



February 10, 2022

Ms. Stephanie Valentine
Office of Planning, Evaluation and Policy Development
U.S. Department of Education

RE: Mandatory Civil Rights Data Collection-Docket No.: ED-2021-SCC-0158

Dear Ms. Valentine:

The National Disability Rights Network (NDRN) appreciates the opportunity to submit comments regarding proposed changes to the 2021–22 Mandatory Civil Rights Data Collection (CRDC). NDRN is the national membership association for the Protection and Advocacy (P&A) agencies, the nationwide network of congressionally-mandated agencies that advocate on behalf of persons with disabilities in every state, the District of Columbia, Puerto Rico, U.S. territories (American Samoa, Guam, U.S. Virgin Islands, and the Northern Mariana Islands), and there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest.

NDRN and the P&A network promote a society where people with disabilities exercise informed choice and self-determination. For over forty years, the P&A network has worked to protect the human and civil rights of individuals with disabilities of any age and in any setting, a central focus of this work has been ensuring that students with disabilities are able to receive quality educational services. Collectively, the P&A agencies are the largest provider of legally based advocacy services for persons with disabilities in the United States.

As a preliminary matter, NDRN supports the efforts of the Department of Education's (ED) Office of Civil Rights (OCR) to use the CRDC to gather critical data on the education of students in the United States which can assist in the efforts to ensure compliance with our civil rights laws prohibiting discrimination. While we are focusing our comments on proposals regarding the restraint and seclusion of students, we do have some preliminary comments.

OCR should move the CRDC from a biennial to an annual collection to make the CRDC an even more effective tool for monitoring student civil rights

As noted in the comments on the proposed changes to the CRDC by the National Center for Youth Law (NCYL):

The proposed 2021-22 data collection breaks with the CRDC tradition of biennial data collection so that for the first time in the history of the instrument, the public will have access to CRDC data for three consecutive academic years: 2020-21, 2021-22, and 2022-23. This is a very welcome change that should continue with future CRDCs. The COVID-19 emergency simply emphasized a long pre-existing need for access to accurate, universal, and current data on the experiences of children in public schools. Annual data collection allows for true tracking of trends in student civil rights. The CRDC should not revert to a biennial collection after the 2022-23 data collection but should continue as an annual collection. In addition, OCR should seek to shorten the time from data collection to release so that the CRDC can inform decision-making in a timely manner both on the ground in schools and district level, but also at the level of state and federal policy.

Disaggregate by both IDEA and 504-only status for any item that is disaggregated by disability status

Although all students with disabilities are protected from discrimination under Section 504, the majority of students with disabilities in our nation's schools are identified under the IDEA. Yet, there is an additional group of students with disabilities who are only covered by Section 504. The CRDC should disaggregate separately those students who are receiving supports and accommodations through IDEA from those students who are receiving supports and accommodations exclusively through Section 504. CRDC is the only source of available information about the educational experiences and outcomes of these students. For each of the CRDC data elements that are disaggregated by disability status, disability status should be further differentiated by "disability-IDEA" and "disability-Section 504 only" so the public can better understand how the experiences of students with disabilities differ based on this factor. We commend OCR for proposing to disaggregate by "disability-Section 504 only" in several relevant items included in the CRDC. But we urge OCR to include this proposed disaggregation for all sections disaggregated by disability.

Directed Question 4: Data on Chemical Restraints.

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

We support the collection of data on the use of chemical or irritant restraints but make the following request.

Add a separate data collection for the use of chemical restraints, using the definition from the Keeping All Students Safe Act, H.R.3474 (117th Congress) (KASSA). The definition of chemical restraints, which focuses on the use of drugs and medication, is sufficiently different from the use of chemical and other irritants to warrant a separate data collection element.

