

Mandatory Civil Rights Data Collection

July 2020

Attachment B

**CRDC Data Set for School
Year 2020–21: Response to
First Round Public Comment**

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INTRODUCTION

This attachment contains the U.S. Department of Education’s (ED) responses to the 60-day public comment period on the Civil Rights Data Collection (CRDC) for school year 2019–20. ED’s Office for Civil Rights (OCR) is responsible for administering the CRDC, a survey of local educational agencies (LEA).

A total of 598 commenters submitted 952 individual comments to ED in response to the Notice of Proposed Information Collection Requests that was published in the Federal Register on September 19, 2019, Federal Register Vol 84, No. 182. A variety of stakeholders provided comments, including: a Congressional Committee, a Senate Caucus, state educational agencies (SEA), LEAs, administrators, educators, non-profit organizations, coalitions, professional organizations, advocates, parents, and other members of the public. The majority of the individual comments was from associations and individuals, together making up 85 percent of the comments.

The comments for the 2019–20 CRDC included extensive positive feedback on the seven directed questions, changes to the collection shown in the attachments, general reporting issues and suggestions for new data collection items. For example, 368 commenters discussed ED’s collection of data on harassment or bullying based on religion, the overwhelming majority of which expressed support for ED’s proposed collection of detailed data on harassment or bullying on the basis of religion for each of 14 religion categories, as identified by the Federal Bureau of Investigation’s *Hate Crime Data Collection Guidelines and Training Manual* (2015). Of the supporters, 282 of them noted that they believe that the change is “critical” for government agencies to “better respond to incidents of bullying and harassment, especially where ethnic and/or ancestral harassment is combined with direct religious discrimination.” Almost 300 commenters expressed their concern about the perceived rise of anti-Semitism in America. Most of those commenters believe that OCR’s proposal of adding the 14 religions categories will enable authorities to better protect Jewish students. Collection of these data will enhance ED’s and the public’s understanding of harassment and bullying and the relationship between religion, race, ancestry, and ethnicity.

Similarly, many commenters provided positive feedback on ED’s collection of data on sexual offenses. They specifically supported ED’s new proposed collection of data on incidents of sexual offenses committed by students and/or school staff members, and allegations against school staff members for sexual offenses. The addition of new teacher on student sexual assault and sexual harassment data makes the CRDC collection the first universal collection to gather such data, systematically, by school.

Generally, the majority of commenters was appreciative of the efforts made by ED to gather data on a variety of elements related to equal educational opportunity. Commenters pointed to a range of uses for CRDC data. For example, The American Educational Research Association (AERA) said, “AERA highly values the information included in the CRDC, which our members analyze to understand disparities in education, highlight opportunities to address gaps in educational access, and help improve outcomes for all students.” Child Trends, another research association, said, “This collection is a treasure trove of critical data that supports the work of local, state, and federal policymakers, researchers, and the general public in building education systems that

serve all students.” The National Women’s Law Center noted that the “CRDC is an essential tool for exposing educational inequities and discriminatory patterns.” A state agency praised the CRDC’s collection of data from all states and districts, noting the “ability to compare data from state to state or among school districts is critically important to evaluating outcomes, determining best practices, and ensuring progress toward equitable education systems across the nation.”

ED appreciates each commenter’s time and effort in providing thoughtful commentary in response to this proposed data collection. ED reviewed, summarized, and documented each comment prior to offering the responses below. ED’s summary and responses reflect careful consideration of each commenter’s thoughtful contribution to this process.

The comments and responses should be reviewed in the context of the entire CRDC. The CRDC covers broad categories pertaining to student enrollment and educational programs and services, most of which are disaggregated by race/ethnicity, sex, disability, and English learner status—collected from more than 17,000 school districts on a biennial basis. This vast data collection requires each school district to provide up to 1,700 individual responses for the school and school district combined. Every new data element which is disaggregated will require multiple responses and the corresponding behind-the-scenes data collection efforts that the LEAs pursue to enter the data into the CRDC. Therefore, OCR does not add data elements lightly. Conversely, the reduction in data elements is important to the LEAs because of the significant reduction in burden to the LEAs for each data element eliminated. All of this, as well as the utility of the data to OCR’s enforcement efforts is part of the analysis in what data elements to eliminate and what to add.

ED’s responses and proposed changes going forward are included below.

ED recognizes the impact the Coronavirus (COVID-19) pandemic has had on SEAs, LEAs, and schools, beginning in March of the 2019–20 school year, in providing educational and support services to students and parents. Due to extraordinary circumstances created by the COVID-19 pandemic and resulting school closures, ED has been considering ways to support SEAs, LEAs, and schools, including providing flexibility where possible. As part of that effort, and for the other reasons set forth below, ED has decided to postpone the 2019–20 CRDC by one year. This is consistent with ED’s Institute of Education Sciences’ (IES) plan to postpone the collection for “The Organisation for Economic Co-operation and Development’s Programme for International Student Assessment,” which is a world-wide assessment of 15-year old students. In addition, IES plans to postpone the following, pending negotiations with its partners:

- The National Assessment of Educational Progress’ (NAEP) Long Term Trends assessment of 17-year old U.S. students; and
- NAEP’s assessment of 8th grade American History and Civics competencies.

Since March, ED has worked to continually evaluate all mandatory reporting requirements applicable to SEAs, LEAs, and schools to determine whether any adjustment or flexibility is needed in response to COVID-19. ED has monitored developments of how COVID-19 is impacting all data collections across the agency—including those administered by the National Center for Education Statistics (NCES). The decision to postpone data collections does not impact the CRDC alone. In fact, adjustments and shifts are being made with regard to several other data collections administered by ED.

Regarding the 2019–20 CRDC, ED received inquiries from LEAs asking whether the CRDC will be postponed due to the COVID-19 pandemic. To help inform ED’s decision as to whether the 2019–20 CRDC should take place as scheduled, ED considered the many COVID-19 related challenges SEAs, LEAs, and schools are faced with, the numerous CRDC inquiries ED received from LEAs, and the input ED received from several pertinent stakeholders. Based on this feedback, ED has decided to shift the 2019–20 CRDC to the 2020–21 school year.

There are several benefits to this shift. Given that the 2019–20 school year has been truncated by virtue of the COVID-19 situation, a data collection for 2019–20 would not be complete or an accurate reflection of the school year, and thus not an appropriate comparator to prior and future data collections. While the 2020–21 school year may be affected to a degree, ED expects that SEAs, LEAs, and schools are working on plans to ensure continuity of learning, as well as various operational scenarios that takes into consideration the health and safety of staff and students. As part of that planning, ED expects that would include implementation of processes that would allow for the safe and accurate collection and reporting of data. Second, a number of stakeholders has expressed concern about the increased burdens on school districts and schools because of the drastic changes caused by the COVID-19 situation. ED hopes that by shifting the CRDC to the 2020–21 school year, LEAs will experience less burden related to COVID-19 because they will be better positioned to respond to any lingering effects of COVID-19. It is worth noting that by making this shift, data submissions will not commence until the winter of

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2021. Nevertheless, ED recognizes these issues and has agreed that it should act to reduce regulatory burdens as much as feasible and appropriate under the circumstances. It is hoped that this action will assist local school districts and schools as they continue to cope with the situation.

All comments received for the 2019–20 CRDC, and ED’s responses to those comments, will now apply to the 2020–21 CRDC. The CRDC will continue as a biennial collection, and therefore, for example, the next collections following the 2020–21, will comprise of the 2022–23, and 2024–25 school years.

Reporting Burden

Public Comments

Twenty-five commenters expressed general support for reducing the reporting burden on LEAs. Nine commenters said the burden of the CRDC was too great. Seven commenters stated that the estimated burden for completing the CRDC data collection was not accurate and understated. Five commenters said that the CRDC survey is confusing or overly complex, while one commenter said the burden could be reduced by a streamlined data collection system.

ED's Response

Discussion: These comments are very important and useful. ED recognizes the burden of reporting CRDC data and that LEAs are facing a challenging economic environment. ED has given significant consideration to all of the proposed data requirements and the burden they may impose on LEAs. These commenters' concerns are very important and should be taken seriously as some stakeholders who value the CRDC suggest imposing even more additional burdens on the LEAs. Because of these concerns, and other reasons mentioned throughout this document, ED has worked hard to reduce burdens by removing data elements which it has determined are less critical in fulfilling OCR's enforcement duties.

ED is also taking other steps to reduce the reporting burden on LEAs, while also maintaining a rigorous standard to ensure the quality of information submitted. For example, for the 2020–21 CRDC, OCR consulted with other program offices within ED to identify and eliminate any duplication of data items and, where possible, ensure the CRDC uses definitions consistent with those used by other program offices. This inter-office coordination is a part of the operational processes for each collection, including the 2020–21 collection. In addition, for the 2020–21 CRDC, ED plans to utilize a data submission system that will present survey items in a module format, which allows LEAs to submit data by broad categories. The system will also ensure LEAs are asked to only respond to applicable questions, and will enable LEAs to conduct automated, customized quality checks of their data before certifying it as complete and accurate. Finally, LEAs will be assisted in resolving possible reporting errors by individualized feedback reports that visually summarize the data submitted.

ED's burden estimates are based on standard statistical analyses. While the burden will vary among LEAs, ED has tried to accurately estimate the overall burden.

ED provides frequent training opportunities to help LEAs and SEAs understand the data elements collected in the CRDC and the survey submission process. Webinars, frequently asked questions, short tip sheets, videos, and other resources are available on the CRDC Resource Center website (<http://crdc.grads360.org>). A Partner Support Center (PSC) is also available to LEAs and SEAs to call or email questions regarding the content of the data to be collected. Additionally, the PSC has provided frequent communications and reminders to all participating LEAs on common issues and trending topics spotted within the volume of directed questions coming in. ED is committed to working with LEAs to ensure accurate reporting of CRDC data and to improve the quality of this information for use by LEAs to improve educational access and opportunity.

Consistent with the policies and principles underlying the President’s Executive Orders 13771 and 13777, ED will deregulate where possible so that limited education funds may be directed to more effectively advance the education of students, and LEAs may experience less burden and improve the quality of the data submitted to the CRDC. For the 2020–21 CRDC, ED’s proposed changes represent a net burden reduction. An additional benefit of the reduced data requests should be an improvement in data quality which will better support OCR’s ongoing mission of ensuring civil rights compliance.

Changes: None.

Funding

Public Comments

Some commenters incorrectly seem to believe that ED is proposing a reduction to CRDC funding. Four commenters oppose reductions to CRDC funding. One of the four commenters stated that it was troubled by what the commenter believed to be a proposed reduction even as OCR acknowledges the need for more technical assistance to improve data quality and speedy release of the data. The remaining three commenters opposed the supposed reduction because the CRDC is a critical tool for policy development. They also requested that ED consider the allocation of additional resources to the CRDC.

ED’s Response

Discussion: ED would like to thank the commenters for their attention to the importance of the CRDC. ED has not proposed any funding reductions for the 2020–21 CRDC and is unaware of any such proposal.

ED recognizes the importance of making the CRDC data accurate and available to the public. As of the 2017–18 CRDC, OCR has: utilized new tools in working with school districts with perceived reporting errors to encourage corrections; conducted greater outreach to school districts with potentially anomalous restraint and seclusion data submissions; allocated additional technical support resources; clarified proper understandings of reporting requirements; where needed, worked with school districts to ensure detailed written corrective action plans were put into place; and increased collaboration with NCES. The CRDC funding estimate is based on contractual costs to enhance the survey tool, provide technical support for all LEAs in the nation, collect the data, and produce and analyze the resulting database of survey responses. In recent years, OCR has actually increased technical assistance to school districts to improve data collection timeliness and accuracy. For example, in the 2017–18 data collection cycle, OCR allocated an additional \$671,549.35 to provide year-round technical assistance support to all school districts. ED does not foresee the CRDC losing any value as a tool for policy development in light of the estimated annual government cost of this collection, which is similar to the cost of previous surveys.

Changes: None.

Timing

Public Comments

Six commenters raised timing issues regarding the CRDC. Three commenters asked ED to release the data elements earlier in the CRDC reporting cycle so LEAs face a lesser burden, and to enable LEAs to collect and store the necessary information over time. Two commenters asked ED to reconsider the time period for data collection, including one that said that July would be the best time for data submission and one requesting two years for data collection. One commenter said the CRDC data may be too out-of-date to be useful if the collection is delayed.

ED’s Response

Discussion: ED appreciates the commenters’ request that ED release the continuing and the new data elements for the CRDC sooner, which would give LEAs more time to prepare for the CRDC. ED will try to do this. As part of making the data collection more user friendly, for the 2020–21 school year collection, the reporting of data for all *new items* (except one) will be optional. ED expects LEAs to complete these data elements to the extent possible to assist OCR in its enforcement efforts, but recognizes that the data may not be available. Therefore, ED plans to delay the mandatory collection of the new items until the 2022–23 CRDC. By making all the new data elements (except one for which the schools already have the data) optional for the 2020–21 school year, LEAs will have more than sufficient notice to change their data collection systems to report complete and accurate data for the subsequent CRDC.

To facilitate data collection and data entry, ED has made changes to the CRDC collection. Since the 2011–12 CRDC, at the close of the school year, small and rural LEAs may “roll over” their data systems, effectively closing out one school year and beginning the next. The end of year “roll over” can make accessing data from the prior school year challenging. OCR has developed a set of pre-collection tools to allow all LEAs, including smaller LEAs, to collect and store their CRDC data in a format that could be easily uploaded into the CRDC submission system. With these tools, LEAs can store their CRDC data in ready-to-use flat files once the survey submission website opened in the fall of the next school year. These pre-collection tools are widely used, and OCR has received many positive comments regarding their ease of use.

ED appreciates the suggestion to have LEAs submit CRDC data in July, and the suggestion to provide LEAs two years to collect and submit their CRDC data. ED will take the suggestions under advisement.

ED continually strives to improve the CRDC and welcomes input from partners about ways to improve and expedite the release of the data elements.

Changes: None.

