



November 18, 2019

Stephanie Valentine, PRA Clearance Coordinator
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: Docket ID Number: ED–2019–ICCD–0119, Agency Information Collection Activities;
Comment Request; Civil Rights Data Collection

Dear Ms. Valentine:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we are writing to provide comments on the proposed changes to data collected for the 2019-2020 Civil Rights Data Collection (CRDC). We strongly encourage the Department of Education (the Department) to maintain the collection of information on preschool enrollment and discipline, school finance, and teacher experience levels and absenteeism, all of which are critical to identifying and addressing disparities in access to, and the quality of, education received by historically underserved students. We also request that the Department begin collecting additional data points related to school discipline, begin collecting data for public school students placed in non-public schools, and improve transparency and timeliness in order to more fully advance the Department's stated mission to prohibit discrimination and ensure equal access to educational excellence.¹

Founded in 1940 by Thurgood Marshall, LDF is the nation's oldest civil rights legal organization. For almost 80 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and racial justice. Since the historic U.S. Supreme Court decision in *Brown v. Board of Education*,² which LDF litigated and won, we have continued to represent students of color to ensure they receive quality and equitable educational opportunities.

LDF, along with other civil rights and advocacy organizations, community members, students, parents, researchers, and policymakers, depends on the CRDC to measure and monitor equity in educational opportunities offered to our nation's students, particularly those who have historically been disadvantaged. LDF has relied on the CRDC to research educational inequities in support of its education reform advocacy work, including efforts to advance school discipline policies that reduce the reliance on exclusionary discipline, eliminate racial disparities, and improve academic achievement

¹ See the U.S. Dep't of Educ., Mission, <https://www2.ed.gov/about/overview/mission/mission.html>.

² 347 U.S. 483 (1954).

for students of color, students with disabilities, and other historically marginalized students.³

Additionally, other government and government-related agencies, including the Government Accountability Office (GAO) and the U.S. Commission on Civil Rights (USCCR) rely on the CRDC to ensure the enforcement of civil rights laws. For example, last year the GAO used the data from the 2013-2014 CRDC collection to find that Black students, boys, and students with disabilities are disproportionately disciplined in public schools.⁴ The USCCR cites to the CRDC throughout a report it released earlier this year examining the connection between school discipline policies and the school-to-prison pipeline for students of color with disabilities.⁵

Because the CRDC is essential to monitoring and enforcing compliance with civil rights law, we urge the Department to ensure that the data collected provides all the information its Office for Civil Rights (OCR) and other offices need to determine whether schools and districts are meeting their civil rights obligations, as well as the information communities need to accurately assess the quality of their schools and districts, and to support local efforts to advocate for improvements when needed. The Department may accomplish these goals by continuing and expanding the current level of CRDC data collection, including the disaggregation of data by student subgroups, requiring all schools and districts to collect and report these data annually, and ensuring that the CRDC data is available to the public in a timely fashion. As the Department of Education provides, the CRDC is “critical” to ensuring that public schools do not discriminate on the basis of race, color, national origin, sex, and disability and is a “valuable resource” for a wide variety of stakeholders seeking “data on student equity and opportunity.”⁶

Given the stark educational and discipline disparities that students of color and other marginalized students experience, we strongly urge the Department to consider the following recommendations.

