



February 8, 2022

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

RE: Proposed Changes to the Mandatory Civil Rights Data Collection; Docket No.: ED-2021-SCC-0158

Dear Ms. Valentine:

On behalf of AASA, The School Superintendents Association, representing more than 13,000 public school superintendents across the nation, I write to offer comments in response to the proposed 2021-2022 Civil Rights Data Collection (CRDC). We understand the importance of the Office of Civil Rights (OCR) and the CRDC in providing a snapshot of the civil rights of our students as well as the need to collect data to understand key trends and issues that impact the educational opportunities that students across America have.

However, the pandemic is not over, nor is the need for district staff to take on many roles outside of their primary duties of providing instruction and academic support for students. Given the documented shortages of educators and support staff in school,<sup>1</sup> as well as substitutes and contractors,<sup>2</sup> the work of collecting, inputting, verifying, and sending federal data has become an even greater undertaking for school personnel than at any point in history. If there was ever a moment in time for the U.S. Department of Education to recognize the hardship of increased data collection it would be now. Instead, by ignoring or simply dismissing the reality of district personnel and their workloads during the third year of a global pandemic, the 2021-2022 collection proposes to increase the CRDC collection by 47.5% when compared to the 2020-2021 collection. Moreover, the Department of Education sets a record over the past decade in the number of hours required to comply with the collection. Even if these estimates, while low, are accurate, the burden a decade ago on districts was estimated to be 8.1 hours per elementary school and 14.9 hours per secondary school. For the 2021-2022 collection the burden for elementary schools is estimated to be 13.7 hours per school survey and for secondary schools, the burden is estimated to be 22.6 hours per school survey.

AASA also questions the need for various data pieces for the purpose of civil rights compliance. The removal and restoration of a host of data collection that varies based on the whims of staff that happen to be charged with managing the Civil Rights Data Collection during a particular collection undermines the very heart of district efforts to collect and report this data. For example, why is the collection of the number of data science classes or the percentage of teachers who worked at an elementary school this

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<sup>1</sup> García, Emma, and Elaine Weiss. "The Teacher Shortage Is Real, Large and Growing, and Worse than We Thought. The First Report in" The Perfect Storm in the Teacher Labor Market" Series." Economic Policy Institute (2019).

<sup>2</sup> Blad, E. (2022). Schools Are Desperate for Substitutes and Getting Creative. Retrieved 2 February 2022, from <https://www.edweek.org/leadership/schools-are-desperate-for-substitutes-and-getting-creative/2022/01>

year and last year considered essential factors in determining whether an LEA is complying with federal civil rights laws? Perhaps the data science classes could not be offered because of staffing shortages? Perhaps many teachers retired due to the pandemic? What does reporting this data tell OCR about whether a student's civil rights were violated?

Furthermore, if Title VI, Title IX and Section 504 are the only stated civil rights laws enforced by OCR that the CRDC can collect data for<sup>33</sup>, then how is there so much confusion about what data should be retired or revised within each collection and within this 2021-2022 collection specifically? Each year we see enormous shifts in the data that is revised and collected. This year the whiplash in data elements is particularly clear as we have an unprecedented CRDC collection happening in back-to-back years. It is our view that either OCR is required to collect this information because to do so would be to leave it clueless as to whether a student's civil rights are being infringed upon on a permanent basis (as the student's civil rights are not immutable) or OCR is collecting considerable amounts of "nice-to-know" rather than "need-to-know" data with little regard for the burden these reporting requirements place on LEAs and school personnel. If it is the latter, which AASA suspects, then it is highly questionable to place this burden on district personnel during a pandemic when it comes at the direct cost of removing key instructional staff to perform data collection duties.

Another real issue of the data collection shifts has to do with the timing of the collection. A requirement for new data for a school year that is already half over is not only challenging for districts to implement but usually leads to seriously flawed data collection since it requires the district to backfill data. Given the back-to-back collections it is also unwise to request additional data for the 21-22 collection and then not receive feedback from the 20-21 data submission until fall of the 21-22 school year. How can educators use 20-21 data to inform practice as well as data quality for 21-22? Does OCR actually expect that districts will sift through relatively old data with different data points and definitions and find the data informative?

Given our direct engagement with OCR on the issue of data collection around seclusion and restraint we wish to share our views on the new data definitions proposed. While there are several strong improvements to these definitions that will help school personnel report this information, we do have very real concerns with some of the changes that are proposed for this collection and how it will impact the accuracy of data reported.