Reducing LEA Reporting Burden by Collecting Data from SEAs

Public Comments

Thirty-four commenters requested that ED obtain any data that are duplicated in the SEA collection directly from the SEAs, to reduce the reporting burden on LEAs. In addition, four commenters referenced the data collection associated with the Elementary and Secondary Education Act, and recommended that the data collection be combined to minimized burden on respondents.

ED’s Response

Discussion: ED has been contacted by several SEAs looking for ways to support their LEAs in meeting the CRDC’s reporting requirements. OCR worked with the National Center for Education Statistics (NCES) to develop a collection tool for the 2013–14 CRDC and subsequent collections that allows SEAs to voluntarily provide data to pre-populate LEA-level CRDC surveys with relevant data available in the SEAs’ student information systems. For the past three CRDC collections, several states have provided pre-populated data for their LEAs, although the LEAs are still required to review the accuracy of the data, and certify the data, for the purposes of CRDC reporting.

ED is continually exploring ways to reduce the reporting burden on LEAs, while ensuring that the data meets the purposes of the collection. ED’s proposed changes for the 2020–21 CRDC will have the net effect of significantly reducing burden on LEAs. LEAs remain the certifying entity to validate their CRDC submission because ED does not have the authority to require SEAs to collect and submit CRDC data for their LEAs. ED has been improving the process of obtaining data from SEAs for the prior three CRDC cycles and will continue to implement changes to reduce the reporting burden on LEAs and improve the quality of the CRDC overall.

Changes: None.

Resources to Support Data Users

Public Comments

One commenter recommended that ED provide evaluation support to SEAs and LEAs who want to use the CRDC data to improve outcomes and learning.

ED’s Response

Discussion: ED is always looking for ways to help LEAs and SEAs improve outcomes and learning. To that end, ED launched an enhanced reporting website in 2012 that provides the public with visually intuitive displays of the CRDC data (<http://ocrdata.ed.gov>). The investment in enhanced reporting features has supported broad and rich conversations among educational stakeholders about improving educational access and equity, resulting in changes to practice, policy, and legislation in states and school districts across the nation. Since 2012, displays have included a “summary of selected facts” and “detailed data tables.” The “summary of selected facts” for a district or school displays data about key issues through tables and charts. Users have the option to access additional data for the district or school for the current CRDC or prior CRDCs. The “detailed data tables” have a flexible interface, which allows users to select data from more than one district or school, for the current CRDC and/or prior CRDCs. Since 2015, the website has included data analysis tools that generate school, district, and state data comparison reports, and English learner, discipline, and educational equity reports. ED has continued to make improvements to the CRDC reporting website and has posted additional documents and fine-tuned customizable tools regarding the data on the website, based on comments and suggestions from data users, ED priorities, and available funding.

Data users who have questions about the CRDC may contact the CRDC Partner Support Center (crdc@aemcorp.com) for technical assistance. In addition, ED will continue to explore its options for developing new resources that may help support SEAs and LEAs to use their CRDC data to improve outcomes and learning.

Changes: None.

Annual Collection

Public Comments

Seven commenters suggested that ED transition the CRDC to an annual collection. Three of the commenters said that students spend few years in school, so if the data are available, then changes can be implemented more quickly. Two of those commenters also remarked that the data are important to various communities, advocates, and stakeholders, in addition to its use for enforcement of civil rights laws.

ED's Response

Discussion: Although there may be benefits stemming from an annual data collection, there would be a very substantial increased burden. LEA commenters have explained that the CRDC is a significant time commitment in both data collection and reporting. One commenter offered insight from a rural school district where all of the CRDC information was manually recorded because the LEA's student information system could not upload the data to the CRDC reporting utility. Recording and reporting detailed responses to the CRDC takes time away from LEA's educational activities, and ED believes the burden of collecting the CRDC data annually would outweigh any benefit to OCR's enforcement of federal civil rights laws within its jurisdiction.

Changes: None.

COLLECTION OF DATA WITH ADDITIONAL DISAGGREGATION

Disaggregation by Section 504-only Status and IDEA Status

Public Comments

Five commenters urged ED to continue to collect disaggregated data by Section 504-only status *and* IDEA status for all student data items collected in the CRDC, and to expand its collection of disaggregated data by Section 504-only status for all items that are disaggregated by IDEA status. One commenter said that students can receive services under Section 504 and IDEA, but the challenges and outcomes they face are not the same. Three commenters said that the CRDC is the sole source of information where the general public can learn about the educational experiences of students who receive services under Section 504. Three commenters said that there is an increase in the number of students who receive services solely under Section 504, so collecting this additional Section 504-only status data for CRDC items would make the CRDC more robust.

ED’s Response

Discussion: ED always weighs whether an element’s removal or addition will improve efficiency in data collection; whether an element is necessary to inform current civil rights enforcement; whether an element represents a pressing civil rights concern; and whether the data can be obtained from other sources. Based on these considerations, ED proposes: (1) continuing the collection of disaggregated data by Section 504-only status and IDEA status for most student data items; (2) continuing with the limited number of data elements (i.e., counts of students enrolled in an International Baccalaureate Diploma Programme; counts of students enrolled in one or more Advanced Placement courses) for expansion to include Section 504-only student data; and (3) continuing with the discontinuation of the collection of IDEA status data for EL students enrolled in EL programs.

Changes: None.

Request for Disaggregation by Additional Racial/Ethnic Categories

Public Comments

Five commenters raised concerns regarding the existing racial and ethnic categories of the CRDC’s data collection. Four of these commenters stated that the categorization of data by existing race and ethnicity did not adequately capture the diversity present in the Asian American, Native Hawaiian, Pacific Islander and Arab American communities. They believe this obscures disparities in treatment within schools as well as in academic outcomes. Commenters stated that there are cultural and linguistic differences, war, and genocide that cause displacement and relocation which affect student outcomes, and that the current category “Asian” is too broad and obscures the diversity and educational inequities in these communities. Four commenters suggest that ED use the categories on the American Community Survey to collect data on race and ethnicity to allow for the ability to address specific communities’ concerns.

ED’s Response

Discussion: ED understands that data can be disaggregated in many ways and that doing so can potentially give insight into such categories. However, for CRDC reporting purposes, school districts are required to follow the Office of Management and Budget’s (OMB) Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity that were last revised in October 1997 (62 Fed. Reg. 58,782) and ED’s “Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education” from October 2007 (72 Fed. Reg. 59,266). Both the OMB standards and the ED guidance require recipients to report by major racial/ethnic categories (i.e., American Indian or Alaska Native, Asian, Black or African American, Hispanic/Latino, Native Hawaiian or Other Pacific Islander, Two or more races, and White). While school districts may choose to disaggregate these categories further to address their own needs (and not for the purposes of reporting to ED), they are only required to comply with the requirements of OMB’s 1997 standards and ED’s guidance. The current data collection has proved useful and adequate in ensuring compliance with the civil rights laws OCR enforces, and any additional divisions of race and ethnicity data would impose an unnecessary collection and reporting burden on the individual LEAs.

After careful consideration, ED has decided not to add the commenters’ proposed additional race and ethnicity classifications.

Changes: None.

Disaggregation by All Demographic Subgroups

Public Comments

One commenter requested that any new data elements be disaggregated by race, ethnicity, sex, disability, and EL status to ensure the utility of the data for civil rights enforcement.

ED’s Response

Discussion: ED continues to propose the collection of data on Section 504-only students in Advanced Placement (AP) courses and the International Baccalaureate (IB) Diploma Programme. Collecting any further type of information as suggested as part of the CRDC for each new data element would greatly increase the reporting burden on LEAs. Further, ED does not believe that collecting disaggregated data for the other proposed new data elements would further the core civil rights mission of the collection.

Changes: None.

Disaggregation by Pregnant and Parenting Student Status

Public Comments

One commenter sought additional data related to pregnant and parenting students. No other commenters raised this issue. Specifically, the commenter requested data on whether districts and schools have policies, programs, and/or alternative schools for pregnant and parenting students, in the same way that data are currently collected on alternative schools, generally, and on bullying and harassment policies. According to the commenter, there is currently no national repository of information about which districts or schools have programs for, or offer services to, pregnant and parenting students, and the data collection on policies and programs would promote

the purpose of Title IX of the Education Amendments of 1972 (Title IX), ensuring schools provide equal education opportunities to pregnant and parenting students. The commenter also requested data on the type of education received by pregnant and parenting students, including: their enrollment levels in rigorous courses; whether they attend alternative high schools or specialized programs for pregnant and parenting students; the graduation rates of those in alternative programs as compared to those in traditional high schools; and their performance on high-stakes tests. The commenter claimed that: “Collecting non-personally identifiable data on pregnant and parenting students [would] help to identify both the discriminatory barriers that still exist today in far too many places and best practices for keeping them in school. It would also help [ED] enforce the law, in line with the strong guidance it issued in 2013 regarding Title IX and pregnant and parenting students.”

ED’s Response

Discussion: While several of the data collection items proposed by the commenters may provide useful additional information, this would be a wholly new line of data elements which OCR has not needed for enforcement purposes. Further, reporting on these items in the CRDC would significantly increase burden of the data collection, and would not further the core civil rights mission of the collection. Finally, this could raise privacy concerns regarding the LEA’s identification of and record-keeping about pregnant and parenting students.

Changes: None.

Disaggregation by Socioeconomic Status

Public Comments

One commenter urged ED to collect CRDC data disaggregated by socioeconomic status.

ED’s Response

Discussion: ED already collects some socioeconomic type data. NCES collects and reports data on percent of students eligible for free or reduced priced lunch. This information is published on OCR’s website. Additionally, ED publishes information regarding each school’s Title I status on its OCR website, where it can be viewed alongside the educational access and equity data collected on the CRDC.

Changes: None.

English Learners Enrolled in English Language Instruction Programs

Public Comments

Fifteen commenters urged ED to continue to collect data on the number of English learner (EL) students disaggregated by IDEA status, who are enrolled in EL programs. Several commenters opposed the proposal to discontinue collecting IDEA status data for EL students enrolled in EL programs because retiring the data collection would undermine public access to information about an overlooked and underserved population. One commenter explained that it opposed discontinuing the collection of the data because collecting this data is vital in combating a widespread misconception that an EL student cannot be a student with a disability and enrolled in an EL program. Another commenter said that the proposal would make it difficult to discover disability and language related needs. Four commenters explained that retaining the reporting requirement is important because there are longstanding concerns with misidentifying, or over-identifying, English language learners as speech and language impaired. A different commenter said that removal of this data item does not align with recent OCR priorities, including the expansion of the CRDC to collect data disaggregated by Section 504 status. This same commenter also said that in OCR’s 2015 Dear Colleague Letter (available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>), OCR discussed the concern that LEAs often have problems classifying EL students as disabled based on their language capabilities and fail to provide both language and disability services. Two commenters suggested that ED add disaggregation by Section 504 status instead of removing disaggregation by IDEA status. Another commenter requested that ED add new data elements to capture the difference among EL students with regard to the number of years EL students are enrolled in EL programs disaggregated by the language spoken at home.

ED’s Response

Discussion: ED appreciates the comments concerning EL students enrolled in EL programs disaggregated by IDEA status. ED intends to continue to collect data on the number of EL students enrolled in school disaggregated by sex, race/ethnicity, Section 504-only status, and IDEA status, as well as number of EL students enrolled in EL programs disaggregated by sex and race/ethnicity. This data collection will continue to inform the public about this population of students and give visibility to such students. For example, these data will continue to inform the public of how many EL students enrolled in school have been identified as having a disability under IDEA or under Section 504-only, or how many EL Asian female students are enrolled in EL programs. ED also intends to continue to collect disaggregated data by EL status for most CRDC data elements.

ED understands that collecting data on the number of EL students enrolled in English language instructional programs disaggregated by Section 504 status may be informative, but, at this time, adding disaggregation by Section 504 status would significantly increase the collection burden on LEAs without necessarily contributing to OCR’s civil rights enforcement efforts. Similarly, ED does not believe that adding new data elements to capture the difference among EL students

with regard to the number of years EL students are enrolled in EL programs disaggregated by the language spoken at home would merit the additional reporting burden on LEAs.

Changes: None.

Early Childhood Education, Preschool, and Kindergarten Characteristics

Public Comments

In response to ED’s directed questions on its proposed retirement of some LEA-level early childhood, preschool, and kindergarten data elements (see *Attachment A-5: Directed Questions* document), 43 commenters urged ED to reconsider its proposal. The commenters requested that ED continue the collection of LEA data on whether early childhood education or preschool services serve non-IDEA children; whether preschool is provided to all students, IDEA students, Title I school students, and students from low income families; and preschool and kindergarten length (full-day, part-day) offered and cost (free, partial/full charge). These commenters said that the data are important to understanding the landscape of early childhood, preschool, and kindergarten services offered to a diverse population of students. Many commenters said that full-day services are a necessity for some students with disabilities, and that full-day services increase the availability of preschool education for low-income families that may not be able to adjust their work to account for only partial-day preschool programs. One commenter stated the following: “Our state benefits from a mixed-delivery system, where parents can choose the setting that is right for their families, and where young children have access to early learning experiences in programs run by public schools, Head Start programs, private agencies, and home-based providers. Thanks to the information currently provided in the CRDC, we are able to have a point of comparison between school run programs and those that aren’t, in order to best inform early childhood policy creation, implementation, and evaluation.”

ED Response

Discussion: ED has carefully considered each data collection element and has endeavored to minimize the burden imposed on LEAs while continuing to collect important civil rights data. OCR recognizes that various groups use the CRDC data to analyze preschool offerings and demographics. OCR is tasked with the enforcement of federal civil rights laws within its jurisdiction, as well as collecting data for other purposes, such as the development of technical assistance documents. The early childhood education, preschool, and kindergarten characteristics data originally proposed for removal are not currently necessary to aid in that enforcement. While the data may be useful for other purposes, the CRDC is collecting other similar data, which OCR believes are adequate for its purposes and can effectively be used by others. OCR has identified an additional preschool data element that OCR proposes to remove from the CRDC. For consistency with OCR’s originally proposed removal of the LEA-level data element on whether preschool programs serve non-IDEA children of a specific age, OCR now proposes to also remove the school-level data element on whether preschool programs serve non-IDEA children of a specific age range. OCR will continue to collect significant amounts of preschool enrollment data disaggregated by demographic groups. This detailed data includes total preschoolers, as well as preschoolers disaggregated based on several categories, including IDEA students. This should allow OCR and interested parties to extrapolate the number of *non*-IDEA children enrolled in preschool programs.