³ Letitia Smith-Evans & Janel George, *Unlocking Opportunities for African American Girls: a Call to Action for Educational Equity*, LDF and the National Women’s Law Center (NWLC), nn. 66-67 and accompanying text (2014), <https://www.naacpldf.org/wp-content/uploads/Unlocking-Opportunity-for-African-American-Girls-0-Education.pdf>; Cara McClellan, *Our Girls, Our Future: Investing in Opportunity and Reducing Reliance on the Criminal Justice System in Baltimore*, LDF Thurgood Marshall Institute (TMI), nn. 82-87 and accompanying text (2018) <https://www.naacpldf.org/wp-content/uploads/Baltimore-Girls-Report-FINAL-6-26-18.pdf>; Ajmel Quereshi & Prof. Jason Okonofua, *Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline*, TMI, nn. 2-3 (2017-2018) <https://www.naacpldf.org/wp-content/uploads/LDF-Bias-Report-WEB-2.pdf>; Complaint from LDF & Nat’l Ctr. for Youth Law to U.S. Dep’t of Educ. Office for Civil Rights (hereinafter OCR) against Bryan Indep. Sch. Dist. (Feb. 20, 2013), n. 115 and accompanying text, available at <https://www.naacpldf.org/wp-content/uploads/Bryan-ISD-OCR-Complaint.pdf>.

⁴ See U.S. Gov’t Accountability Office, GAO-18-258, *Discipline Disparities for Black Students, Boys, and Students with Disabilities* (Mar. 2018), <https://www.gao.gov/assets/700/690828.pdf>.

⁵ THE U.S. COMMISSION ON CIVIL RIGHTS, *BEYOND SUSPENSIONS: EXAMINING SCHOOL DISCIPLINE POLICIES AND CONNECTIONS TO THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS OF COLOR WITH DISABILITIES* (Jul. 23, 2019), <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>.

⁶ U.S. Dep’t of Educ., *Frequently Asked Questions on the CRDC*, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/crdc.html>.

OCR Must Maintain All Current Data Collected Regarding Preschool Students, School Finance, and Teacher Data in the CRDC

- Preschool Suspension and Enrollment Data

OCR proposes to combine two questions that are currently separate – the number of preschool students who receive one out-of-school suspension and the number of preschool students who receive more than one out-of-school suspension. OCR also proposes to stop disaggregating preschool enrollment data by race, sex, disability, and English Learner (EL) status. As described by the Department, there is a preschool suspension crisis, with high rates of preschool suspensions, disproportionately affecting boys of color.⁷ Race-based disparities are worse for preschool students who receive more than one suspension. The CRDC for the 2013-2014 school year, the last year in which the Department has provided detailed tables containing national information, shows that Black students represented 19% of preschool enrollment, but more than 46% of students receiving one out-of-school suspension and more than 53% of students receiving more than one out-of-school suspension.⁸ With the proposed changes, however, we will not be able to see whether these trends continue, since without disaggregated enrollment numbers, there will be no means of calculating suspension rates by race from the CRDC data. Furthermore, there will be no way of tracking whether racial disparities continue to be worse for students suspended more than once. Given the troubling disparities identified in the latest data, the Department should collect more information, not less, regarding rates of preschool suspension and disparities based on race. For example, the collection should include the number of school days missed by preschool students who received out of school suspensions, disaggregated by race, sex, disability, and EL.

Additionally, OCR proposes to stop collecting whether school districts' early childhood education programs serve children without disabilities age 0 to 2; whether preschool and kindergarten are full time, part time, free, or of cost for families; and whether preschool is offered to all students, students with disabilities, students in Title I schools, or students from low-income families. Children, especially historically marginalized children, benefit from preschool,⁹ and it is essential to know which school districts are providing free public preschool to children and families.

- School Finance

OCR proposes deleting the entire section on School Finance from the CRDC, including sections on number of teachers, support staff, administrators and total school personnel in preschool and K-12, with salaries, as well as the amount of non-personnel expenditures. This information is extremely important in assessing whether different schools and districts are receiving equitable funding. Research continues to confirm that

⁷ Addressing Preschool Suspension and Expulsion: The Pyramid Equity Project, <https://www2.ed.gov/about/inits/ed/earlylearning/files/fact-sheet-pyramid-equity-project.pdf>.

⁸ 2013-2014 State and National Estimations, CRDC, https://ocrdata.ed.gov/StateNationalEstimations/Estimations_2013_14.

