



February 11, 2022

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Office of the Chief Data Officer  
Office of Policy, Evaluation and Policy Development  
U.S. Department of Education  
400 Maryland Avenue SW, Lyndon Baines Johnson Bldg., Room 6W201  
Washington, D.C. 20202-8240

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

***RE: IDRA's comments on Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection for Docket ID Number ED-2021-SCC-0158***

Dear Ms. Valentine,

IDRA is an independent non-profit organization dedicated to promoting educational justice and achieving equal educational opportunity for every child through strong public schools that prepare students to access and succeed in college. Our staff is a vanguard training, policy, community engagement, and research and evaluation team whose mission is to create equitable and excellent schools for all students. For nearly 50 years, IDRA has provided training, technical assistance, evaluation, and program development to school districts seeking to improve teaching quality and educational outcomes of students. IDRA has produced research and data analyses on the impact of policies related to school funding, English learners, school discipline, and preparation for and success in institutions of higher education.

Comprehensive and timely data collection, which includes and targets historically underrepresented and marginalized communities, serves as a cornerstone of effective civil rights enforcement and advocacy. Collection of these data ensures the Department, research organizations, and community advocates gain a complete and accurate understanding of our nation's diverse demographic groups and their complex educational experiences. The Department's collection and publication of these data is a critical tool used by families, civil rights organizations, and grassroots advocates to identify and raise awareness of issues in their communities, allowing them to hold schools and state leaders accountable for ensuring equitable educational outcomes.

Because we value our students and seek to promote equitable and excellent schools for them, we urge you to adopt the following recommendations regarding the Mandatory Civil Rights Data Collection (CRDC) administered by the U.S. Department of Education's Office for Civil Rights (OCR).

## **Recommendations for general reporting procedures and demographic data elements**

**Collect and report data on an annual basis.** A shift from a biennial to an annual data collection schedule, with timely publication and reporting, will provide a clearer snapshot of schools' education trends over time. Importantly, an annual collection and publication will provide more accurate information about the experiences of systemically-marginalized groups, such as students of color, LGBTQ+ students, emergent bilingual students (English learners). Advocacy organizations, families, policymakers, LEAs, SEAs, and federal agencies need regular, timely data to identify and address equity concerns as effectively as possible. The protection of students' civil rights depends on regularly measuring and understanding the impacts of policies, practices, and circumstances (like the COVID-19 pandemic) on their access to education. Annual reporting and publication will also help to mitigate the harms of poor data collection and publication practices in states and LEAs.

**Provide cross-tabulation of data by intersectional disaggregation, including by race, ethnicity, national origin, socioeconomic status, English learner (EL) status, native language, disability status and type, and gender.** The CRDC must expand data collection and publication showing intersectional categories to ensure all students benefit from equitable access to educational opportunities in schools. Separating and reporting data by multidimensional categories can reveal the unique experiences of students and broaden the scope for schools in providing tailored responses. Data reported by intersectional disaggregation can help inform equitable school policies and practices that cultivate student success.

**Add a “nonbinary” element to gender categories throughout the data collection.** We support the proposed change to add a “nonbinary” element to subsequent CRDC collections. Students who do not identify as the sexes “male” or “female” should have the option to identify as nonbinary when reporting information to their schools. And it is the duty of the Department, LEAs, and SEAs to ensure all students feel a sense of belonging in their campus communities and to affirmatively protect the civil rights of nonbinary students, including through enforcement of Title IX protections. These protections will be more effective if we can fully understand the experiences of nonbinary students in their schools. As the Department considers adding a nonbinary element, we urge you to consult with students, families, and other advocates to further refine conceptions and language, including to ensure “sex” and “gender” are used and defined accurately throughout Department materials.

## **Recommendations related to emergent bilingual (English learner) students**

**Retain data collection regarding the enrollment of emergent bilingual students (English learners) in English language instruction programs by gender and disability status.** More research and data collection are needed to develop effective instructional materials and teaching methods, avoid harmful outcomes like inappropriate placement and instruction, and identify strong programs for emergent bilingual students, including those who have disabilities. Collecting information about emergent bilingual students by gender and disability status will enable us to ensure schools are providing instruction to these students as required by law and help to address problems with over- and under-identification of children who need special education services.

**Retain and expand data collection about emergent bilingual students and school language programs in order to illustrate the need for increased funding and support.** Programs that serve emergent bilingual students are underfunded in states across the country.<sup>1</sup> Federal entities (like the Office of English

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<sup>1</sup> Sugarman, J. (2016). *Funding an Equitable Education for English Language Learners in the United States*. Migration Policy Institute. <https://www.migrationpolicy.org/research/funding-equitable-education-english-learners-united-states>

Language Acquisition) and federal funding programs need additional capacity and resources to ensure they are providing support to SEAs and LEAs to effectively serve the fast-growing population of emergent bilingual students. Many states not only underfund the programs they have, but also do not incentivize or require LEAs to adopt research-based bilingual education programs that help students to both learn English *and* sustain and develop their home language and culture. These states are failing to support their students and are stunting the development of the assets that multilingual students bring to their schools. We support the collection and expansion of data elements that enable us to better understand the educational experiences of emergent bilingual students from preschool through secondary school, including but not limited to their access to courses, how they are disciplined, graduation and attrition rates, the language programs to which they have access, and how their achievement during and after those programs is measured. These data will help us to build and advocate comprehensive research, policy, advocacy, and community engagement agendas with and in support of emergent bilingual students and their families.