ED is empowered to “collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights.” See 20 U.S.C. § 3413(c)(1). ED may also collect CRDC data that may assist SEAs and LEAs carryout the reporting requirements in other laws, such as the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act in 2015. At the same time, ED is required to follow directives under various other legal mandates, including Executive Orders. Consistent with the policies and principles underlying the President’s Executive Orders 13771 and 13777, ED will deregulate where possible so that limited education funds may be directed to more effectively advance the education of students and LEAs may experience less burden and improve the quality of the data submitted to the CRDC. ED weighs whether an element’s removal improves efficiency in data collection; whether an element is necessary to inform current civil rights enforcement; whether an element represents a pressing civil rights concern; and whether the data can be obtained from other sources. ED has determined that the burden of continuing the collection of early childhood education, preschool, and kindergarten characteristics data outweighs the benefit to ED’s ongoing civil rights compliance efforts and other data collection authorities.

Changes: ED proposes to retire the collection of data on whether a school’s preschool program serves non-IDEA children of a specific age range (Data Group 953).

Preschool Enrollment and Funding

Public Comments

In response to ED’s directed questions on its proposed discontinuation of the collection of preschool student enrollment counts for disaggregated demographic subgroups (see *Attachment A-5: Directed Questions* document), 65 commenters urged ED to reconsider its proposal. Commenters said that the disaggregated enrollment data are the sole source of nationwide detail that revealed preschool education remains relatively unavailable to low income families and in majority minority communities. One commenter said that this “data is vital for gaining a holistic picture of the early learning landscape in the United States and supporting access to early learning programs is critical to promoting equity among the nation’s youngest students. ED’s proposed changes would drastically limit what we know about children’s access and experiences in preschool.” Many commenters also said that with the loss of both the disaggregated enrollment data and the disaggregated suspension data, it will no longer be possible to support ED’s stated mission of combatting racial, gender, and disability-related disparities in preschool discipline. One commenter argued that OCR has a legal obligation to collect preschool enrollment data disaggregated by demographic subgroups. The commenter said that the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act, requires state and local report cards to include the number and percentage of students enrolled in preschool programs as reported to the CRDC. In addition, the commenter said that as ED explained in its most recent guidance document about state and local report cards, “the ESEA requires that State and local report cards include the CRDC data disaggregated by any subgroup that is also required under the ESEA (i.e., major racial and ethnic groups, English learners, gender, and children with disabilities).” Another commenter recommended keeping all the

preschool enrollment data collection and requiring LEAs to report their preschool funding sources to better understand how preschool services are funded.

ED Response

Discussion: Initially, ED sought to reduce the burden on LEAs by proposing to no longer collect preschool enrollment data disaggregated by specific demographic subgroups, and only collect a total count of preschool student enrollment. However, in addition to the overall support for the continued collection of this data, ED found the public comments persuasive that the CRDC remains the sole source of nationwide detail on the early learning landscape and that such data may inform policies relating to racial, sex, and disability-related discrimination in preschool programs. Also, one commenter pointed out that it appears that preschool enrollment data disaggregated by demographic subgroups have to be collected by SEAs and reported in state and local report cards, so the added burden of reporting in the CRDC is somewhat lessened. Furthermore, based on the commenters' feedback, OCR acknowledges the value of continuing to collect disaggregated preschool enrollment data so that it may be used with other disaggregated preschool data, such as disaggregated expulsion data, to determine the rates of students enrolled in preschool who have received an expulsion. Accordingly, ED now proposes to continue to collect these data.

Separately, while adding data elements for preschool funding data, as one commenter has requested, could be useful, this would increase the scope of the collection and the reporting burden on LEAs, which would be inconsistent with the policies and principles underlying the President's Executive Orders 13771 and 13777 to deregulate where possible. More importantly, such funding data are not essential to furthering OCR's mission of civil rights enforcement. ED weighs whether an element's removal improves efficiency in data collection; whether an element is necessary to inform current civil rights enforcement; whether an element represents a pressing civil rights concern; and whether the data can be obtained from other sources. After considering all aspects of these concerns, ED has decided not to collect preschool funding data at this time.

Changes: ED proposes to continue to collect preschool enrollment data by race, sex, disability-IDEA, and EL status (Data Group 956).

Data Related to Interscholastic Athletics

Public Comments

In response to ED's directed questions on this issue seeking input on the value of this data (see *Attachment A-5: Directed Questions* document), three commenters expressed support for ED's continued collection of single-sex athletics data. One commenter said that the datapoints in the current collection are appropriate to adequately demonstrate whether districts are complying with Title IX in regard to single-sex athletics. Another commenter cautioned ED against any future changes regarding single-sex athletics that may undermine understanding of potential discrimination, and urged ED to only make changes with the goal of quantifying potential discrimination based on sex, including gender identity. Two commenters said that participation in sports is linked with student achievement and that participation levels for females is still lower than those for males. One commenter expressed concern that the CRDC only focuses on athletic opportunities, but does not provide any information on how girls' teams are treated in terms of

the benefits and services they receive. The commenter recommended that ED collect information on athletic expenditures, from school and non-school sources—for travel; equipment; uniforms; practice and competitive facilities; locker rooms; training and medical facilities; and publicity—on male and female teams. The commenter also urged ED to include data on interscholastic athletic participants by race and ethnicity in addition to sex in order to allow schools to better assess and expand opportunities for women of color. Finally, the commenter recommended that ED clarify that LEAs should report data on athletic participation consistent with student athletes' gender identity.

ED's Response

Discussion: ED appreciates the commenters support for ED's continued collection of data on single-sex interscholastic athletics sports, teams, and participants. For the 2020–21 CRDC, OCR is proposing to continue to collect by sex, the number of single-sex interscholastic athletics sports, the number of single-sex interscholastic athletics teams, and the number of student participants on single-sex interscholastic athletics sports teams. Few commenters actually requested a change regarding these data. In fact, one commenter, in response to a directed question, agreed that the existing data collection on this issue is adequate. ED agrees with that commenter, and others, that stated such data are necessary to aid OCR in determining districts' compliance with Title IX in regard to single-sex athletics. Consequently, ED is not proposing to eliminate any of these data elements.

Regarding the requested new data elements concerning athletics, ED understands that collecting such data elements might provide useful information for the commenters seeking the information. However, collecting such information as part of the CRDC would significantly increase the scope and burden of the data collection, and would not substantially further the core civil rights mission of the collection.

Changes: None.

Civil Rights Coordinators

Public Comments

Three commenters supported ED's continued collection and public reporting of information on civil rights coordinators at the LEA-level, and all three commenters urged ED to expand its collection and reporting to include civil rights coordinators data at the school-level. One commenter recommended that ED create and update annually, a website for the public to find and contact Title IX coordinators at the state- and LEA-levels, K-12 school-levels, and post-secondary school-levels. The commenter also suggested that ED collect coordinator information on all individual schools that receive federal funding as well as on the LEA coordinators who are providing training and assistance to the school-level coordinators. Finally, the commenter recommended that ED collect information on the percent of time coordinators spend on their coordinator duties, and on whether coordinators reviewed their school's CRDC submissions, and received training.

ED's Response

Discussion: ED appreciates the commenters’ support for the continued collection and reporting of the civil rights coordinators data by the CRDC.

The CRDC is a biennial collection that collects civil rights coordinator contact information at the LEA-level only. ED developed a new website in 2016 (<https://www.ed.gov/civ-rts-coordinators>) based on the 2013–14 CRDC to provide the public with a way to search for K-12 civil rights coordinator contact information at the state- and LEA-level. The website will be updated with subsequent CRDC data. In addition, LEA-level civil rights coordinators data for the 2015–16 school year are currently available on the CRDC reporting website (<https://ocrdata.ed.gov>).

ED is only able to provide this information at the LEA-level, consistent with regulatory requirements, and biennially. To obtain contact information on Title IX coordinators in post-secondary schools, the public may access ED’s *Campus Safety and Security Data Analysis Cutting Tool* website (<https://ope.ed.gov/campussafety/#/>). Data included in the website are the most current data available to the public.

Changes: None.

Students with Disabilities in a Non-Public School Setting

Public Comments

Eleven commenters provided suggestions regarding the collection of data and the treatment of students with disabilities who receive services in a non-public setting. Eight commenters said that many students with disabilities are placed by their school districts in non-public school settings and can be subjected to exclusionary discipline, restraint and seclusion, other adverse actions, or denied access to experienced teachers, but the CRDC does not collect data about their experiences. Two commenters urged ED to collect data on the experiences of students with disabilities in non-public school settings, specifically focusing on the disproportionate number of students with disabilities who are restrained or secluded. Five commenters expressed disappointment that ED did not follow through with the commitment it made in 2017 to gather input from stakeholders regarding how to collect data from non-public school districts on students that are placed in private or non-public educational settings. Four commenters claimed that ED’s Restraint and Seclusion Initiative’s stated goal to take a proactive approach to protect students with disabilities is inconsistent with ED’s failure to collect data on this subgroup of students with disabilities. These commenters urged ED to follow through on its previous commitment, and engage with stakeholders and gather input on how to collect data on the experiences of students in non-public schools.

ED’s Response

Discussion: ED appreciates the numerous comments received regarding the collection of data for students with disabilities placed in non-public schools. The collection of data on the treatment of students with disabilities in these settings can be useful for highlighting possible discrimination and educational inequities. ED currently collects data from school districts on students with disabilities placed in educational settings that are not operated by the students’ home districts.

Changes: None.

Class Size

Public Comments

One commenter urged ED to collect class size school-level data. The commenter said that smaller class sizes have been proven to improve outcomes for all students, particularly for students of color and those from low-income families.

ED’s Response

Discussion: The primary purpose of the CRDC is to collect information that is useful for the enforcement of civil rights laws within OCR’s jurisdiction. ED has determined that the burden imposed on LEAs for data collection should be reserved to items that are most in keeping with statutory directives. ED does not believe collecting the proposed data would substantially further the core civil rights mission of the collection. Therefore, ED has decided not to collect the additional proposed data at this time.

Changes: None.

Single-Sex Classes

Public Comments

One commenter urged ED to collect additional data related to single-sex classes. Specifically, the commenter requested the following collection: (1) single-sex class enrollment data, disaggregated by sex, race/ethnicity, English learner status, and disability status; (2) for each single-sex class, the number of coeducational class sections in each subject and grade level, also disaggregated by race/ethnicity and disability, to help determine whether students of color and students with disabilities are being steered into single-sex or coeducational classrooms; and (3) school and school district web references with justifications on single-sex schools and on coed schools with single-sex classes.

The commenter also raised a concern with the quality of the single-sex classes data collected by the CRDC. The commenter said that it continues to find that some schools report numbers of students in single-sex classes rather than the requested data of the number of single sex classes.

ED’s Response

Discussion: While the collection of the data proposed by the commenter in relation to single-sex classes could provide useful additional information, reporting on these data would significantly increase the scope and burden of the CRDC. ED has been able to enforce the civil rights laws within its jurisdiction without the proposed data. Therefore, ED believes the burden of collecting this data would outweigh any benefit it confers. ED has decided not to adopt the proposal to collect the additional data related to single-sex classes at this time.

ED strives to ensure CRDC data are an accurate and comprehensive depiction of student access to educational opportunities in school districts. The data submission system uses a series of embedded edit checks to ensure: (1) suspicious data are flagged with warning messages, which may or may not require an LEA to address depending on the severity level of the message, prior to the LEA proceeding to submit its data; and (2) significant data errors are flagged with error messages, which require an LEA to address by making a change to the data, before the LEA may proceed to submit its data. Additionally, each district is required to certify the accuracy of its data submission. Only a district superintendent, or the superintendent’s designee, may certify the CRDC submission. Following the close of the survey submission window, ED reviews the data to identify possible reporting anomalies and gives districts the opportunity to amend their CRDC submission, as necessary. Following the data quality review, ED works to release the data to the public.

Based on public recommendations and ED’s own 2015–16 CRDC data quality analysis effort, a new warning was implemented in the 2017–18 CRDC data submission system to call attention to situations where schools may have misreported the number of single-sex classes. Upon completion of its 2017–18 CRDC data quality analysis effort, ED will determine whether the data quality check for single-sex classes can be improved.

Changes: None.

School Segregation Policies

Public Comments

One commenter requested that ED include data elements asking if schools identify as single-sex or dual academies, whether they have policies that exclude students from classes or activities based on their sex, race, gender orientation, or gender identity, and, if so, to explain why and provide the web reference for their justifications, evaluations, and approvals

ED’s Response

Discussion: ED has been able to vigorously combat racial and sex-based discrimination without the proposed additional data. Moreover, collecting data on written policies that violate Title VI of the Civil Rights Act of 1964 (Title VI) or Title IX of the Education Amendments of 1972 (Title IX) in the way the commenter describes is unlikely to provide a meaningful dataset that would enable OCR to further its mission of ongoing civil rights enforcement. ED has determined that the burden imposed by the CRDC should be reserved to items that are most likely to further OCR’s mission. Therefore, ED has decided not to collect the proposed data about school policies that may violate Title VI or Title IX at this time.

Changes: None.

School Health and Wellness

Public Comments

One commenter recommended that the CRDC include measures related to school health and wellness that would gauge equitable access to physical activity, healthy school facilities, and healthy school food. ED would then be able to identify schools and districts where students do not have equitable access to healthy school environments that support their ability to learn.

Resources could then be directed appropriately to ensure that the conditions for health and wellness are in place for all schools.