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

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

Gather separate data, as proposed, on the use of irritant restraints such as pepper spray, tear gas, or other chemical or irritant restraints used on students. As noted by NCYL in their comments:

Accurate data reporting is needed to understand the full scope of this practice and its implications for the civil rights of low-income students and students of color. Student organizers in Clark County, Nevada recently filed a Freedom of Information Act request that revealed nearly 180 pepper spray incidents between 2012 and 2020 involving students of all ages, including elementary students.¹ The two Clark County schools with the most pepper spray incidents had student populations of over 90% students of color.²

For both data elements, gather data for any staff employed by or assigned to a school, as well as law enforcement officers, using the definition of law enforcement officers from KASSA.

LAW ENFORCEMENT OFFICER.—The term “law enforcement officer”— (A) means any person who— (i) is a State, Tribal, or local law enforcement officer (as defined in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10284); and (ii) is assigned by the employing law

¹ Kate Hamaji & Kate Terenzi, *Arrested Learning: A Survey of Youth Experiences of Police and Security at School*, CTR. POPULAR DEMOCRACY (Apr. 2021) at 17.

² *Id.*

enforcement agency to a program, who is contracting with a program, or who is employed by a program; and (B) includes an individual referred to as a “school resource officer” if that individual meets the definition in subparagraph (A).

A broad definition of law enforcement officer is critical because school districts employ or otherwise engage a wide range of law enforcement officers and this definition has been thoroughly vetted. To obtain a complete data picture of the use of chemical restraints and irritant restraints this data element should also include such uses by all school staff, not just law enforcement officers.

Restraint and Seclusion Related Comments

NDRN supports the proposed amendments to the definitions of mechanical restraint, physical restraint and seclusion as proposed. The Government Accountability Office (GAO) recommended that OCR revise these definitions and we believe the proposed revisions will help clarify situations which should be reported in each of these categories.

Specifically, NDRN supports the amendment to the definition of mechanical restraint to include use of handcuffs or other similar devices by law enforcement officers but requests that the definition used in KASSA, referred to above, be applied. Additionally, NDRN supports the proposed amendment to the definition of physical restraint of adding the phrase “Physical escorting that involves methods utilized to maintain control of a student should be considered a physical restraint.” Finally, NDRN supports the proposed definition of seclusion through adding the phrase “Students who believe or are told by a school staff member that they are not able to leave a room or area, should be considered secluded.”

Include students with disabilities placed by school districts in non-public schools who were subjected to mechanical restraint, physical restraint, chemical restraint, irritant restraint, or seclusion.

NDRN’s members have long reported that a large percentage of restraints and seclusion occur for students with disabilities who have been placed in non-public schools by their school district under the IDEA. Abuses of restraint and seclusion in non-public schools is not unknown to OCR. For example, in *Letter of Finding, Oakland (CA) Unified School District*, No. 09-14-1465 (OCR June 24, 2016), OCR found the Oakland Unified School District discriminated against a student when it placed the student in a non-public school and the school repeatedly restrained the student over an 11-month period. Similarly, in *Prince William (VA) County Schools Letter of Finding*,

OCR Complaint No. 11-13-1058 (OCR July 29, 2014), OCR determined that a program for students with serious emotional and behavioral problems did not provide a free appropriate public education (FAPE) to students through its frequent use of restraint, seclusion, and placement in a time out area.

According to data reported to ED as required by IDEA Section 618, 3% of students served under IDEA are educated in separate schools (not parentally placed). Nevertheless, OCR is not collecting data on restraint and seclusion of students with disabilities placed in these schools. This is a significant oversight. Data on the use of restraint and seclusion with these students is critical to get a full picture of the incidences of restraint and seclusion in our nation's schools. Given this, OCR needs to expand its data collection to cover these children.

Thank you for the opportunity to comment on the proposed regulations. If you have any questions, please contact Ron Hager ron.hager@ndrn.org or Cyrus Huncharek cyrus.huncharek@ndrn.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis L. Decker", written in a cursive style.

Curtis L. Decker
Executive Director
National Disability Rights Network