⁹ Claudio Sanchez, Pre-K: Decades Worth of Studies, One Strong Message, NPR, May 3, 2017. "<https://www.npr.org/sections/ed/2017/05/03/524907739/pre-k-decades-worth-of-studies-one-strong-message>."

school districts which primarily serve non-white students receive significantly less funding than school districts that primarily serve white students.¹⁰ Although per-pupil expenditure information is now required by the Every Student Succeeds Act (ESSA) to be reported for states, districts, and schools on annual report cards,¹¹ this reporting will not include the same detailed information as currently reported through the CRDC. ESSA requires state and local report cards to include the “per-pupil expenditures of Federal, state, and local funds, including actual personnel expenditures and actual non-personnel expenditures of Federal, state, and local funds, disaggregated by source of funds, for each local educational agency and each school in the State for the preceding fiscal year.”¹² The CRDC, in contrast, collects the number of full-time teachers, instructional aides, support services staff, administration staff, and total personnel, along with salaries for each, and also collects non-personnel expenditures. Furthermore, the CRDC provides one central location to access school finance information, providing the only straightforward means for users to compare spending across states.

- Teacher Data

OCR proposes to stop collecting the number of first-year and second-year teachers in schools and districts. Student achievement is positively correlated with teacher experience, especially in the initial years of a teacher’s career.¹³ Collection of information regarding the number of inexperienced teachers provides an invaluable tool in assessing whether these teachers are more heavily concentrated in schools with historically marginalized students. Low-income students and students of color are disproportionately taught by teachers with three or fewer years of experience.¹⁴ Additionally, collecting information regarding teacher absenteeism (OCR proposes to no longer track the number of teachers absent more than ten school days) provides key information regarding the effectiveness of teachers in particular schools or districts, as teacher absenteeism correlates with student loss of learning.¹⁵

OCR Must Collect Additional Data Elements to Ensure Compliance with Civil Rights Laws

- Data on Police Use of Force Against Students

¹⁰ See, e.g., EdBuild, \$23 Billion (Feb. 2019), <https://edbuild.org/content/23-billion/full-report.pdf> (describing how “[n]ationally, predominantly white school districts get \$23 billion more than their nonwhite peers, despite serving a similar number of children”).

¹¹ Every Student Succeeds Act, Sections 1111(h)(1)(C)(x) and (h)(2)(C).

¹² *Id.*

¹³ Tara Kini Anne Podolsky, Does Teaching Experience Increase Teacher Effectiveness? A Review of the Research, Learning Policy Institute, June 3, 2016, <https://learningpolicyinstitute.org/product/does-teaching-experience-increase-teacher-effectiveness-review-research>.

¹⁴ The Education Trust, Fact Sheet – Teacher Equity, <https://edtrust.org/wp-content/uploads/Ed%20Trust%20Facts%20on%20Teacher%20Equity.pdf>.

¹⁵ See Taylor Swaak, Nearly 30 Percent of Teachers Are Chronically Absent. How Rhode Island Is Using ESSA to Move the Needle, the 74, Oct. 22, 2018, <https://www.the74million.org/nearly-30-percent-of-teachers-are-chronically-absent-how-rhode-island-is-using-essa-to-move-the-needle/>.

CRDC data shows that Black and Brown students are more likely to attend schools that have school resource officers but not counselors.¹⁶ The 2015-2016 CRDC also revealed that “[B]lack students represented 15 percent of the total student enrollment, and 31 percent of students who were referred to law enforcement or arrested – a 16 percentage point disparity.”¹⁷ LDF has seen in many school districts that school police serve as disciplinarians, even for the most minor conduct, criminalizing student misbehavior.¹⁸ Additionally, on numerous occasions, news reports and graphic bystander videos have exposed school police using excessive force against students in school districts, including in Florida,¹⁹ New Mexico,²⁰ and South Carolina.²¹

LDF urges the Department to collect data on police use of force against students, disaggregated by race, sex, disability, and EL, including: number of students subjected to pepper spray, Tasers, physical attack (e.g. tackling, body slamming, etc.), and number of students injured or killed by a firearm. Studies reveal that police presence and other aggressive security practices create alienation and mistrust among students, which can disrupt the learning environment.²² The data on police use of force against students would provide more insight on the impact of school police on students’ wellbeing and safety.