ED’s Response

Discussion: ED is guided by the authorizing statute for the “Civil Rights Data Collection,” which enables ED to collect information that is “necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights.” 20 U.S.C. § 3413(c)(1). ED may also collect CRDC data that may assist SEAs and LEAs carryout the reporting requirements in other laws, such as ESSA. It is not clear that the proposed data additions would further OCR’s mission of protecting civil rights or other purposes for collecting civil rights data. Moreover, the addition of these items to the CRDC would significantly increase the scope and burden of the data collection. Therefore, at this time, ED will not propose additional data elements surrounding health and wellness in schools.

Changes: None.

Preschool Suspension

Public Comments

Eighty-seven commenters urged ED to reconsider combining the collection of data on preschool students who receive one out-of-school suspension and multiple out-of-school suspensions. Many commenters said that this data has been useful in tracking trends and directing advocacy to promote reforms to preschool discipline. One commenter said the “importance to monitor multiple suspensions due to the negative impact multiple suspensions have on educational outcomes and trajectories. The impact of multiple suspensions can be cumulative with each additional suspension increasing the risk of dropping out by 10 percent. Multiple suspensions have also been associated with increased interactions with law enforcement and the criminal justice system. Emerging research shows that one suspension is in fact different than multiple suspensions.” Nine commenters added that preschool settings are the most segregated education settings nationwide and CRDC data offers a unique look at the disciplinary difference in these settings. Six commenters said that Health and Human Services (HHS) and ED have jointly recognized the impact of suspensions and expulsions in preschool settings. These commenters recommended that ED confer with HHS to determine how reliable data about student discipline can continue to be collected in preschool settings. Several Associations for the Education of Young Children in different states said that having this distinction “is important in understanding the patterns of what is happening in early childhood education programs and to whom. Indeed, over a decade of research and existing CRDC data tell us that the policies and practices of suspension and expulsion in early childhood, including repeat suspension and expulsion, are disproportionately affecting children of color, and causing harm to children and families. As educators, parents, researchers, and advocates, we rely heavily on disaggregated data from the CRDC to help us understand how preschool suspensions and expulsions continue to impact populations of students and to tell the story of how these practices continue to fall more harshly on particular populations of students.” One commenter recommended that the suspension data collection be *expanded* to include the number of school days missed by preschool students, disaggregated by race, sex, disability, and EL status.

ED Response

Discussion: ED believes that its proposed combined collection of data on preschool students with one out-of-school suspension and multiple out-of-school suspensions strikes a fair balance between serving OCR’s mission and limiting the CRDC’s burden on LEAs. Tracking one or more suspensions with the disaggregation indicated will allow OCR, investigators, school officials, and others to take note of situations that merit further investigation or inquiry. Data showing disproportionate suspensions alone does not prove unlawful discrimination. However, such data may be an indicator of an underlying problem, and one of several factors OCR may look to in an investigation that includes allegations of discrimination. ED believes that a combined collection of counts of preschool students with one out-of-school suspension and multiple out-of-school suspensions will be effective to inform enforcement of civil rights laws, and guide investigators and stakeholders, while still reducing the burden on LEAs. In addition, ED proposes to make the new “counts of preschool students with one or more out-of-school

suspensions” data element required for the 2020–21 CRDC because LEAs have been required to collect and submit counts of preschool students with one out-of-school suspension and counts of preschool students with multiple out-of-school suspensions since the 2011–12 CRDC.

As part of the analysis, ED is obligated to follow the policies and principles underlying the President’s Executive Orders 13771 and 13777. Therefore, ED will deregulate where possible so that limited education funds may be directed to more effectively advance the education of students and LEAs may experience less burden and improve the quality of the data submitted to the CRDC. ED weighs whether an element’s removal improves efficiency in data collection; whether an element is necessary to inform current civil rights enforcement; whether an element represents a pressing civil rights concern; and whether the data can be obtained from other sources. Therefore, ED has decided to continue to propose the collection of combined preschool suspension data at this time.

While adding a new data element proposed by commenters regarding the number of days missed, disaggregated by race, sex, disability, and EL status, for preschool suspensions absence data might be informative, SEAs, LEAs, or schools can rely on preschool data elements to take note of preschool suspension situations that merit further investigation or inquiry. . Further, this additional data collection would significantly increase the scope of the collection and the reporting burden on LEAs. Finally, ED does not believe the proposed new data element would further the core civil rights mission of the collection. Therefore, ED has decided not to collect preschool suspension absence data at this time.

Changes: None.

Additional Discipline Data

Public Comments

Several other commenters requested that ED collect additional data. Five commenters recommended that ED collect data on exclusionary discipline practices disaggregated by the reason the school district gave the student the disciplinary action. Four of these commenters asserted that students of color and other marginalized students are disproportionately disciplined for minor subjective offenses, including days lost due to out-of-school suspensions. Such data, the commenters said, would provide valuable information regarding how many, and which, students are disciplined for non-violent, subjective offenses and this information could reveal the need for trainings of explicit and implicit bias, structural racism, and other interventions in schools and districts where disproportionality is evident.

Two commenters stated the CRDC should specifically collect data on students who are suspended, expelled, or referred to law enforcement for substance use or misuse, distribution, or possession of a controlled substance. These commenters asserted that the collection of this data would provide insight into potential civil rights issues and provide insight into how schools deal with substance use amongst students. The commenters also said that collection of this type of data would not be a burden to school districts because they already collect information on the type of disciplinary action a student receives.

Two commenters suggested that ED collect data on whether staff are trained to respond to substance use issues with evidence-based non-punitive measures, such as Screening, Brief

Intervention, and Referral to Treatment (SBIRT). According to these commenters, SBIRT involves having a conversation with the student about their substance use and connecting the student to services. These commenters also said that punishment of students for substance misuse or substance use disorder is a civil rights concern because criminalization of drug use disproportionately targets communities of color, and the frequent co-occurrence of substance use among young people with psychiatric disabilities makes these groups disproportionately affected by schools' punitive responses.

Two commenters urged ED to collect data regarding whether schools and districts are implementing restorative justice practices or school-wide Positive Behavioral Interventions and Support Services, including a definition of these approaches, which would allow valuable comparisons of exclusionary discipline rates and disparities among student subgroups and schools and districts implementing these alternative approaches and those that are not.

Two commenters suggested that ED collect data on police use of force against students, disaggregated by race, sex, disability and English language proficiency, as it would provide information on the impact of police use of force on students' well-being and safety.

ED's Response

Discussion: Commenters made numerous suggestions for additional data ED could collect related to school discipline practices. Data on discipline are important information, which is why ED proposes to continue collecting discipline data on numerous data elements. For example, the following are just some of the data elements proposed for continuation: (1) number of students without disabilities who received one out-of-school suspension, disaggregated by race, sex, and EL status; (2) number of students with disabilities (IDEA) who received one out-of-school suspension, disaggregated by race, sex, disability-504 only status, and EL status; (3) number of students without disabilities expelled, disaggregated by race, sex, and EL status; (4) number of students with disabilities (IDEA) expelled, disaggregated by race, sex, disability-504 only status, and EL status; and (5) number of school days missed in K-12 settings due to out-of-school suspensions, disaggregated by race, sex, IDEA status, Section 504 status, and EL status. When including all of the disaggregated subcategories, this is a lot of data and a significant burden without adding more. All of the data elements ED proposes to collect in the 2020–21 CRDC are detailed in the Paperwork Reduction Act Supporting Statement A.

Commenters requested a significant amount of additional data elements surrounding student discipline for substance abuse. This would create a significant burden on the schools and/or LEAs. Additionally, ED does not believe that this data collection is necessary, and the commenters' proposed collection would create data consistency concerns due to variations in controlled substance legality across various jurisdictions.

While data in this category may be useful in limited situations, adding the additional discipline data elements suggested by commenters is not necessary to further civil rights enforcement, nor would the benefits of the suggested data outweigh the burden of their collection. While some commenters believe that this additional data could prove useful for stakeholders and researchers, ED is statutorily empowered to collect data ED believes will further the mission of enforcing the civil rights laws within OCR's jurisdiction. *See e.g.* 20 U.S.C. § 3413(c)(1). ED may also collect CRDC data that may assist SEAs and LEAs carry out the reporting requirements in other

laws, such as ESSA. On balance, ED does not find that the value of this added data outweighs the burden the collection would cause.

Changes: None.

Harassment or Bullying – Based on Religion and General Reporting

Public Comments

Three hundred sixty-eight commenters raised ED’s collection of data on harassment or bullying based on religion in response to ED’s directed questions on its proposed collection of detailed data for specific religion categories (see *Attachment A-5: Directed Questions* document). The overwhelming majority of commenters expressed support for ED’s proposed collection of detailed data on harassment or bullying on the basis of religion for each of 14 religion categories, as identified by the Federal Bureau of Investigation’s *Hate Crime Data Collection Guidelines and Training Manual* (2015). Of the supporters, 282 of them said that they believe that the change is “critical” for government agencies to “better respond to incidents of bullying and harassment, especially where ethnic and/or ancestral harassment is combined with direct religious discrimination.” Almost 300 commenters expressed their concern about the perceived rise of anti-Semitism in America. Most of those commenters believe that OCR’s proposal of adding the 14 religions categories will enable authorities to better protect Jewish students. Six commenters also noted their concern about the apparent rise of anti-Islam sentiment. A few commenters said that reporting will inform the public about incidents of harassment and bullying of religious minorities, hold schools accountable for their response to incidents of anti-Semitism or anti-Islam, or assist schools combat this growing form of intolerance. While supportive of the inclusion, one commenter was concerned that any data reported would be falsely low because the student information systems do not capture this data in the behavior incident reports. Another supporter recommended that ED provide guidance for school districts on how they can collect data on perceived religion without eliciting private information from students and clarify the appropriate use of the information collected.

Three commenters, who support the inclusion of each of the 14 religion categories, referred to a study by GLSEN which found that, “Of the students who experienced incidents of bias-based bullying, 18% reported bias due to actual or perceived religion.” The three commenters also said the following: “The availability of data in the CRDC on harassment and bullying based on religion can help enhance the understanding of the complexities that characterize this set of issues. Research on bullying and harassment based on religion seeks to build a greater knowledge of the interwoven relationship between religion, race, ancestry, and ethnicity.” Similarly, another commenter stressed the importance of identifying the “root cause” of harassment or bullying on the basis of perceived religion. One commenter stated the following: “There is a rich diversity of faiths and religious beliefs among our nation’s students. Information on their experiences will further the protection of religious freedom.” This same commenter, however, expressed concern, “...that a new emphasis on religion-based harassment could be used as a pretext to report conduct meant to protect the diverse student populations in America’s classrooms. For example, individuals could report activities designed to promote understanding and inclusiveness towards lesbian, gay, bisexual, transgender, and questioning or queer (LGBTQ) students, parents, or teachers as harassment, claiming that these activities offend their religious beliefs.”

Seven commenters objected to the proposed collection of detailed data on harassment or bullying on the basis of religion for each of 14 religion categories. Two commenters said that only a subset of requested data would come within OCR’s jurisdiction under Title VI of the Civil Rights Act of 1964 (Title VI), since Congress has not given OCR jurisdiction over discrimination based on religion alone. One commenter stated that the CRDC does not ask schools to disaggregate bullying/harassment based on any other basis, creating the perception that bullying/harassment based on religion is more serious than for any other protected class. One commenter expressed concern that the new elements of the data collection would require the collection of religious information of students. Along these lines, another commenter was concerned that schools would start tracking perceived religion of students in their administrative records, which this commenter believes is an “invasion” of a student’s privacy. One commenter stated that districts would have to spend additional time investigating incidents to determine whether perceived religion was a reason for the bullying particularly in situations where the bullying may have multiple causes.

One commenter suggested that the need to disaggregate by religion is low compared to the high burden of doing so, while two commenters suggested the need to expand the collection and disaggregate data on bullying and harassment for race, sex, and disability, rather than the 14 religion categories proposed. In addition, one commenter suggested that “disaggregating by religion [would] leave many school administrators and communities with the impression that anti-Semitism is an isolated or rare concern and treat it less seriously.” This same commenter recommended that Congress “...give OCR jurisdiction over religious discrimination and harassment in schools.” Furthermore, one commenter expressed concerns over the method of collecting and disaggregating data, suggesting it would encourage school faculty to investigate and consider student religion, endanger students’ privacy and security, promote inaccurate data, and fail to capture the reality of religious bullying and harassment. The same commenter suggested that OCR adopt methodological improvements and safeguards, including anonymous self-reporting and faculty training, to protect students and refine the data collection.

Nine commenters raised reporting issues concerning ED’s collection of data on harassment or bullying. With respect to disaggregating data based on the 14 religion categories, eight commenters said that their current student information systems do not include fields or incident codes sufficient to collect data on harassment or bullying based on any category of perceived religion and therefore they do not collect such data. Five commenters stated that unless their student information systems are enhanced, the data reported would be unreliable, incorrect, or incomplete. One commenter recommended that ED first pilot test the collection of the data, while another commenter said that the requested information is already collected on their state bullying investigation form. Commenters also expressed concerns over the ability of untrained staff to report or investigate harassment or bullying based on 14 religion categories. Four commenters said that the new data collection would require additional staff training and professional development. Even where staff is trained, one commenter stated that students at the K-12 level may lack familiarity with religion or not have the developmental ability to describe the harassment they experience adequately to promote accurate identification by school staff of the specific religion involved.

One commenter said that while the CRDC includes language identifying adult employees and non-employee third parties and potential perpetrators of harassment or bullying, the CRDC does not gather data on adult to student infractions. This commenter recommended that ED collect data on harassment or bullying of a student by an adult.

ED’s Response

Discussion: ED appreciates the plethora of comments it received on this topic. The vast majority of commenters supported the addition of the proposed data element on harassment or bullying on the basis of religion for each of 14 religion categories, as identified by the Federal Bureau of Investigation’s *Hate Crime Data Collection Guidelines and Training Manual* (2015). ED agrees with those commenters that stated that such data are critical for government agencies to “better respond to incidents of bullying and harassment, especially where ethnic and/or ancestral harassment is combined with direct religious discrimination,” such as anti-Semitism or anti-Islam (Muslim). As other commenters stated, there are a number of reasons why such data are important, including: it would enhance ED’s and the public’s understanding of this occurrence and the relationship between religion, race, ancestry, and ethnicity; it would aid in the identification of the root causes of such prohibited conduct; and it would further the protection of religious freedom.