### **Recommendations related to school discipline and policing**

**Expand the collection of data showing the use and impact of school-based law enforcement.** The presence of school-based law enforcement and discipline practices that rely on law enforcement or other security personnel to enforce campus rules are extremely harmful to the education and well-being of children. The use of police officers in schools is particularly harmful for Black students, other students of color, LGBTQ+ students, and students with disabilities who have disproportionate contact with police in their schools.<sup>2</sup> Relying on law enforcement means that schools are not protecting students' civil rights, cultivating restorative ecosystems by building trusting relationships, strengthening educators' capacity to deliver culturally-sustaining instruction, or providing resources that extend beyond students' academic performance to meet their physical, mental, and emotional needs. Specific and contextualized data about school policing can help to eliminate reliance on this harmful practice used in schools across the country.

Additionally, an expansion of this portion of the CRDC can help to address poor data collection practices many advocates struggle to navigate in their states and communities. Unfortunately, many SEAs and LEAs fail to collect accurate data about the use of law enforcement in schools, seek to charge exorbitant amounts of money in response to data requests, or claim that data are kept by local law enforcement agencies rather than the school districts where officers are placed.

To support the work of families, advocates, and the Department to protect students and ultimately eliminate the presence and use of law enforcement in schools, IDRA recommends the CRDC expand its school policing dataset to include disaggregated data related to:

- Referrals to law enforcement of preschool students,
- Types and usage of electronic surveillance that result in discipline or referrals to law enforcement,
- Use of force instances involving law enforcement,
- Referrals to law enforcement for behaviors that occur in virtual settings,
- Use of electroshock weapons (e.g., tasers) and chemical irritants (e.g., pepper spray) by law enforcement or other school personnel,
- Referrals to threat assessment teams that include law enforcement officers, and
- Incidents of law enforcement involvement in discipline matters that do not result in arrest, citations, or other legal system involvement.

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<sup>2</sup> Craven, M. (September 2021). Stop the Bad; Do the Good – Hurting and Excluding Students Feeds the School-to-prison pipeline. *IDRA Newsletter*. <https://idra.news/nlSept21a>

We also recommend the Department provide clear definitions that allow states to categorize the type of referral to law enforcement made in order to accurately gather specific data about the use of citations or complaints, arrests, referrals to juvenile probation, referrals to adult criminal court, or the involvement of law enforcement officers in routine discipline matters (which may occur because officers are stationed in schools, not because of a referral from a teacher, school staff, or other person).

**Expand the collection to account for additional forms of punitive and exclusionary discipline.** While schools across the country continue to use the harmful forms of discipline collected in the CRDC, including suspensions and expulsions, there are many forms of punitive discipline that are not currently reported. Students, families, and advocates witness the use of these discipline methods and recognize the significant impact on students' academic achievement, feelings of belonging in school, and well-being. We urge the Department to collect information on the use of the following in schools:

- Informal removals, or “shadow discipline,” that result in students being removed from their classrooms or sent home for an extended period but are not recorded as in-school or out-of-school suspensions,
- Electronic surveillance devices that allow schools to track student behaviors using technology or online platforms, and
- The use of threat assessment teams and the outcomes for students referred to them.

### **Recommendations related to COVID-19 data collection**

**Collect data related to instruction during the COVID-19 public health crisis, including the percentage of students receiving virtual/remote and in-person instruction and rate of attendance by virtual/remote and in-person modalities.** To better understand the extent to which students received effective instruction during the pandemic through virtual and in-person modalities on the basis of race/ethnicity, disability, English learner status, and other student demographics, CRDC must collect and report these data. These data will help to contextualize a number of trends that are already being observed about students and how they have been impacted by the pandemic, including attrition rates, engagement, discipline rates, attendance and enrollment, and academic achievement.<sup>3</sup>

**Collect data related to students' household access to broadband connectivity, including how many students received hotspots, computers, or other Wi-Fi-enabled devices for virtual instruction.** The CRDC should collect and report data about the strategies schools employed to identify barriers to student connectivity, provide students with the connections and devices they needed to ensure continuity of learning, and ensure devices were used appropriately and effectively during periods of remote instruction due to the COVID-19 pandemic.