- Discipline Data Disaggregated by Reason for Disciplinary Action

As described above, Black preschool children are significantly more at risk of being suspended out of school than their white peers. However, there is no data showing the reason for the disciplinary action. We recommend that all data on exclusionary discipline practices (e.g. in- and out-of-school suspensions, expulsions, referrals to law enforcement and school-based arrests) be disaggregated by reason for the disciplinary action.

Though there is no evidence that students of color misbehave more than their white peers,²³ the CRDC reveals that Black students are disciplined more, pushing them out of school and into the juvenile or criminal justice systems. Students of color and other

¹⁶ ADVANCEMENT PROJECT, LDF, et al., POLICE IN SCHOOLS ARE NOT THE ANSWER TO SCHOOL SHOOTINGS (Mar. 2018), available at <https://advancementproject.org/resources/police-schools-not-answer-school-shootings/>.

¹⁷ The U.S. Dep’t of Educ., Office for Civil Rights, 2015-16 Civil Rights Data Collection, School Climate and Safety (Apr. 2018, revised May 2019), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

¹⁸ See generally, NAACP LDF and National Center for Youth Law Letter to the U.S. Department of Education regarding violations of Title VI of the Civil Rights Act of 1964 by the Bryan Independent School District, Texas, Feb. 20, 2013, <http://www.naacpldf.org/document/bryan-isd-ocr-complaint>.

¹⁹ Karma Allen, *Florida school's resource officer arrested after video shows him slamming 15-year-old girl to ground, police say*, ABC NEWS (Nov. 5, 2019), <https://abcnews.go.com/US/florida-schools-resource-officer-arrested-video-shows-slamming/story?id=66775374>.

²⁰ P.R. Lockhart, *Police officer resigns after video shows him using excessive force on an 11-year-old girl*, VOX (Oct. 24, 2019), <https://www.vox.com/identities/2019/10/24/20929397/police-officer-excessive-force-school-11-year-old-girl-new-mexico>.

²¹ Charles Duncan, *Deputy charged for assaulting middle school student in South Carolina, police say*, THE STATE (Sep. 12, 2019), <https://www.thestate.com/news/state/south-carolina/article235011922.html>.

²² Advancement Project, *supra* note 16, at 14.

²³ See, e.g., Russell Skiba, et al, *New and Developing Research on Disparities in Discipline*, The Equity Project at Indiana University, 2, (Mar. 2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_NewResearch_010915.pdf.

marginalized student populations are often disproportionately disciplined for minor, subjective offenses such as disobedience and disruptive behavior, which are left up to the discretion of school staff, administrators, and school police who may be more likely to negatively interpret the behavior of certain student subgroups based on their own conscious or unconscious bias.²⁴ The addition of these data will provide valuable information regarding how many and which students are disciplined for non-violent, subjective offenses.

- Data on the Use of Alternative Discipline Practices

Schools and districts should report whether they are implementing school or district-wide restorative practices or school-wide positive behavioral interventions and supports. These practices “enable students to develop a stronger sense of empathy and compassion,” help address the root causes of conflict and misbehaviors, and increase the chances that students will receive the support they need to address those behaviors.²⁵ This additional data element will allow valuable comparisons of exclusionary discipline rates and disparities among student subgroups between schools and districts implementing these alternative approaches and those that are not, which would provide community members the evidence they need to advocate for these practices in their own communities. The Department should also provide a definition for these approaches to indicate and encourage alignment with key components of program fidelity and best practices. Such a definition should specify that these approaches: address the root causes of student misbehavior; are developed and implemented in collaboration with parents, youth, and community organizations; provide ongoing training and professional development for staff; and include regular review of quantitative and qualitative data to continuously assess and improve outcomes.