LEAs that currently do not have systems that can disaggregate the data along the 14 different religion categories will have time to modify and adapt their systems. All new data elements (except one) are proposed as optional for 2020–21 CRDC, with the expectation that they will be required for the 2021–22 CRDC. (ED does not have the authority to collect this CRDC data directly from SEAs.)

Some commenters expressed concern that this data will result in a false low number because student incident reports may not capture information on religion. However, the existing CRDC already requires LEAs to report on the harassment or bullying of students on the basis of religion. Specifically, school staff are already making this determination when conducting their investigations into reported allegations of harassment or bullying on the basis of actual or perceived religion, but without disaggregation. Thus, the collection to include specified religions would not negatively impact the overall collection of data on harassment or bullying on the basis of religion. Similarly, this proposed expansion would not affect the probability of some misusing this information as one commenter suggested, as a pretext to report conduct meant to protect marginalized or vulnerable student populations. Such arguments, if accepted, would mean no data could ever be collected to avoid the risk of misuse. Rather, ED believes data are an important and valuable tool to be used in its efforts to combat and correct discrimination. ED reiterates that it is not requiring LEAs to know or report on the actual religion of the alleged victimized student, but rather the religion as perceived by the alleged harasser. While this may not be known in every case, there will be instances where it is obvious or apparent.

While any new data collection increases the burden on LEAs to a certain extent, this burden should be relatively small. LEAs are already required to collect on such incidents on the basis of religion. When it is observable that such events are based on religion it is likely also easily observable which religion is the subject of the harassment. The proposed new data would also not endanger students’ privacy and security because LEAs are not being asked to determine the

actual religion of the students. Rather, these data would, as other commenters stated, better inform the public about the perceived religions targeted for harassment or bullying.

Some commenters argued that such data are outside of ED’s jurisdiction and would create the perception that harassment or bullying on the basis of religion is more serious than other protected classes, or is a rare occurrence. OCR is in fact authorized to collect such data. As stated earlier, Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance. Moreover, the Department’s Organization Act of 1979, 20 U.S.C. § 3401(2), provides that educational opportunities should not be denied because of race, creed, color, national origin, or sex. Discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics is discrimination on the basis of national origin or race in violation of Title VI. *See* Executive Order 13899 of December 11, 2019, “Combating Anti-Semitism.” Furthermore, beyond Title VI and the Organization Act of 1979, ED and OCR have specific jurisdiction over religion under the Magnet Schools Assistance Program, 20 U.S.C. § 7231d(b)(2)(C), which requires elementary and secondary applicants to include assurances that they will not engage in discrimination based on race, religion, color, national origin, sex, or disability in (i) the hiring, promotion, or assignment of employees of the applicant or other personnel for whom the applicant has any administrative responsibility; (ii) the assignment of students to schools, or to courses of instruction within the schools, of such applicant, except to carry out the approved plan; and (iii) designing or operating extracurricular activities for student.

There are other nondiscrimination provisions within ED’s authority that prohibit discrimination on the basis of religion.

- The Equity Assistance Centers authorized under Title IV of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000c, 2000c–2, and 2000c–5, provide technical assistance upon request to responsible governmental agencies regarding effective methods of coping with special educational problems occasioned by desegregation. “Desegregation” is defined at 42 U.S.C. § 2000c(b) as “the assignment of students to public schools and within such schools without regard to their race, color, religion, sex, or national origin.”
- The DC Opportunity Scholarship Program under D.C. Code § 38-1853.08(a) requires that “An eligible entity or a school participating in any program under this division shall not discriminate against program participants or applicants on the basis of race, color, national origin, religion, or sex.”
- The Higher Education Act of 1965, 20 U.S.C § 1011(a), provides that colleges and universities receiving Federal financial assistance may not use such financial assistance, directly or indirectly, to undertake any study or project or fulfill the terms of any contract containing an express or implied provision that any person or persons of a particular race, religion, sex, or national origin be barred from performing such study, project, or contract, except that nothing in this subsection shall be construed to prohibit an institution from conducting objective studies or projects concerning the nature, effects, or prevention of discrimination, or to have the institution’s curriculum restricted on the subject of discrimination.
- The Higher Education Act of 1965, “Discretion of Student Aid Administrators,” 20 U.S.C. § 1087tt(c), prohibits discrimination against any borrower or applicant in

obtaining a student loan on the basis of race, national origin, religion, sex, marital status, age, or disability status.

- Disclosure of Foreign Gifts, Section 117(h)(5), 20 U.S.C. § 1011f (h)(5), requires disclosure by institutions of higher education, among other things, of certain all foreign-funded grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.
- The “General Provisions of the ESEA,” 20 U.S.C. § 7914(a), provides “Nothing in this Act shall be construed to permit discrimination on the basis of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, or disability in any program funded under this Act.”

In addition, the following provisions prohibit discrimination on the basis of race or national origin. These provisions may, like Title VI, prohibit discrimination on the basis of shared ancestry under Executive Order 13899:

- Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701-1721, provides all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin.
- The Carl D. Perkins Career and Technical Education Act of 2006, 20 U.S.C. § 2396, provides “Nothing in this Act shall be construed to be inconsistent with applicable Federal law prohibiting discrimination on the basis of race, color, sex, national origin, age, or disability in the provision of Federal programs or services.”
- The General Education Provisions Act, Use of Funds Withheld, 20 U.S.C. § 1231e(b)(2), provides the Secretary may use any funds withheld or re-allotted from a State due to noncompliance with Title VI of the Civil Rights Act for grants to local educational agencies for any other program administered by ED that is designed to enhance equity in education or redress discrimination on the basis of race, color, national origin, sex, age, or disability.

Again, the CRDC already collects data on harassment and bullying based on religion. ED is only proposing to disaggregate that existing data by specific religion. Indeed, in many cases when a school documents an incident of harassment based on religion that it will know what the alleged perpetrator perceived the victim’s religion to be. Otherwise, the school would not be able to identify the incident as one based on religion. Simply documenting what the reporting person already knew should not be difficult or burdensome. It is also inaccurate to state that ED is prioritizing one form of harassment or bullying over another by collecting such data. Data such as this will aid OCR’s overall mission of civil rights enforcement.

Accordingly, ED proposes to continue to collect data on the number of allegations received by a school of harassment or bullying on the basis of religion (in addition to the collection of data on the number of allegations based on sex; race, color, and national origin; disability; and sexual orientation), and begin to collect the number of harassment or bullying allegations on the basis of perceived religion, for 14 religion categories. ED recognizes the concerns raised by commenters worried about a potential breach of privacy, but the proposed additional harassment or bullying

allegations for 14 religion categories data element will not elicit private information about students, just as existing data elements on harassment or bullying for all specific categories do not collect data that are sensitive in nature. The instructions that accompany the CRDC harassment or bullying on the basis of religion data elements will make it clear that the CRDC does not give respondents the authority to inquire about the religion of students. As a part of its regular technical assistance and outreach, OCR will provide training opportunities for school districts to properly understand all the data elements, including this particular data element that will not require LEAs to include religious affiliation of students as part of their administrative records. In addition, a CRDC Partner Support Center is available to school districts to call or email questions regarding the content of the data to be collected. For this data, in classifying the allegations of harassment or bullying, respondents will be directed to look to the likely motives of the alleged harasser/bully, and not the actual status of the alleged victim. For the new allegations of harassment or bullying on the basis of perceived religion for each of 14 religion categories data element, this direction also applies.

ED understands that technical assistance would be helpful to LEAs to promote accurate data collection, and will provide assistance in the survey itself and through the typical technical assistance channels that already exist for the CRDC. Such technical assistance will also be clear that student privacy should not be impacted.

One commenter’s request to also add data elements on harassment or bullying of a student by an adult is reasonable, but is deemed excessive at this time. The additional data does not outweigh the burden upon LEAs to gather that data. ED believes that the continued proposed collection of data involving students who are harassed or bullied whether by other students, school employees, or non-employee third parties, is sufficient for aiding OCR’s overall mission of civil rights enforcement.

Changes: None.

Harassment or Bullying on the Basis of Sex

Public Comments

Seventeen commenters objected to ED’s proposal to further amend the definition of harassment or bullying based on sex for the 2020–21 CRDC because the new definition eliminates specific reference to gender identity, gender expression, and nonconformity with gender stereotypes. One of the commenters argued that, this “erases” the experiences of the almost 60 percent of lesbian, gay, bisexual, transgender, and queer students who continue to be harassed or bullied because of their gender identity or gender expression. Fifteen of the commenters expressed similar concerns that the current proposal would not capture vital data on the breadth of the harassment that transgender and gender non-conforming students face, and would be inaccurate, incomplete, and lead to underreporting. These commenters remarked that not collecting such data would lead to less protections for transgender and gender-nonconforming students, increase their feelings of being unsafe at school, and ultimately lead to a rise in mental health concerns and harmful, negative behaviors. One commenter also claimed that without a national database of these incidents it is difficult to make comparisons between schools, districts, and states.

Six of the commenters argued that changing the definition in this way is inconsistent with ED’s rationale presented for the addition of new elements that disaggregate data for harassment or bullying based on religion. They noted that the 14 religion categories identified for the 2020–21 CRDC were pulled from the Federal Bureau of Investigation’s (FBI) Hate Crime Data Collection Guidelines and Training Manual (2015), which provides specific guidance on distinguishing sexual orientation, gender identity, anti-transgender, and anti-gender-nonconforming crimes rather than relying on the use of “sex stereotyping” as a blanket term that may not fully incorporate gender identity and gender expression, as is suggested in proposed changes. One commenter also asserted that collecting harassment or bullying data that are not on the basis of a student’s gender identity is inconsistent with data reported to ED and the Department of Justice that are used to prepare the agencies’ annual “Indicators of School Crime and Safety” report. Another commenter stated that requiring reporting of harassment or bullying on the basis of sex in a way that fails to reflect the designation of female or male in a student’s record that is consistent with the student’s gender identity would require school employees to make inquiries into students’ medical and social histories in an extremely invasive manner, which violates students’ privacy.

One commenter urged ED to postpone the definition change until the Supreme Court decides *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*. The commenter said that the decision would inform ED’s interpretation of Title IX as to gender identity discrimination. Three other commenters expressed concern with ED’s rationale for the proposed definition “to achieve more consistency with OCR complaint processes,” which reinforced their concern about OCR’s failure to enforce legal protections for transgender students. Two commenters said their support of ED’s continued collection of harassment or bullying incidents on the basis of sexual orientation.

ED’s Response

Discussion: ED appreciates the 17 commenters’ feedback on ED’s proposed changes to the definition of harassment or bullying based on sex. OCR’s proposal brings the definition of “harassment or bullying on the basis of sex” in line with OCR’s complaint adjudication process.

ED’s proposed changes to the “harassment or bullying on the basis of sex” definition include the removal of “gender-based harassment or bullying” references. The main proposed change is the replacement of “...Gender-based harassment or bullying is nonsexual intimidation or abusive behavior toward a student based on the student’s actual or perceived sex, including harassment based on gender identity, gender expression, and nonconformity with gender stereotypes...” with “...Harassment or bullying based on sex stereotyping includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, but not involving conduct of a sexual nature...”. The changes are appropriate in light of the CRDC’s long-standing definition of “sex,” which has been in place since at least the 2009–10 collection. The definition subject to the proposed change is anomalous within the CRDC collection and will be brought back in line with the definition elsewhere in the existing CRDC, as well as the historical definition since at least 2009. The long-standing definition of sex in the CRDC is “the concept describing the biological traits that distinguish the males and females of a species.”

As to the commenters’ request for ED to include gender expression in its CRDC sex definition for harassment or bullying, under Title IX, schools already must respond to harassment on the basis of sex stereotyping.

Changes: None.

Harassment or Bullying – Removing Web Link Indicator on Policies

Public Comments

Nine commenters provided feedback specifically on ED’s proposal to remove the question “if” the LEA has a web link to its written policy or policies prohibiting discriminatory harassment or bullying of students. Even though the survey still collects the weblink itself, if it exists, the commenters opposed the proposed change. Eight, apparently misunderstanding the proposal, suggested that not being required to report having a web link to an LEA’s written policy removes a helpful indicator of schools’ knowledge of and adherence to their anti-harassment and bullying policies and which LEAs make information on anti-bullying policies readily available to educators, students, and parents. One believed that removing the web link question may discourage schools from posting online any information about their harassment or bullying policies. Another said that having an easily accessible, and conspicuous platform could eliminate gaps in information for working parents, reduce paper waste, and provide a consistent forum to house this information.

One commenter expressed concern that if ED removes the “if” question (whether the LEA has a written policy on its website) and supposedly makes the web link to an LEA’s written policy question optional, then many LEAs will skip the supposedly optional question—resulting in less information. The commenter also suggested eliminating the question in the CRDC regarding whether the school has a written policy and retaining the second question (whether the LEA has a written policy on its website).

In addition to objecting to web links being removed, three commenters suggested that OCR request whether an LEA’s policy protects groups based on sexual orientation, gender identity, gender expression, race, disability status, national origin, and religion in an LEA’s policies prohibiting discriminatory harassment or bullying of students.

ED’s Response

Discussion: ED proposes retiring the second item in a three-part series of items about an LEA’s web link to policies prohibiting harassment and bullying. The item to be removed asks whether the LEA has a web link to its written policy (or policies) prohibiting discriminatory harassment or bullying of students on the basis of sex, race/color/national origin, and disability. ED proposes to retire this item because it is redundant. The next item, which ED proposes to retain, asks for a web link to the LEA’s written policy (or policies) prohibiting discriminatory harassment or bullying of students on the basis of sex, race/color/national origin, and disability. This covers the eliminated item.

An LEA’s web link to harassment and bullying policies is useful to OCR, parents, and students. LEAs should make their policies available online. Therefore, ED will continue collect an LEA’s web link (if one exists) to its harassment and bullying policies.

