

August 20, 2013

Catherine Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Stephanie Valentine
Acting Director
Information Collection Clearance Division
U.S. Department of Education
400 Maryland Avenue, S.W.
LBJ, Room 2E105
Washington, DC 20202-4537

Re: Comments Solicited under 78 FR 37529

Dear Ms. Valentine:

On behalf of AASA: The School Superintendents Association, representing more than 10,000 school system leaders across the country, we welcome the opportunity to provide comments on the above-referenced proposed revisions to the Mandatory Civil Rights Data Collection (CRDC). Given the media attention the CRDC has received, and the conversations it has sparked in communities across the country about school district management, student achievement, and school policies, AASA is pleased to weigh in on the proposed expansion of the current data collection and its impact on school districts.

First, AASA would like to reframe the conversation. The proposed expansion of data collection is focused on the question ‘Are we collecting the right data?’ without engaging in the equally meaningful, if not more important conversation of ‘Should we be collecting this data?’ AASA fully recognizes the importance of data and its role in empowering schools and educators in expanding educational opportunities for students. Yet, this data collection represents a very real burden, demanding time and resources in school districts that have yet to recover to pre-recession budget levels. AASA opposes any new, unfunded data collection efforts by the Department of Education or Congress. AASA members universally object when unfunded mandates from Washington, D.C. take time, money, and resources away from their top priority: educating students. There is a significant cost to collecting this new data by school districts and superintendents believe the benefit is not high enough to make the new data requests by OCR advisable. Superintendents are leading systems that serve increasingly higher numbers of vulnerable students. Couple this with the expanded role of schools over the last twenty years, shifting from a more narrow focus on academic well-being to growing responsibility for providing food, clothing, health services, transportation, after-school placements, and technology on top of quality education programming, and it is easy to see why AASA is concerned by the continued expansion of data collection.

State and local school district budgets continue to operate at pre-recession levels. Further, those budgets that have started to experience stability and growth report it as fragile and express concern about how stable the growth is, especially as they brace for continued cuts in federal funding, in large part attributable to sequestration. School districts have fewer dollars with which to invest time and personnel resources into data collection. There is no debating whether the new data collection points for the 2013-2014 and 2015-2016 school-years will cost more money and increase the administrative and personnel burdens in every school district in America. The question is not whether the data collection will cost more

money and increase burdens, but to what extent. While well-intentioned, unless fully funded, any requirement for data or information translates into a burden for the school district regardless of whether the data collection requirement originates at the state or the federal level. While more affluent communities may be able to shoulder the burden and costs associated with the CRDC, poorer districts struggle to not only educate their high poverty, but also struggle with recruiting and retaining personnel to process the data collection. Those schools educating a majority of students in poverty will find the (estimated) 17 percent increase in new data collection points requested by ED to directly further limit their ability to provide adequate educational opportunities to their students. AASA appreciates OCR attempting to quantify the burden—in terms of data items collected and related personnel hours/salaries—but anticipates the estimation to be low. We are concerned that the 17% figure is an underestimate, especially in the post-recession school environment, with LEAs operating with very lean administrative staff capacity. The expanded data collection will undoubtedly burden districts already operating beyond administrative capacity. The expanded data collection, as required by the federal government, translates into (at least) an additional \$9.8m schools must use to fund the data collection at the same time that the federal government funding. More succinctly, the combination of cuts in federal funding and expanded data collection is a double hit for school districts, who will be forced to use local school dollars to cover not only the cuts of sequestration, but to bankroll the expanded data collection. The budget dollars schools use to cover the increased federal reporting are at the direct expense of educational priorities.

AASA understands the legal obligation OCR has to investigate civil rights violations as well as the research community and activists' community desire for more data; it makes their case for state and federal legislative reform stronger. However, AASA questions whether the current data school districts must collect and report, coupled with new data that districts would potentially collect and report, are actually in the best interest of students given our current fiscal environment. As the leaders of our nation's school systems, AASA's members must ensure taxpayer funds are put to the best possible use and maximize the ability of students to learn, be healthy and safe and grow into successful adults. We do not believe the new data requested by OCR furthers this goal; in fact, we think it hinders it.

Below are our comments on the specific data collection categories and definitions for the School Years 2013-2014 and 2015-2016.

Restraint and Seclusion

OCR is requesting a continuation of data collection related to restraint and seclusion. AASA has several concerns with the definitions outlined by OCR related to seclusion and restraint.

Traditional mechanical restraints are rarely used in school districts by school personnel. Because of the vague definition of mechanical restraint used by CRDC, districts are reporting the use of handcuffs by law enforcement personnel when they respond to this data point. 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 he needs to use handcuffs, then he has a right to use this mechanical restraint on a student. In OCR's data collection, there is no opportunity for school districts to indicate whether the mechanical restraint is a handcuff used by law enforcement, so the data gathered and reported by districts to OCR is likely misleading if not entirely inaccurate. OCR should revise this definition to explicitly describe whether they want districts to report the use of handcuffs by law enforcement personnel and ask districts to indicate whether the mechanical restraint was used outside this context.

