVID-19 Related Items

Proposed New element: Percentage of students who received virtual instruction.

Comment: CCD supports the addition of data collected on students receiving virtual instruction. **We also 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: 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.

Discipline: Non-Public Schools

Comment: Consistent with past CCD comments, we request the **addition of elements to measure all experiences, including any and all disciplinary actions impacting children with disabilities -placed by school districts- in non-public schools.** CCD recommends adding the requirement for non-public schools to collect all discipline data as required by the CRDC. (See below for CCD’s recommendation regarding use of physical restraint, chemical restraint and seclusion impacting students.)

Rationale: According to data reported to the Department as required by the Individuals with Disabilities Education Act (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. Given this, it is critical that OCR expand the CRDC data collection to cover these children. **We strongly urge OCR to address this population in the CRDC.**

Restraint and Seclusion

1. Comment: As noted in our response to directed question #4, we strongly encourage OCR to include data on the **use of chemical restraint** beginning with the 2021-2022 CRDC. We also urge an addition (in **bold**) to the following element:

- Number of instances of mechanical restraint, physical restraint, **chemical restraint**, seclusion (disaggregated by race, sex, nonbinary, EL, students without disabilities, students with disabilities-IDEA, students with disabilities-Section 504 only).

2. Comment: We request the **addition of elements to measure experiences of children with disabilities placed by school districts in non-public schools who were subjected to** mechanical restraint, physical restraint, **chemical restraint**, seclusion.

Rationale: This recommendation is particularly salient given ED’s “Initiative to Address the Inappropriate Use of Restraint and Seclusion,” announced in January 2019, which uses a “proactive approach” to “protect students with disabilities” from “the possible inappropriate use of restraint and seclusion.”ⁱ According to OCR’s 2019 Annual Report to the Secretary, the President, and the Congress,ⁱⁱ the activities undertaken for this initiative are driven by the data reported in the CRDC, which does not include information on restraint and seclusion in non-public schools. According to data reported to ED as required by IDEA Section 618, 3% of students served under IDEA are educated in separate schools (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. According to a recent first-of-its-kind study by the Teacher

Project and the USA TODAY Network, private schools account for the majority of restraint and seclusion incidents in an entire state. The study also found that just 10 states and Washington, D.C. were able to provide complete information on restraint and seclusion in special-education private schools.ⁱⁱⁱ Given this, it is critical that OCR expand data collection to cover these children. **We continue to urge OCR to address this population in the CRDC.**

Early Childhood Education

Comment: Make all restored data elements **mandatory not optional** for 2021-22 CRDC. These include the following:

- Whether the LEA provided early childhood services in LEA or non-LEA facilities to non-IDEA children from birth to age 2. (LEA). (~~Optional for 2021–22 CRDC~~)
- Whether preschool is provided to: all students, students with disabilities (IDEA), students in Title I schools, students from low income families (LEA). (~~Optional for 2021–22 CRDC~~)
- Whether preschool serves non-IDEA students age: 3 years; ~~age 4 years~~; ages 4-5 years (LEA). (~~Optional for 2021–22 CRDC~~)
- Whether the school’s preschool program serves non-IDEA students age: 3 years; ~~age 4 years~~; ages 4-5 years. (~~Optional for 2021–22 CRDC~~)
- Preschool length offered (full-day, part-day) and cost (free, partial/full charge) (LEA). (~~Optional for 2021–22 CRDC~~)
- Kindergarten length offered (full-day, part-day) and cost (free, partial/full charge) (LEA). (~~Optional for 2021–22 CRDC~~)

Rationale: Given that these elements were previously mandatory, restoring them in the 2021-2022 CRDC should not pose a problem for schools and districts. Furthermore, allowing responses to be *optional* for 2021-2022 will compromise the integrity of the data regarding school and district trends.

Pathways to College and Career

Comments:

1. Add “disability-Section 504 only” to the following elements and make mandatory for 2021-2022:
 - Number of students (preschool-12) enrolled in gifted & talented programs
 - Number of students (grades 9-12) enrolled in distance education courses
 - Number of students (grades 9-12) enrolled in at least one dual enrollment/dual credit program
 - Number of students ages 16-19 years who participated in LEA-operated high school equivalency exam preparation program
 - Number of students enrolled in at least one AP course in specific subject area
 - Number of students enrolled in Algebra I in grades 7-8
 - Number of students who passed Algebra I in grades 7-8
 - Number of students enrolled in Algebra I in grades: 9-10; 11-12
 - Number of students who passed Algebra I in grades: 9-10; 11-12
 - Number of students enrolled in math courses in grades 9-12
 - Number of students enrolled in science classes in grades 9-12
 - Number of students enrolled in computer science classes in grades 9-12
 - Number of students enrolled in data science classes in grades 9-12
 - Number of students who took SAT, ACT, or both, anytime during school year

Rationale: Unlike students served under the IDEA, 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.

2. Make the following element **mandatory** for 2021-2022:

Number of students (grades 9-12) who participate in at least one credit recovery program that allows them to earn missed credit to graduate from high school.

Teachers and other Personnel (funded with federal, state, and/or local funds)

Comments:

1. Make all restored data elements **mandatory** for 2021-22 CRDC. These include:

- Number of FTE first-year teachers (preschool-12).
- Number of FTE second-year teachers (preschool-12).
- Number of FTE teachers (preschool-12) absent more than 10 school days.
- Number of teachers (preschool-12) employed at the school during the 2021–22 regular school year
- Number of teachers (preschool-12) employed at the school during both the 2020–21 regular school year and the 2021–22 regular school year.

2. **Add** “Number of teachers certified in specified areas (mathematics; science; English as a Second Language; or special education)” to the List of 2021-22 CRDC Data Elements in the Appendix.

Rationale: OCR has referenced and specified the “Number of teachers certified in specified areas (mathematics; science; English as a Second Language; or special education)” in Supporting Statement A, however, this element *is not shown* in the List of 2021-22 CRDC Data Elements in the Appendix and must be formally added.

We appreciate this opportunity to comment and look forward to an updated and improved CRDC. If you have any questions, please reach out to one of the cochairs listed below.

Sincerely,

American Foundation for the Blind
American Psychological Association
American Speech-Language-Hearing Association
Association of People Supporting Employment First
Association of University Centers on Disabilities
Autistic Self Advocacy Network
Autism Society of America
Bazelon Center for Mental Health Law
Center for Learner Equity
Children and Adults with Attention-Deficit/Hyperactivity Disorder
Council for Exceptional Children
Council of Parent Attorneys and Advocates
Easterseals

National Association of School Psychologists
National Association of State Head Injury Administrators
National Center for Learning Disabilities
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
Parent to Parent of Georgia, Inc
The Advocacy Institute
The Arc of the United States

CCD Education Task Force Co-Chairs:

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Laura Kaloi, Council of Parent Attorneys & Advocates and Center for Learner Equity	lkaloi@stridepolicy.com

ⁱ 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>

ⁱⁱ <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2019.pdf>

ⁱⁱⁱ The Teacher Project. 'It hurts your bones': Private special ed schools can restrain kids with disabilities 1,000s of times. Parents might not know. July 26, 2020. Available at <https://www.usatoday.com/story/news/education/2020/07/25/disability-special-education-private-school-restraint/4737971002/>

The Consortium for Citizens 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. The Education Task Force of CCD monitors federal legislation and regulations that address the educational needs of children and youth with disabilities and their families, including regulatory efforts under federal law such as the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). The Education Task Force advocates for high expectations for children with disabilities under these and other laws.

www.c-c-d.org