Attachment B – Response to First Round Public Comment
CRDC Data Set for School Year 2020–21

ED's proposed changes do not make any reporting requirement optional and is not proposing a removal of the harassment and bullying policy data from the CRDC results. Consequently, ED will continue the proposed retirement of the policy web link indicator inquiry, but will clarify this change to address the commenters' misunderstanding.

Changes: None.

Offenses

Public Comments

In response to ED’s directed questions on its proposed collection of new information on incidents and allegations of specific sexual offenses involving students and school staff (see *Attachment A-5: Directed Questions* document), 20 commenters provided feedback on ED’s collection of data on sexual offenses. Eleven of these commenters supported ED’s new proposed collection of data on incidents of sexual offenses committed by students and/or school staff members, and allegations against school staff members for sexual offenses; eight commenters did not mention whether they supported the new proposed collection; and one commenter did not support the new proposed collection. Of the 20 commenters, 16 of them expressed some concerns and made some recommendations for ED’s consideration.

Six commenters raised concern regarding a school’s ability to track information on sexual offenses conducted by students and school staff members. Three commenters expressed concern that their student data systems did not currently collect the proposed data on sexual offenses, and therefore enhancements to the systems would have to be made. Three commenters also said a challenge with collecting the new proposed data elements because student offenses data and staff offenses data are stored in different data systems.

One commenter stated that staff-related rape or sexual assault data are not information they document since the allegation, if raised, is reported directly to the city police department, and the outcome of the investigations are not currently documented by the school district.

A few commenters raised the sexual offenses categories. One commenter claimed that many districts may collapse rape, attempted rape, and sexual assault categories into a general “sexual misconduct” category for tracking data on personnel. The commenter suggested that districts accustomed to using a general sexual misconduct category for tracking data on personnel may find it administratively complicated to use the CRDC offenses categories and may compromise the fidelity of the data reported for the CRDC. Another commenter asked ED to redefine “rape” and “sexual assault (other than rape)” to match the definitions used for the Clery Act, and remove “attempted rape” from the list of CRDC offenses categories. Two commenters asserted that the sexual offenses categories should not be limited to just rape, attempted rape, and sexual assault. One commenter recommended that the categories be expanded to include sexual harassment, sexual exploitation, sexual intimidation, sexual misconduct, and sexual grooming, while the other commenter recommended the inclusion of any act that a reasonable person would deem as sexual in nature.

Three commenters asked ED to expand its collection of documented incidents of sexual offenses to include incidents of sexual assault by school staff members, and not just limit it to incidents of rape or attempted rape committed by school staff members. They asserted that this would be consistent with ED’s proposed collection of documented incidents of rape or attempted rape and sexual assault committed by students.

Three commenters recommended that ED collect data on allegations of sexual offenses against a student for consistency with ED’s proposed collection of allegations of sexual offenses against school staff members. One commenter alleged that with respect to sexual assaults, investigations are often completed by attorneys and involve protected attorney/client privileged information, which could present a problem for reporting for the CRDC. The commenter also stated that the use of the word “pending” presented an issue when inquiring about allegations of offenses that occurred at the school against a school staff member. The commenter requested clarity on whether the word “pending” refers to the offense pending at the time when the data are being collected or pending at the time the school year ended.

Four commenters requested that ED collect data on sexual offenses that occurred not just on school property, but also outside of school property. According to the commenters, schools have a responsibility to respond to sexual offenses that interfere with a student's education regardless of whether they occur on or off school property. One commenter claimed that courts have found schools may be liable even if a sexual offense occurs off school premises. One commenter urged ED to collect data on sexual offenses committed by school staff on school property or at a school-sanctioned event. This would include locations involved in travel to or from a school sponsored event or activity.

Two commenters expressed concern with the term/label of “school staff member” because it is unclear which individuals the school is required to report for CRDC purposes. One commenter recommended that ED include in its definition of “school staff member,” any person employed by the school on a temporary or permanent basis and school volunteers. To account for students of all genders (including male, female, and non-binary), one commenter urged ED to refer to victims of rape or sexual assault as “students of all genders.” Another commenter encouraged ED to collect more information related to sexual offenses, such as whether: (1) Child Protective Services or law enforcement were contacted; (2) the parents of the involved children were contacted; (3) counselling services were made available to the affected children; and (4) statistics about the staff offenses were annually reported to the school board and parents.

One commenter questioned how the new proposed data collection would be used; the reliability of how districts would report the data; and whether it was necessary for OCR to obtain these data to demonstrate district Title IX compliance, given that OCR had not requested the data previously. Another commenter questioned how CRDC-reported data would overlap with (and possibly contradict or impede) Title IX investigations, and whether the collection of the proposed data, particularly the collection of data on allegations, compromise guidance on sexual harassment/violence investigations that usually provides for confidentiality to the extent possible for both the victim and the accused.

ED’s Response

Discussion: ED has proposed adding data elements on incidents of sexual offenses committed by students and/or school staff members, and allegations against school staff members for sexual offenses. The inclusion of this data reflects OCR’s commitment to ensuring that school districts understand how to effectively respond, under Title IX, to complaints of sexual harassment and assault, including sexual acts perpetrated upon students by teachers, school staff, and personnel. The inclusion of this data in the CRDC is a part of a broader ED initiative—led by OCR—aimed

at enhancing OCR’s enforcement of Title IX in both elementary and secondary public schools and strengthening the ability of schools to respond to all incidents of sexual offenses and sexual harassment. . As evidenced by ED’s “Civil Rights Initiative to Combat Sexual Assault in K-12 Public Schools” (February 26, 2020; <https://www.ed.gov/news/press-releases/secretary-devos-announces-new-civil-rights-initiative-combat-sexual-assault-k-12-public-schools>), ED is extremely concerned about the sexual offenses and sexual harassment that occur in K-12 public schools, including sexual incidents involving teachers and school staff incidents . As Assistant Secretary Kenneth L. Marcus has stated, OCR will “focus our enforcement, technical assistance, and data-gathering activities on this issue, and we are going to make it a priority going forward.” (See February 26, 2020 Press Release.)

OCR has observed a very significant increase in complaints of sexual offenses in the K-12 environment, as well as an increase in the reports of these offenses being committed by teachers and school staff in the press. Gathering this type of information is critical to further OCR’s mission to protect the civil rights and the safety of children in our schools.

Parents entrust their children to schools for many hours each day; as Secretary DeVos has noted, “No parent should have to think twice about their child's safety while on school grounds.” (See February 26, 2020 Press Release.) OCR’s primary responsibility is to enforce civil rights laws that protect all students. The same applies to protecting the civil rights of adults who claim to have been victims of sexual violence in the school environment. These data elements will assist OCR in protecting the civil rights of vulnerable children and provide meaningful data on sexual offenses involving teachers, school staff, and personnel.

ED recognizes this will create some additional burden on LEAs. However, the benefits of these data outweigh the burdens. In addition to reporting these offenses to local law enforcement, LEAs should follow-up on any violation that could impact students’ safety in the learning environment.

Commenters offered feedback on the specific definitions used to collect this data. The Clery Act addresses sexual offenses in post-secondary institutions, which can present a different set of issues than K-12 settings. ED’s proposed definitions are appropriate for LEAs. For the CRDC, the definitions of “rape or attempted rape” and “sexual assault” are consistent with the definitions used for NCES’ School Survey on Crime and Safety (SSOCS). Commenters that had issues with definition for “attempted rape” are correct that there is no definition. NCES SSOCS does not provide a definition for “attempted rape.” In the event that this becomes an issue with the CRDC reporting process, OCR will provide technical assistance to LEAs that require clarification on “attempted rape.”

ED agrees with the recommendation to define “school staff” as any person employed or volunteering at a school on a temporary or permanent basis, for the offenses data elements, and therefore will adopt the definition. Additionally, ED considers a “pending determination” any allegation of offenses by a school staff member for which the determination remained pending during the 2020–21 regular school year.

Commenters implied that the CRDC would not collect all relevant data about sexual offenses, including those that occur outside of schools, but still impact students. The CRDC instructions

already state that schools should collect data for sexual offenses that occur both on-and off-campus; “incidents at the school” refers to incidents that occurred in school buildings, on school grounds, on school buses, and at places that hold school-sponsored events or activities; and accounts for all incidents that occurred before, during, or after normal school hours. ED will ensure that the CRDC instructions explain that places that hold school-sponsored events or activities, include places that are not on the schools’ premises. Currently, ED believes that “incidents at the school” should not be extended beyond these categories. Indeed, it is questionable if OCR has jurisdiction to address other incidents beyond those included in the proposed data elements.

To remain consistent with ED’s proposed collection of documented incidents of rape or attempted rape and sexual assault committed by students, ED also proposes to add documented incidents of sexual assault committed by school staff members to the 2020–21 CRDC, as requested by commenters. ED recognizes that schools might not be equipped to collect and store the new elements proposed for the 2020–21 CRDC. Therefore, all new data elements (except one) are proposed as optional, with the expectation that these elements will be required in the 2022–23 CRDC. Even though the collection will be “optional,” ED strongly encourages LEAs to provide this information to assist OCR to protect the civil rights of any victims. For a complete list of all the new proposed data elements and explanations for their proposed addition, please see Supporting Statement A.

Some commenters asked ED to include more data elements related to sexual offenses, but collecting additional of information would increase the scope and reporting burden on LEAs. ED believes that the proposed data elements, as modified, strike a fair balance between serving OCR’s mission and limiting the CRDC’s burden on LEAs. Therefore, ED has decided not to collect additional sexual offenses data at this time.

To help alleviate some of the additional burden on LEAs caused by ED’s proposed addition of data elements on incidents of sexual offenses committed by students and/or school staff members, and allegations against school staff members for sexual offenses, ED now proposes to remove three offenses data elements from the CRDC. Currently the CRDC collects a great deal of information on physical offenses and threatened physical offenses, which is broken down in several ways. ED’s proposed removal of three elements does not significantly affect the utility of the remaining data elements on violent crimes or the threat of violent crimes. The data elements to be removed involve incidents that occurred at the school, and include: the number of documented robberies with a firearm or explosive device; the number of documented physical attacks or fights with a firearm or explosive device; and the number of documented threats of physical attack with a firearm or explosive device. These data elements are sub-categories of three broader data elements—robberies with a weapon, physical attacks or fights with a weapon, and threats of physical attack with a weapon—that will remain included in the CRDC. In addition, the CRDC will continue to collect incidents of possession of a firearm or other explosive device. Because the broader data elements include the three sub-categories of data elements and because of the other remaining data element collections, ED considers those data elements sufficient to inform OCR’s enforcement of civil rights laws.

Changes: For the offenses data elements (Data Groups 1025-1029), ED proposes to define “school staff” as any person employed or volunteering at a school on a temporary or permanent basis. For the reasons stated above, ED also proposes to expand its collection of documented incidents of offenses committed by school staff members from only rape or attempted rape, to also include sexual assault (Data Group 1025). Finally, ED proposes to retire the collection of documented incidents of the following: robberies with a firearm or explosive device; physical attacks or fights with a firearm or explosive device; and threats of physical attack with a firearm or explosive device (Data Group 952; Data Category: Offense Type), while retaining multiple other data elements regarding violence or threatened violence.

Restraint and Seclusion

Public Comments

One commenter expressed support for ED’s continued collection of K-12 student restraint and seclusion data, and recommended that ED collect the same data for preschool children. The commenter said that collecting preschool restraint and seclusion data would provide a more complete understanding of young children’s experiences in public schools.

ED’s Response

Discussion: ED appreciates the commenter’s support for the continued collection of K-12 restraint and seclusion data by the CRDC. ED understands the commenter’s desire for ED to additionally collect preschool restraint and seclusion data. ED is very concerned about restraint and seclusion issues as evidenced by its “Initiative to Address the Inappropriate Use of Restraint and Seclusion, Ensure Compliance with Federal Laws” (January 17, 2019; <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>). ED’s initiative includes three components (i.e., compliance reviews; CRDC data collection; and support for recipients) that help districts and schools understand how federal law applies to the use of restraint and seclusion, and support districts and schools seeking resources and information on the appropriate use of interventions and supports to address the behavioral needs of students with disabilities. The CRDC data collection component is a very strong effort by ED to obtain and report information and address the possible inappropriate use of restraint and seclusion in our nation’s schools. For mechanical restraint, physical restraint, and seclusion, ED currently collects K-12: counts of non-IDEA students disaggregated by demographic groups; counts of IDEA students disaggregated by demographic groups; and instances by demographic groups. Expanding the CRDC to collect preschool restraint and seclusion data would greatly increase the scope and burden of the CRDC. ED believes that the existing CRDC K-12 restraint and seclusion data elements strike a fair balance between serving OCR’s mission and limiting the CRDC’s burden on LEAs. Tracking K-12 students with the disaggregation indicated will allow OCR, investigators, school officials, and others to take note of restraint and seclusion (including K-12 and preschool) situations that merit further investigation or inquiry. For these reasons, ED has decided not to collect the additional data requested at this time.

Changes: None.

Advanced Placement – Other AP Subjects and Exam Participation

Public Comments

Twenty-eight commenters commented on ED’s proposal to retire the collection of the counts of students enrolled in AP subjects (other than math, science, and computer science) as well as the number of students who were enrolled in AP courses and who took the corresponding exams, and who did not take any of the corresponding exams. One commenter supported ED’s proposed removal of the specified AP data elements for multiple reasons. The commenter said that LEAs administer AP tests for the College Board without receiving compensation. Specifically, the commenter stated the following, “We send (pay for) administrators to get trained to coordinate the effort, send and pay for training for teachers to administer the courses and exams, and use our time in chasing down students to pay for the exams. This consumes much administrative effort, time, and dollars for the College Board's "for-profit" non-profit business...If the federal government wishes to get this information to monitor equity, then the College Board should provide it. They have this information and the resources to provide it much more cost-effectively than school districts.”

Fifteen commenters opposed the proposed changes because prior releases of disaggregated AP data exposed a disparity in access to AP programming. Six commenters argued that access to AP programs is especially important for students of color and/or low-income individuals. Two commenters expressly tied this data collection to OCR’s enforcement of Title VI.