- Data Elements related to Discipline, Restraint and Seclusion, and Teacher Quality for Students with Disabilities Placed by a School District in Private and Other Non-Public schools

We urge the Department to collect data regarding the treatment of students with disabilities placed in educational settings not operated by the reporting school district. National data reveals that almost 125,000 students in 2015-2016 were placed in seclusion or involuntary confinement or were physically or mechanically restrained at school to immobilize them or reduce their ability to move freely.²⁶ Students with disabilities served

²⁴ Russell J. Skiba, Robert S. Michael & Abra Carroll Nardo, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, The Indiana Education Policy Center (June 2000), <http://www.indiana.edu/~equity/docs/ColorOfDiscipline.pdf> (Stating that data showing that Black students are disproportionately disciplined for minor and subjective reasons “is evidence of a pervasive and systematic bias that may well be inherent in the use of exclusionary discipline.”); see also U.S. Dep’t of Education, *Resolution Letter for Compliance Rev. #05-12-5001*, (Nov. 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05125001-a.pdf> (“...OCR’s investigation revealed that students engaging in similar misconduct did not always receive the same discipline and that black students were disproportionately represented compared to white students to a statistically significant degree during the 2010- 2011 and 2011-2012 school years in the proportion of students who were disciplined...”)

²⁵ Advancement Project, *supra* note 16, at 18.

²⁶ School Climate and Safety, *supra* note 15 at 11.

under the IDEA represented 71% of students restrained and 66% of students secluded.²⁷ Every year students with disabilities served under IDEA are placed in private, separate facilities.²⁸ Such placements occur when school districts conclude that they cannot educate students in their public schools consistent with IDEA. These students often have the most significant behavioral needs and may be unable to describe their experiences effectively. They are more likely to be Black,²⁹ and many are also receiving services through the child welfare system.³⁰ It is critical that data be collected about these vulnerable students because they are placed away from the regular oversight that public school placements provide. We urge the Department to collect data on the experiences of students with disabilities placed by public school districts in private or “non-public schools” when required under the IDEA and Section 504 of the Rehabilitation Act of 1973.

- Public Reporting of Data on Public Schools in the Commonwealth of Puerto Rico

As mentioned above, parents, students, advocates, and others use the CRDC to advise the Department and local policy makers about disparities in access to educational opportunities as well as discriminatory disparities, including in discipline and in resource equity. The extension of data collection to Puerto Rico beginning with the 2017-2018 collection will support civil rights enforcement and reforms by allowing these interactions to occur, but only if the responses are made publicly available to the same extent as those for every state and the District of Columbia. For example, there are civil legal services agencies serving people with disabilities (also known as “protection and advocacy” agencies) in every state, the District of Columbia, and the Commonwealth of Puerto Rico. The entire list of requested data elements for the 2017-2018 and each subsequent CRDC should be made publicly available, as Puerto Rico is a part of the nation’s public school system.

Transparency and Timeliness Should Be Improved

We urge the Department to take steps toward conducting the CRDC annually. Because each year in a child’s educational career is critical, it is important for the Department to collect and make available the data necessary to address any issues that arise. Additionally, LDF strongly recommends that the Department work to minimize the delay between the collecting and reporting of data. The 2015-2016 data was released

²⁷ *Id.* at 12.

²⁸ See, e.g., Nat’l Ctr. For Educ. Statistics, *Characteristics of Private Schools in the United States: Results from the 2013-2014 Private School Universe*, Survey 6 & Table 1 (Nov. 2016), <https://nces.ed.gov/pubs2016/2016243.pdf> (in 2013-2014, 99,280 students were enrolled in 1,607 private, nonsectarian, special education schools).