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. Unless OCR provides descriptive examples and interpretative guidelines to every district on the difference between

physical restraint and physical escort, it will be difficult for school districts to provide accurate data to OCR.

The definition of seclusion and time-out are poorly worded. This definition is far too general and the example of behavioral time-out is inaccurate. Time-out as a behavioral procedure as identified in behavior analysis journals like JABA or JEAB is not used for the purpose of calming, but is a method of behavioral deceleration, i.e., a punishment procedure that removes the individual from a condition in which said individual has access to positive reinforcement. Time-out has always been a punishment procedure and OCR's characterization of it as anything other than a punishment procedure is inaccurate. Moreover, the intended purpose of time-out is listed, but not the intended purpose of seclusion. The purpose of seclusion is different than time-out in that seclusion is not intended to be a punishment, but rather a place for the child to go to calm himself. It is erroneous of OCR to associate time-out as having a calming function, but not seclusion. There are also different forms of seclusion that are not listed. There can be a child in a room with an adjacent adult who prevents the child from approaching the doorway; there can be a child in a room in which the adult stands at the doorway preventing egress (open door seclusion), and there can be closed door seclusion in which the child is in a room by himself with an adult holding the door closed, but the door is unlocked. Furthermore, some schools will require a child to walk to an open door seclusion room (the child walks in voluntarily and stays there with verbal prompts only). Presumably this last form would not be included in the definition as it is voluntary, yet the vague wording of seclusion means that all of these various types of seclusion would be undifferentiated under the category of seclusion.

The phrase "physically prevented from leaving" also requires clarification as it is unclear whether a barrier such as a door prevents the child from leaving or the presence of another adult watching the child who prevents the child from leaving counts under this definition or both. Finally, the definition of seclusion used by OCR states that seclusion can occur in an area as well as a room. If a child is in a classroom with twenty other students and is required to stay in a play area alone in the corner of the room, should this be considered seclusion? If a child is alone sitting outside the principal's office and unable to leave the waiting area, is this also seclusion?

Preschool

Certain data points related to the collection of pre-school data are questionable. For example, OCR is proposing to have districts report whether there is a state law or regulation requiring them to provide full-day or part-day kindergarten. Why must districts report this information to OCR? Is there no one at OCR or at ED capable of reviewing 50 state laws and regulations to ascertain the answer to this question? This question should be eliminated. AASA would like to know what the threshold is for having to report on Pre-K data. If it is the receipt of federal funds, then AASA absolutely believes that any and all entities (LEA and non-LEA, however that may be defined) should face the same reporting requirements. AASA seeks clarification as to how it is the LEA's responsibility to collect data for non-LEA settings.

AASA could find no definition for a non-LEA facility. It is unclear whether the LEA would be obligated to contact private pre-school placements and inquire as to the number of students they serve by age. Moreover, there is no legal obligation that the non-LEA facility must share information on their enrollment with the LEA, which could mean the data collection efforts by LEA would be wasteful and inaccurate. AASA questions the purpose of requiring this data collection point and believes that in large districts with dozens of pre-school providers this data could be significantly burdensome to gather.

AASA also believes that OCR lacks the authority to require this information to be collected by all schools in America since we cannot see how it ensures compliance with Title VI of the Civil Rights Act, Title IX of the Education Amendments, Section 504 of the Rehabilitation Act of, Title II of the Americans with Disabilities Act, and Section 9533 and 9534 of the Elementary and Secondary Education Act.

AP Exam

The College Board is very adept and capable when it comes to data collection. They know, better than anyone out there, who has and has not taken an AP course or exam; what their demographics are, and how they have performed on the AP examinations. Asking schools to collect and report data that is not only already collected, but also shared, by the College Board is redundant. It seems a much more effective and efficient approach would be to contract with College Board to share the data that is already available.

Corporal Punishment

Thirty-one states currently ban corporal punishment in schools. AASA assumes that districts in states where corporal punishment is banned will not have to answer any of the four data collection sets related to corporal punishment; however, OCR should ensure this entire category is removed from the surveys sent to those states.

Personnel Type (Salary Expenditure)

Personnel decisions are extremely local in nature and are a reflection of how the school district has decided to invest its limited resources so as to maximize their impact on student learning. In some schools this means reliance on instructional staff, while in other schools it means higher class sizes so as to afford more student support service personnel. Turning in a straight count of how many teachers a school has and what they make is only part of the picture, and a very watered-down snapshot, at that.