Eight commenters argued that the AP data are important for tracking college or career readiness. Two commenters added that these data reveal whether students have access to rigorous and well-rounded coursework. Seven commenters argued that the data on AP exams are important, citing performance expectations or evidence that taking the AP tests correlates with educational benefits even for those who do not score a passing grade. One commenter argued that the removal of the AP data would make it impossible to discern whether the rigorous classes resulted in learning.

Four commenters tied this data collection to state reporting requirements, implying that ED must continue the collection under the Elementary and Secondary Education Act. One commenter asserted that the data surrounding AP access are sparse, and therefore argued that the CRDC results in this area are exceedingly valuable. Another two commenters argued the elimination of these data would send the message to LEAs that access to AP classes is not a priority.

ED’s Response

Discussion: ED proposes retiring a variety of data elements that impose an unnecessary burden on LEAs while providing little utility to OCR’s core mission of upholding students’ civil rights. ED has determined that the burden imposed by the CRDC must be weighed against the benefit to ensuring compliance with the civil rights laws OCR is empowered to enforce. OCR carefully considered the data elements proposed for removal and determined that they imposed an excessive burden on LEAs compared to the utility in furthering OCR’s enforcement of civil

rights. Indeed, this is consistent with the comments from 25 commenters which expressed support for reducing the overall reporting burden on LEAs.

While ED appreciates the commenters’ strong support for the continued collection of data on these elements, OCR has determined that a few of the CRDC items related to AP courses and exams may be removed to reduce the burden on LEAs without impacting OCR’s ability to enforce the civil rights laws within its jurisdiction.

In smaller LEAs, administrators serve in multiple roles, including being responsible for the collection of this data. ED understands that continuing to collect these data elements would only further add to the administrative costs, both financial and in personnel, that small LEAs must bear. ED also recognizes that the College Board, the entity that owns this AP data, has the capability of sorting, collating, and disseminating a variety of public files, if it so desired, on all of these issues. In fact, in its public submission to this data collection, the College Board agreed with ED and other commenters that AP data are important for tracking college or career readiness. ED encourages the College Board to consider providing that data to the public, at no cost.

As one commenter mentioned, it is true that the Elementary and Secondary Education Act (ESEA), as amended in 2015 by the Every Student Succeeds Act (ESSA), requires SEAs and LEAs that receive Title I funds to include in their state and local report cards certain CRDC data. That does not mean, however, that ESEA requires certain data elements in the CRDC.

ED will continue to collect a variety of crucial data on college and career readiness regarding AP courses, including: the number of AP courses provided; whether students are allowed to self-select for participation in AP courses; number of students enrolled in at least one AP course (disaggregated by race, sex, disability status, and EL status); and number of students enrolled in at least one AP course in math, science, or computer science (disaggregated by race, sex, disability status, and EL status). In this regard, please NOTE: ED is proposing to add Section 504-only disability data to current disaggregated elements concerning the number of students enrolled in at least one AP course. ED agrees with commenters that such information provides important information regarding access of students with disabilities to courses that support the transition to postsecondary education and career readiness.

ED believes these data elements are sufficient to support OCR’s mission and overall civil rights enforcement, to ascertain disparities in access where present, and work towards their eradication when they result of civil rights violations.

Changes: None.

Advanced Placement and International Baccalaureate – Section 504-Only Students

Public Comments

Thirteen commenters provided comments on ED’s proposal to collect data on Section 504-only students in AP courses and the (IB Diploma Programme (“AP/IB programs”), in its response to ED’s directed questions on its proposal (see *Attachment A-5: Directed Questions* document). The majority of commenters support the collection of data for Section 504-only students in AP/IB programs. Two commenters said that this data collection would likely impose a minimal

burden. Four commenters supported the 504-only AP/IB program data collection with no reasoning or objection. Four commenters said that any additional data collection was advantageous, and one of these commenters added that 504-only AP/IB data could aid in OCR’s enforcement efforts. One commenter stated that this data was already collected by the LEA, but it was not easily reported due to software issues.

One commenter objected to the proposed change and said that the AP/IB sections of the CRDC posed the largest burden to answer.

ED’s Response

Discussion: ED has proposed expanding two data elements for the 2020–21 CRDC to collect data to better understand access for students served under Section 504-only. Specifically, ED proposes to introduce the collection, by sex and students served under Section 504-only data for counts of students enrolled in: (a) one or more AP courses, and (b) an IB Diploma Programme. ED already collects counts of: sex and race/ethnicity; sex and English learner (EL) status; and sex and Individuals with Disabilities Education Act (IDEA) student status. This expansion would shed light on access to these courses and programs for Section 504-only students.

Over the past three collections of CRDC data, ED has seen an increase in the number and percentage of students with disabilities served under Section 504 of the Rehabilitation Act of 1973. In the 2015–16 CRDC, about 1.1 million students were served under Section 504. Given the increase of students served under Section 504, and ED’s interest in ensuring equal educational opportunity for all students, ED believes it important to collect more data on students served under this section. Numerous commenters implied that this addition would not pose too great a burden.

Consistent with the policies and principles underlying the President’s Executive Orders 13771 and 13777, ED will deregulate where possible so that the LEA may use their limited education funds directly for the education of students and the LEAs may experience less burden and improve the quality of the data submitted to the CRDC. ED has determined that the burden of collecting the proposed data on Section 504-only students in AP courses and the IB Diploma Programme will be minimal. Moreover, this data will aid in the enforcement of the civil rights laws within OCR’s jurisdiction.

After careful consideration, ED has decided to continue to propose the expansion of two data elements related to Section 504-only students in AP courses and the IB Diploma Programme.

Changes: None.

Credit Recovery Program

Public Comments

Twelve commenters provided feedback on ED’s proposal to no longer collect data on the number of student participants in a credit recovery program. All 12 commenters did not support the proposal to eliminate the collection of data on the count of student participants in a credit recovery program. Two commenters said the program was important, particularly for those with disabilities who tend to lose instructional time due to co-occurring health and other challenges. One of these commenters also said that the program provides flexibility for students with

disabilities to work on their classes over the summer, after school, weekends, or at home. One commenter observed that there are differences in the schools that offer credit recovery as well as the quality of the credit recovery programs. Another commenter asserted that approximately 7,000 students drop out (or are pushed out) of high school and that most do not return to complete their credits; therefore, removing the credit recovery data from the CRDC would limit the information about the experiences of this group and miss the opportunity to reinforce the responsibility of LEAs to ensure the success of all students. One commenter claimed that while the quality of credit recovery programs varies widely across the country, knowing about the number of students enrolled is necessary to improve those programs and ascertain how many students seek to obtain credit towards finishing high school if they have not completed the degree in a traditional way. The same commenter stated that eliminating this data element would harm data analysis regarding efforts to: improve high school graduation rates; and help non-high school students receive the credits they need to graduate. One commenter mentioned that student attrition is a serious problem, especially for students of color, and requested that ED maintain the collection of credit recovery program data because the data can inform policies that help students stay in school and graduate. Another commenter said that the data would assist policymakers and researchers to examine issues such as disparities in education, education quality, and services provided to youth in juvenile justice facilities. A different commenter pointed out that the credit recovery program data element is the only item in the CRDC data collection that assesses how LEAs are creating opportunities for young people who are disconnected from school to stay engaged or to reengage in order to earn a regular high school diploma.

ED's Response

Discussion: ED proposes retiring the collection of the number of students participating in a credit recovery program to alleviate the administrative burden associated with this reporting requirement on LEA respondents.

ED understands that credit recovery is an important tool for students across the country. For students with disabilities, credit recovery provides flexibility, allowing students and parents to manage their educational and medical needs. The quality of credit recovery programs varies, but commenters claim that these programs are a useful tool in combatting student attrition. The data on credit recovery programs is sparse, but ED agrees they are a positive tool for students engaged with the juvenile justice system, or otherwise at risk of not meeting their credit requirements.

ED does not believe that removing this data collection from the 2020–21 CRDC will have a negative impact on educational outcomes or discourage schools from creating or continuing credit recovery programs. Removing this data element will not reduce the number or quality of such programs.

Consistent with the policies and principles underlying the President's Executive Orders 13771 and 13777, ED will deregulate where possible so that limited education funds may be directed to more effectively advance the education of students and LEAs may experience less burden and improve the quality of the data submitted to the CRDC. ED weighs whether an element's removal improves efficiency in data collection; whether an element is necessary to inform

current civil rights enforcement; whether an element represents a pressing civil rights concern; and whether the data can be obtained from other sources. ED has determined that the burden of continuing the collection of credit recovery program data outweighs the benefit to ED’s ongoing civil rights compliance efforts.

Accordingly, ED continues to propose retirement of the data collection on credit recovery program participants.

Changes: None.

Student Chronic Absenteeism

Public Comments

One commenter asked ED to collect student chronic absenteeism data via the CRDC. The commenter noted that student chronic absenteeism is a “strong proxy measure for student health and wellness.” To strengthen the measure, the commenter urged ED to collect disaggregated grade-level data for students who experience chronic absenteeism because without grade-level breakouts, school districts could miss the early age at which chronic absenteeism starts, which slows development of key academic and social skills needed for success.

ED’s Response

Discussion: ED appreciates the commenter’s support for the student chronic absenteeism data element. However, beginning with the 2017–18 CRDC, ED discontinued the collection of data on student chronic absenteeism in the CRDC in an effort to not cause LEAs undue burden of collecting and reporting student chronic absenteeism data. Beginning with the 2016–17 school year, ED introduced the collection of student chronic absenteeism data via the *EDFacts* Submission System (ESS) and removed it from the CRDC. Beginning with the 2017–18 school year, ED began to rely on the student chronic absenteeism data collected through ESS only for determining whether in the aggregate there are disparities in student absenteeism among protected classes. For specific information about ESS, please go to <https://www2.ed.gov/about/inits/ed/edfacts/index.html>.

In addition, although ED appreciates the commenter’s recommendation to collect student chronic absenteeism data in the CRDC, disaggregated by grade-level, the proposed grade-level disaggregation would significantly increase the burden of the data collection, and would not substantially further the core civil rights mission of the collection. ED does not believe additional data collection on chronic absenteeism is necessary to enforce the civil rights laws within OCR’s jurisdiction. Therefore, ED does not propose adding a data collection element on student chronic absenteeism in the CRDC.

Changes: None.

SCHOOL STAFF

Teachers and School Staff

Public Comments

Fifty-one commenters provided feedback in response to ED’s directed questions on its proposal to retire data collected on staff in terms of years of teaching experience and absenteeism (see *Attachment A-5: Directed Questions* document). One commenter encouraged ED to retire the collection of data on teachers and school staff entirely, asserting that OCR lacks the authority to collect this information. Forty-four commenters asked ED to continue collecting data on teachers in their first- and second-year, arguing that past CRDC data were helpful in revealing that minority students often have less experienced teachers. Commenters noted the data: provide important information on where novice teachers are concentrated; highlight inequities in the quality of teaching; and inform whether schools with more students of color, English learners, and students with disabilities have more first year teachers. One commenter asserted that “to eliminate the collection of this data is to ignore that our nation’s most underserved students are often exposed to teachers who lack the needed experience to improve student outcomes. Therefore, it is critical that ED maintain this portion of the data collection.”

Thirty-three commenters asked ED to continue collecting data on absentee teachers, citing difficulties in tracking absentee teachers and their impact on student achievement and educational equity without the CRDC data collection. Commenters noted that this data help inform advocates to partner with LEAs to address absenteeism. Some commenters had suggestions for absenteeism reporting. One commenter suggested not requiring jury duty to be reported as an absence since most teachers are not able to change their jury duty to the summer. Another commenter encouraged ED to begin to collect data on teacher’s race/ethnicity, while another commenter urged the new collection of data on teacher’s race/ethnicity and sex. Both commenters asserted that student outcomes are positively affected by diverse teaching staff.

ED’s Response

Discussion: ED collects a great deal of teacher information in the CRDC. Even after the retirement of certain teacher data elements from the CRDC, ED will still collect, among other data elements, full-time equivalency counts of: (1) total teachers, (2) certified teachers, and (3) non-certified teachers. ED considers the continued collection of these elements sufficient to inform OCR’s enforcement of civil rights laws and for other appropriate purposes.

ED continues to propose to retire the collection of data related to staff teaching experience and absenteeism. In addition, ED now proposes to retire from the CRDC two data elements that collect the following elements: count of teachers who were employed at the school during the regular school year; and count of teachers who were employed at the school for both the previous school year and the current school year. Overall, the data elements proposed for retirement are not central to the enforcement of the civil rights laws OCR enforces and other purposes for which OCR collects data (as mentioned above), and their retirement will reduce the overall burden the CRDC imposes on LEA respondents.

Consistent with the policies and principles underlying the President’s Executive Orders 13771 and 13777, ED will deregulate where possible so that limited education funds may be directed to more effectively advance the education of students and LEAs may experience less burden and improve the quality of the data submitted to the CRDC. ED understands that teacher experience and attendance are often important components in effective teaching and that collecting these data and additional disaggregated data on school staff to gauge diversity might additionally provide useful information for the commenters seeking more data. However, OCR has weighed the benefits and burdens and has concluded that it should proceed as it originally proposed.

Changes: ED proposes to retire the collection of count of teachers who were employed at the school during the regular school year; and count of teachers who were employed at the school for both the previous school year and the current school year [Data Group 1003; Data Category: Teacher (Year Employed)].

SCHOOL FINANCE

School Finance

Public Comments

Forty-three commenters provided feedback on ED’s proposal to eliminate the collection of all school finance data, such as FTEs and salaries of preschool through grade 12 personnel at the school-level, funded with federal, state, and/or local funds, in response to expressed concern from LEAs with the level of difficulty in reporting this data and data quality concerns. Three commenters supported ED’s proposal. Stakeholders previously have told OCR that school finance information such as this is very difficult to collect and consequently very difficult to report accurately. OCR understands from these communications that these are some of the most burdensome data elements to collect. Consistent with OCR’s prior understanding, two commenters noted that school finance data were the most difficult to report accurately and so the elimination of these data elements would significantly reduce reporting burden, while another commenter noted that the CRDC financial questions have proven to be the least reliable, most burdensome, and most distorting of the three existing federal efforts (i.e., CRDC; School Level Finance Survey; ESSA financial transparency requirement) to collect school financial data.