²⁹ Compare Characteristics of Private Schools, *supra* note 17, 14 & Table 9 (in 2013-2014, 20.4% of students enrolled in private special education schools were Black) and U.S. Dep’t of Educ., IDEA Section 618 Data Products: Static Tables (in 2015-2016, 42,376 out of 171,294 IDEA students educated in separate schools were Black – almost 25%) with U.S. Dep’t of Educ., 38th Annual Report to Cong. on the Implementation of the Individuals with Disabilities Education Act 42 & Exh. 25 (2016) (in 2014-2015, 1,097,252 out of 5,825,680 children served under IDEA were Black – about 19%).

³⁰ See Vanessa X. Barrat & Beth Ann Berliner, *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California’s Public Schools* 19 & fig. 8 (2013), https://www.wested.org/wp-content/uploads/2016/11/1400283692Invisible_Achievement_Gap_Full_Report-3.pdf (finding that California foster children are 3 times more likely to be placed in nonpublic special education schools as are other children).

on April 24, 2018,³¹ nearly two years after the conclusion of the school year for which the data was collected. Current data is needed to identify and address disparities as soon as possible to limit the negative impact on students.

Furthermore, the Department should post its analyses of the CRDC data in a timely fashion. More specifically, for each prior data collection, the Department has posted state and national estimations,³² which can be used to get a broader picture of educational equity across the country. The state and national estimations for the 2015-2016 collection have not yet been posted, despite the release of the collection over a year and a half ago. Other features that have not yet been posted include the School/District/State Comparison Report, which allows users to compare discipline data across schools, districts, and states,³³ and the School/District/State Detail Report, which provides detail on discipline data.

We also urge the Department issue reports providing “insights into equity in school districts” as it did for the 2013-2014 Collection.³⁴ After the initial 2013-2014 data was released with a First Look Report, the Department also released reports examining chronic absenteeism; corporal punishment; protecting the civil rights of students being educated in the juvenile justice system; and examining data and research related to discipline, restraint and seclusion, chronic absenteeism, and other measures of educational inequities.³⁵ The release of additional insight into the 2015-2016 Collection has not been as robust, featuring only a school climate and safety issue brief, and a data story and brief on STEM courses. For the 2019-2020 collection, we urge the Department to take a rigorous look at educational equity across measures of school discipline, access to higher-level courses and programs, school finance, and all other measures where there are continuing racial disparities.

The CRDC has long been an essential tool for LDF and many others to determine whether this nation’s students have equitable educational opportunities regardless of their race, ethnicity, disability or gender. The collection of this data is also critical to achieving key components of the mission of the Department of Education to prohibit discrimination and to ensure equal access to education. The continued reporting of key data points shedding light on educational quality and equity is essential to vigorously monitoring and enforcing civil rights for all students, and especially those most marginalized. We urge the Department to expand its data collection as indicated above.

Thank you for considering this letter. If you have any questions, please contact us at 202-682-1300.

³¹ U.S. Dep’t of Education, Press Release, U.S. Department of Education Releases 2015-16 Civil Rights Data Collection (Apr. 24, 2018), <https://www.ed.gov/news/press-releases/us-department-education-releases-2015-16-civil-rights-data-collection>.

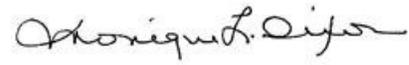
³² Civil Rights Data Collection, State and National Estimations, <https://ocrdata.ed.gov/StateNationalEstimations>.

³³ <https://ocrdata.ed.gov/DataAnalysisTools/DataSetBuilder?Report=1>.

³⁴ Dep’t of Educ., Office for Civil Rights, Civil Rights Data Collection (CRDC) for the 2013-14 School Year, <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2013-14.html>, last modified Sep. 25, 2018.

³⁵ *Id.*

Sincerely yours,

A handwritten signature in black ink, appearing to read "Monique Dixon". The signature is fluid and cursive, with the first name "Monique" being more prominent than the last name "Dixon".

Monique Dixon
Deputy Director of Policy

Nicole Dooley
Senior Policy Counsel

Lisa Cylar Barrett
Director of Policy