**Mechanical Restraints:** As we told OCR previously, handcuffs are used exclusively by law enforcement when they are called to intervene in a school setting when school staff do not feel safe or able to intervene. The use of handcuffs by law enforcement is not a decision that can be changed by school district personnel; if an officer feels that they need to use handcuffs, then they have a right to use this mechanical restraint on a student.

**Physical Restraints:** The definition of physical escort describes a "temporary" touching or holding of the student whereas there is no time-based indication for physical restraint. Physical restraint is never a permanent action, and it is unclear how a [temporary] restriction that "immobilizes or restricts the ability of a student to move freely" is different from a "temporary touching or holding a student" for transportation purposes. We recommend deleting: "Physical escorting that involves methods utilized to maintain control of a student should be considered a physical restraint."

**Seclusion:** Thank you for amending the definition to no longer mention time-out and for clarifying that it should not include a separate area within the classroom when the student is with others. That said, we

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<sup>33</sup> AASA understands there are 6 data pieces that are mandated outside of these civil rights laws as required by the Elementary and Secondary Education Act, and we take no issue with reporting these data as part of the CRDC.

agree with the Council of Administrators of Special Education that reliance on student perception of whether they can or cannot leave a classroom to be considered secluded will create significant confusion and a considerable over-reporting of seclusion. Students generally do not believe they have the right to just leave a classroom, or any location they are put in. When students try and leave in the middle of class, they are told they are not free to leave, and the act of leaving has consequences. This definition can be particularly problematic in specific contexts. For example, a student who must miss recess due to classroom misbehavior or who is given detention after school can be seen as being secluded. As we know, seclusion is never meant to be a disciplinary response, but with a definition as broad as this it is hard to see how refusing to allow a student to go play with their friends and instead sit with the teacher and read quietly would be understood as anything but seclusion. What about a child who is sent to the principal and must sit by the “calming bench” outside of it to consider what he or she has done to be sent to the principal? The child may feel they must be there and school staff may say that they “must” stay on the bench, but is this seclusion or discipline? We would urge the Department to add clarify that that seclusion is a non-disciplinary technique and to remove any reference to a child’s perception of what they can and cannot do in school.

### **AASA’s Responses to the Directed Questions:**

*Question 1: Have local educational agencies (LEA) enrolled preschool students served only under Section 504 in preschool programs?*

Answer: AASA opposes any further expansion of the CRDC during the pandemic. Depending on the district and state, LEAs can and do enroll preschool children that qualify for Section 504 accommodations. Preschool programs run by the LEA may also be contracted out to private providers making it challenging or incomplete to obtain data on students who may be given 504 plans.

*Question 2: Have LEAs enrolled preschool students in gifted and talented programs?*

Answer: AASA opposes adding this question to the current collection. We could find no evidence that LEAs enroll preschool students in any gifted and talented programs and if it does occur, it is an anomaly.

*Question 3: Have LEAs collected data using a third nonbinary sex category? What, if any obstacles have LEAs faced in collecting such data? What, if any, changes should OCR make to the proposed definition for nonbinary?*

Answer: There are state laws that require that districts report gender of the student that aligns with the sex listed on their birth certificate rather than the gender with which they identify. This can create issues for the district if they have to keep track of the child’s gender in two distinct places—one for purposes of the state and one for CRDC—as well as dilute the quality of the data that is reported. While we appreciate that expanding data disaggregation to only districts that already report student enrollment data for nonbinary students, the population of these students is so small in many schools and districts that we will likely be vastly undercounting their population. Furthermore, information teachers have about a student’s gender may not be part of the schools’ official record. It may be impossible to make comparisons between the treatment of transgender students if one district excludes transgender students from its formal data collection while the other does not. It doesn’t necessarily imply that a transgender’s student is inferior simply because the district does not report data about it due to state law or privacy concerns. In some states, parents may need to be asked to confirm their child’s gender before the district changes it on its records where others may not be able to change it for record keeping processes unless the parent requests the change. These various situations will lead to poor quality data being collected about this population of students until we have more flexible state policies that enable and encourage districts to collect and report this data with fewer stipulations.

Question 4: *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?*

Answer: No. This should not be part of the expanded collection in any way. An incident where a sworn law enforcement officer may use a chemical or irritant restraint on a student may be exceedingly rare if it ever occurs and again, is done without any consultation with school personnel. This does not warrant an expansion of data in CRDC.

We urge you to please consider further revisions to the collection that significantly limit the CRDC to the most urgent and necessary questions that must be asked to ensure the civil rights of students are not being infringed upon.

Sincerely,



Sasha Pudelski  
Director of Advocacy