Thirty-eight commenters opposed ED’s proposal, and 2 focused on the reporting aspects. Of the 38 opposed to the removal, 26 commenters mentioned that the current CRDC school finance data are critical to identifying and measuring inequities and ensuring equitable funding among schools. Nine further pointed out that low-income students, students of color, or students with disabilities are those being harmed by funding inequity. Eight commenters cited a recent report which found that predominantly white school districts have access to \$23 billion more in state and local funding compared to majority non-white districts. Eleven commenters noted that research shows that school spending has been shown to positively affect student outcomes and that more funding for schools leads to better outcomes, especially if spent well and in schools serving students with the highest needs.

Ten commenters pointed out that the CRDC is the only data source that shows school level expenditures across the country and allows families, researchers, and policymakers to analyze school spending from one district to the next. Finally, 10 commenters mentioned that the ESSA collection lacks the detail of the CRDC collection, which does not allow for data to be easily compared.

ED’s Response

Discussion: ED proposes retiring the collection of all data related to school finance in response to burden and data quality concerns and lack of utility in enforcing civil rights laws. LEAs reporting the school finance data collection have explained in their comments that these data are among the most burdensome and least reliable data reported as part of the CRDC.

OCR is tasked with the enforcement of federal civil rights laws within its jurisdiction, and the school finance data has rarely been relied upon to aid in that enforcement. As mentioned, LEAs have reported that school finance items are difficult to understand; the requested data are not currently collected by LEAs in the fashion requested; the data are not easily available or

calculable; and the data are time-consuming to collect. Based on OCR’s quality analysis of the school finance data, OCR has concerns about the data’s utility to OCR’s ongoing efforts to enforce federal civil rights laws.

OCR recognizes that various groups (e.g., LEAs, associations, academic/think tanks) indicate that they have looked to the CRDC school finance data to analyze “equitable funding” among K-12 schools. Many states collect school finance data and some states may have a legal obligation to ensure equitable funding among K-12 schools. Presumably, the states have data on this particular issue and, therefore, that is an effective place to access school finance data. Interested groups may wish to direct their data requests to state agencies of interest.

Consistent with the policies and principles underlying the President’s Executive Orders 13771 and 13777, ED will deregulate where possible so that limited education funds may be directed to more effectively advance the education of students and LEAs may experience less burden and improve the quality of the data submitted to the CRDC. ED has determined that the burden of continuing the collection of school finance data outweighs the benefit to ED’s ongoing civil rights compliance efforts.

For these reasons, OCR continues to propose to retire all school finance items.

Changes: None.

GENDER IDENTITY AND SEX

Gender Identity and Sex

Public Comments

ED did not have any specific proposals or directed questions on this topic. Five commenters asked ED to address their concerns with respect to gender, gender identity, and sex. One commenter recommended that ED begin using the data category of gender rather than sex. The commenter claimed that the existing definition of sex, which describes individuals by biological traits is outdated, confusing, and fails to accurately capture gender data particularly for non-binary students. That commenter also requested that ED add a category of non-binary in addition to male and female. One commenter requested that ED include a question in the CRDC asking LEAs to provide information on whether their policies include protections for gender identity, gender expression, and sexual orientation. One commenter asked ED to disaggregate data by gender identity (actual or perceived), gender expression, and nonconformity to gender stereotypes when collecting data on sexual harassment. Another commenter requested that ED expand gender categories beyond male and female wherever data are disaggregated by sex. One commenter wanted ED to modify its data collection to collect data on sex and gender identification, asserting that LEAs already collect this data.

ED’s Response

Discussion: ED acknowledges the commenters’ suggestions to include gender identity in its definition of sex, and to collect additional disaggregated data by gender identity, gender expression, and sexual orientation.

It is critical to provide a definition of “sex” for the CRDC to ensure valid and comparable data are submitted by more than 17,000 school districts. Thus, states and districts should report data consistent with the current definition. (Please see ED’s Response for “Harassment or Bullying on the Basis of Sex” for specific definition.) Further, Title IX prohibits discrimination on the basis of sex, so OCR must continue collecting data based on the disaggregation category of sex, rather than gender identity. Finally, ED notes that under Title IX, schools currently must respond to harassment on the basis of sex stereotyping.

Changes: None.

PUBLIC REPORTING OF DATA COLLECTION

Linking Data

Public Comments

Three commenters raised an issue about linking of CRDC data to other data sources. Two commenters encouraged ED to link CRDC data with other federally collected data. In addition, two commenters recommended that ED clarify how other data, such as NCES data, are integrated into the CRDC.

ED's Response

Discussion: ED appreciates the comments. ED is always looking for ways to incorporate CRDC data with other collections to minimize burden on LEA respondents. OCR has worked in a variety of ways to reduce burden where possible and enable the public to coordinate some of these data on their own.

NCES is a federal entity that collects and analyzes data related to education in the U.S. and other nations. To coordinate the definitions used and identify possible duplication of data elements, OCR has met with key staff throughout ED and in 2013 convened a two-day technical working group, including participants from NCES, the Office of Planning, Evaluation and Policy Development, the Office of English Language Acquisition, the Office of Special Education Programs, and the Correctional Re-Entry Group, to review the proposed 2013–14 CRDC and 2015–16 CRDC collections. This cross-program office coordination provided an opportunity for experts in content areas and survey design to raise potential areas of overlap.

OCR similarly coordinated with other program offices within ED for the 2017–18 CRDC and in preparation for the 2020–21 CRDC. OCR also participated in a technical review panel meeting with field experts to discuss the content of NCES' School Survey on Crime and Safety, and the NCES survey's relationship to the CRDC, and to explore ways to improve both surveys and reduce burden and eliminate duplication.

Some data submitted by SEAs through the *EDFacts* Submission System (ESS) are merged into the CRDC dataset to provide more complete and robust data for civil rights purposes, with no additional burden on SEAs or LEAs. All data submitted by SEAs through ESS are available at <https://www2.ed.gov/about/inits/ed/edfacts/index.html>. The following data groups are currently collected through ESS only, and merged into the CRDC data set after the collection is complete: children with disabilities (IDEA) school age (Data Group 74); student chronic absenteeism (Data Group 814); student high school graduates/completers (Data Group 306); and Title I (of ESSA) school status (Data Group 22). Because these ESS data have LEA- and school-level identification numbers (ID) that are consistent with those used for the CRDC data, these ESS data can be integrated into the CRDC data set. Other ESS data also have ID numbers that match those used for the CRDC data. Therefore, data users may integrate additional ESS data into their personal CRDC data set, if they are inclined to do so.

Changes: None.

Puerto Rico Data Availability

Public Comments

Five commenters urged ED to make data collected from Puerto Rico publicly available. One commenter suggested that the collection of civil rights data will only support enforcement if the data are made public.

ED’s Response

Discussion: As further discussed below, ED collects data from Puerto Rico, will continue to do so, and will make that data publicly available. Congress required in the Elementary and Secondary Education Act (ESEA) of 1965, as amended in 2015 by the Every Student Succeeds Act (ESSA), that school districts and states use data reported to OCR in the CRDC to populate their publicly available state and local report cards. In light of Section 1111(h)(1)(C)(viii) of ESEA, as amended by ESSA, ED assists states and LEAs that receive Title I funds to ensure certain information reported through the CRDC constitutes a subset of data to be included on report cards at the state-, LEA-, and school-level. Specifically, ESSA requires that state and local report cards include CRDC information on measures of school quality, climate, and safety (i.e., in-school suspensions; out-of-school suspensions; expulsions; school-related arrests; referrals to law enforcement; chronic absenteeism, including both excused and unexcused absences; and incidents of violence, including bullying and harassment). While ESSA generally defines “state” to include “the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas,” 20 U.S.C. 7801(48), it more narrowly defines “state” for purposes of Title I of ESSA to only cover “the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico,” 20 U.S.C. 6332(e). Consistent with recent changes to ESEA by ESSA, ED will continue to collect data from Puerto Rico as it has since the 2017–18 CRDC. The 2020–21 CRDC will include the Puerto Rico in the universe of school districts. ED anticipates Puerto Rico’s inclusion in all future CRDCs.

All of the commenters recommended that OCR make the data collected from Puerto Rico publicly available. ED agrees with the commenters’ recommendations. ED has a longstanding commitment to transparency and recognizes the importance of making the CRDC data available to the public. ED is also committed to ensuring that the CRDC data are made available to the public consistent with ED’s privacy policies. OCR will make the data submitted from Puerto Rico publicly available, along with all of the required data submitted from the other public school districts, with the appropriate privacy protections. ED presently makes CRDC results available on its CRDC reporting website (<https://ocrdata.ed.gov>), with privacy protections in place.

Changes: None.

RETIRING DATA

Retiring Data

Public Comments

Seventy-six commenters oppose retiring any data elements at all from the CRDC. Some of these commenters noted that CRDC data are “vital” to ensuring students are receiving appropriate and equitable education and services. One commenter noted 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.” One commenter noted that the data collected in the CRDC is used by its members “to analyze to understand disparities in education, highlight opportunities to address gaps in educational access, and help improve outcomes for all students.” Many more noted that CRDC is the largest source of publicly available nationwide civil rights education data and it is used to analyze student equity and opportunity in education. Commenters noted the CRDC is critically important to evaluating outcomes, determining appropriate allocation of resources, determining best practices, and ensuring progress toward equitable education systems across the nation because the CRDC contains data from nearly every school, state, and LEA, providing the ability to compare data on a national scale.

After noting the importance of CRDC data collections, commenters expressed concerns that taking data out of CRDC would make it more difficult to detect civil rights violations and build equitable schools; undermine the CRDC’s and OCR’s mission; reduce the information available on state and district report cards under ESSA; adversely affect transparency; impede the work of public advocacy groups, policy makers, educators, and families that rely on the data to address educational inequities; hinder efforts to remedy educational inequities and improve schools; and mask the challenges students face in accessing a high-quality education.

ED’s Response

Discussion: ED thanks reviewers for their interest and support of the CRDC and OCR’s mission to enforce federal civil rights laws. ED is required to weigh the burden imposed by the CRDC against the benefit to ensuring compliance with the civil rights laws which OCR is empowered to enforce. Accordingly, ED has proposed to discontinue various data elements from the CRDC. Twenty-five commenters expressed strong support for reducing the reporting burden on LEAs. Of course, all data has some utility and many people would like the LEAs to collect and report more and more data. OCR not only has a duty to collect data to assist in its enforcement activities, but it also has a duty to alleviate the burden the CRDC places on the LEAs as much as possible. This requires a careful burden-benefit analysis of collecting data. Further, consistent with the policies and principles underlying the President’s Executive Orders 13771 and 13777, ED will deregulate where possible so that the LEA may use their limited education funds directly for the education of students and the LEAs may experience less burden and improve the quality of the data submitted to the CRDC. Consequently, ED proposes retiring a variety of data collections that impose a significant burden on LEAs while providing little utility to OCR’s core mission of upholding students’ civil rights. The elements proposed for removal were carefully considered and determined to impose too great a burden on LEAs while providing too little

utility in furthering OCR’s enforcement of civil rights. Without this data, OCR will still be able to effectively protect student’s civil rights, especially for EL, IDEA eligible, and Section 504-only students.

After careful consideration, ED has decided to continue the proposed retirement of the following:

- whether LEAs have a web link to a written policy or policies prohibiting discriminatory harassment or bullying of students;
- whether LEA’s early childhood program(s) serve non-IDEA children age birth to 2 years (LEA);
- whether preschool is provided to: all students, students with disabilities (IDEA), students in Title I schools, students from low income families (LEA);
- whether preschool serves non-IDEA students age 3 years; age 4 years; age 5 years (LEA);
- preschool length offered (full-day, part-day) and cost (free, partial/full charge) (LEA);
- kindergarten length offered (full-day, part-day) and cost (free, partial/full charge) (LEA);
- the number of EL students in English language instruction educational programs, disaggregated by sex and IDEA student status;
- the number of students enrolled in AP subjects other than mathematics, science, and computer science;
- the number of students who participated in AP exams;
- the number of students who did not participate in AP exams;
- the number of students who participate in a credit recovery program;
- the full-time equivalency (FTE) number of teachers in their first year of teaching;
- the FTE number of teachers in their second year of teaching;
- the FTE number of teachers absent more than 10 school days; and
- all data elements involving school finance.

In addition, ED now proposes to retire some additional data elements. Those data elements include the following:

- Whether the school’s preschool program serves non-IDEA students age 3 years; age 4 years; age 5 years;
- Number of teachers who were employed at the school during the current school year;
- Number of teachers who were employed at the school for both the previous school year and the current school year;
- Number of documented incidents that occurred at the school of: Robbery with a firearm or explosive device; physical attack or fight with a firearm or explosive device; and threat of physical attack with a firearm or explosive device.

Finally, based on the comments received, ED proposes the continued collection of preschool enrollment data by demographic subgroups, and the expansion of the documented incidents of offenses committed by a school staff member data element to include sexual assault, and not just rape or attempted rape. ED now believes that the additional burden of reporting these data is outweighed by the potential utility of the data in assisting OCR’s mission to identify, address, and eliminate any prohibited discriminatory conduct in the provision of school education.

Changes: ED proposes to retire the collection of data on: whether a school’s preschool program serves non-IDEA children of a specific age range (Data Group 953); the number of teachers employed at the school during the current school year, and the number of teachers who were employed at the school for both the previous school year and the current school year [Data Group 1003; Data Category: Teacher (Year Employed)]; and the number of documented incidents of robbery with a firearm or explosive device; the number of documented incidents of physical attack or fight with a firearm or explosive device, and the number of documented incidents of threat of physical attack with a firearm or explosive device (Data Group 952; Data Category: Offense Type). In addition, ED proposes to continue to collect preschool enrollment data disaggregated by race, sex, disability-IDEA, and EL status (Data Group 956); and expand its collection of documented incidents of offenses committed by school staff members from only rape or attempted rape, to also include sexual assault (Data Group 1025).