There is momentum at the federal level for the current comparability calculations to reflect personnel costs. Asking schools to report on data that they may already be reporting to ED is redundant and burdensome. For some time, AASA was concerned with the push by advocates to assume that personnel compensation is absolutely positively correlated to effectiveness. OCR now appears to be on the same page as advocates and using the CRDC as their platform to ensure comparable personnel salary expenditures. However, AASA cautions OCR from moving in this direction since more than a decade of research has increasingly demonstrated that the correlation between teacher salary and effectiveness is not absolute. A conversation about equitable distribution of resources should be focused on teacher effectiveness, not on dollars. Reliance on salaries, while a proxy for effectiveness, is short-sighted, poor policy. For example, school personnel costs are the largest portion of an operating budget, and often the most volatile. Paying attention to common staffing patterns, many schools will see a group or cohort of teachers retiring or departing in close proximity to each other. These teachers will be replaced by lower-cost teachers who may be just as—if not more—effective than the teacher they replace. The metric this data collection reports, however, would lead that individual school to be reporting a decrease in expenditure even when teacher effectiveness and student gains were level, if not growing. The reporting of this data will not necessarily enable OCR to determine whether there is an equitable access to effective teachers and that is why we do not support its inclusion in the 2014-2015 CRDC.

Security Staff Type and Support Services Type

AASA believes OCR lacks the authority to require this information to be collected by all schools in America. We cannot see how the collection of these personnel types ensures compliance with Title VI of the Civil Rights Act, Title IX of the Education Amendments, Section 504 of the Rehabilitation Act of, Title II of the Americans with Disabilities Act, and Section 9533 and 9534 of the Elementary and Secondary Education Act. Can a school district be found in noncompliance with any of these laws because they lack a full-time social worker or school resource officer?

AASA believes the collection of this information will lead to incorrect inferences and assumptions about the prioritization of local, state and federal dollars by school district leaders. For example, if a school district reports having no school resource officers or sworn law enforcement personnel, does that mean the school district does not take the responsibility of providing a safe and secure environment for students seriously? Does a one-time snapshot of personnel employed by the district during this period of time tell OCR anything about prior employment of these personnel or the rationale behind an investment in other

personnel or other critical expenditures? If the purpose for CRDC is to have OCR use this data to investigate civil rights violations, how can the presence of a single person who is positioned in a security staff capacity demonstrate whether a district is complying with federal civil rights statutes? Who benefits when school districts supply information about particular personnel without an understanding of the budget constraints a district may be under currently, previously or in the future?

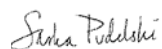
We also believe the definitions of the personnel in Attachment A-3-37 will create confusion for school districts in reporting the presence of these personnel since these definitions are not the same as the ones found in IDEA and ESEA. We recommend the definitions of such staff to be aligned with those found in those statutes. AASA is aware of the shortage of qualified mental health professionals in schools. We have asked Congress on numerous occasions to dedicate funding towards ensuring a greater number of counselors, school psychologists and school social-workers are present in our schools. However, these positions, along with administrative staff and other support staff, have been eliminated steadily since 2009. It is unclear what the purpose of reporting these numbers are; is it to shame districts for their inability to invest in these personnel despite their best intentions? Is it to question the local budgetary decisions made by school superintendents and school boards? Moreover, it is inconsistent for the executive branch to require districts to report on the presence of personnel and programs related to specialized support services when districts' ability to employ these personnel has been greatly hindered by the elimination of funding for these programs and people by the legislative branch.

Finally, AASA urges OCR to consider reverting to the traditional sampling procedures (stratification, estimation, etc.) that were used previously to survey districts for compliance. Given the financial struggles districts are facing, any attempt to reduce cost and burden by reverting to the traditional methods of sampling districts by OCR would be greatly appreciated. If the results from the sample are an accurate approximation of the results from the expanded collection, AASA questions why OCR has moved away from the sampling methodology.

AASA appreciates that OCR is no longer requiring the collection of data related to licensing and certification requirements of FTEs, the number of students awaiting special education evaluation, whether students are ability grouped in English/Math, the harassment and bullying policies existing in LEAs, the number of students enrolled in AP foreign language, the number of students who took AP exams for all AP courses enrolled in (disaggregated by race, sex, disability, LEP), the number of students who passed AP exams for all AP courses and total personnel salaries. AASA never supported the collection of this data and hopes that OCR continues to review the current data collection efforts to reflect on whether they have the authority to collect this data as well as whether it is important or useful to ensure civil rights protections for all students.

Thank you for the opportunity to comment on this data collection. If you have had any questions, please do not hesitate to contact Sasha Pudelski (spudelski@aasa.org).

Sincerely,



Sasha Pudelski
Government Affairs Manager



Noelle Ellerson
Assistant Director of Policy and Advocacy