Access to broadband services was inequitable, even before the pandemic. With an increasing reliance on the Internet to complete homework, supplement in-classroom learning, and engage in peer social interactions, students who lack the opportunity to access these online resources at home miss critical learning opportunities. This “homework gap” has serious long-term consequences for students' success outcomes that persist beyond graduation. With the move to system-wide distance learning during the pandemic, the pervasiveness of this digital divide had predominant impacts on students from low-income households, students with disabilities, and students of color. By collecting data related to students' household access to broadband connectivity, states, SEAs, LEAs, the Department, and advocates can better

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<sup>3</sup> Quintanilla-Muñoz, C. (May 2021). *Plugged In, Tuned Out: Student Engagement Patterns in Texas Public Schools During COVID-19 Show Need for Statewide Broadband Access*. IDRA. <https://idra.news/PluggedInPDF>

assess disparities on the basis of socioeconomic status, race/ethnicity, disability, language status, and other student characteristics.

Additionally, we urge the Department to retain the following data elements:

- **Retain data elements related to school finance and expenditures.** School finance and expenditure data are critical to assess the needs and use of funds in schools and to identify funding inequities that disproportionately impact and harm systemically-marginalized students. For almost 50 years, IDRA has focused on addressing the extreme funding disparities that prevent these students from accessing equitable and excellent educational programs.<sup>4</sup> Those barriers, codified in states' funding formulae and policies, persist today. Schools that primarily serve students from low-income households and students of color, and programs for supporting emergent bilingual students and students with disabilities are chronically underfunded. Underfunded schools result in serious and persistent disparities in educational opportunities and outcomes for those students and their families. School funding data enable the Department, advocates, and policymakers to examine and quantify those differences, which can lead to more equitable school funding policies and practices.
- **Data related to credit recovery programs.** Student attrition continues to be a major problem in many schools across the country, particularly for students of color, and especially in light of the COVID-19 pandemic. IDRA has collected and analyzed attrition data for the state of Texas for over three decades and has found that, since 1986, Texas schools have lost more than 4 million students.<sup>5</sup> For the Class of 2021, Latino and Black students were two times more likely to leave school than white students. Collecting data about credit recovery programs can inform policies and other practices that help students stay in school and graduate. Excluding data on the number of students participating in credit recovery programs will limit information about the experiences of marginalized students and prevent school districts from ensuring the success of all students.
- **Data related to teacher absenteeism and experience.** Teacher absenteeism is a symptom of school climate and therefore influences the quality of student educational experience and achievement. Similarly, educator experience affects the quality of instruction and the entire campus climate. Research shows that teacher experience is positively associated with student academic gains on standardized tests, school attendance, and a supportive campus climate among educators.<sup>6</sup> CRDC data have shown that students of color and emergent bilingual students are more likely to attend schools with concentrations of first-year teachers where they are denied access to the benefits of experienced educators.<sup>7</sup> Collecting data about teacher absenteeism, teacher experience, and where experienced teachers are working is important to identifying potential solutions and interventions, including remedying concentrations of inexperienced and chronically absent educators in the same schools and districts.

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<sup>4</sup> Cortez, A. (2012). Report of the Intercultural Development Research Association Related to the Extent of Equity in the Texas School Finance System and Its Impact on Selected Student. IDRA.

[https://www.idra.org/images/stories/IDRA\\_School\\_Finance\\_Equity\\_Report\\_08162012.pdf](https://www.idra.org/images/stories/IDRA_School_Finance_Equity_Report_08162012.pdf)

<sup>5</sup> Johnson, R. (November-December 2021). Preview of IDRA's 36<sup>th</sup> Annual Texas Public School Attrition Study – A First Look at the Pandemic's Effect on Attrition Rates. *IDRA Newsletter*. <https://idra.news/nlNovDec21b>

<sup>6</sup> Kini, T., & Podolsky, A. (2016). *Does Teaching Experience Increase Teacher Effectiveness? A Review of the Research*. Learning Policy Institute. [https://learningpolicyinstitute.org/sites/default/files/product-files/Teaching\\_Experience\\_Report\\_June\\_2016.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Teaching_Experience_Report_June_2016.pdf)

<sup>7</sup> OCR. (March 2014). *Civil Rights Collection Data Snapshot: Teacher Equity*. U.S. Department of Education, Office for Civil Rights. <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-teacher-equity-snapshot.pdf>

- **Data regarding early childhood education.** Early learning opportunities prepare students for school. Data related to schools' early education programs contribute to our understanding of the availability, cost, duration, enrollment, and quality of early education and kindergarten programs across the country. Additionally, disaggregated items by demographic subgroups of the students enrolled in early education programs help schools identify where inequities in access, discipline, and program quality exist for students of color, students with disabilities, students from families with limited incomes, and emergent bilingual students.

The need for accurate, comprehensive data is particularly acute in this moment, when states across the country – and particularly the U.S. South – are taking steps to obscure the reality of systemic racism and bias in our school systems. Previous efforts to limit the collection of comprehensive data capturing information about all students served to eliminate critical insights into discriminatory practices and outcomes. Attempts to erase the reality of the lived experiences of students of color, students with diverse gender identities, LGBTQ+ students, immigrant students, and other systemically-marginalized groups threaten our foundational civil rights protections and interventions.

We urge the Department to take bold, affirmative steps to ensure equal protection of our nation's students. Should you have any questions about the recommendations above, please reach out to Morgan Craven, J.D., IDRA's National Director of Policy, Advocacy, and Community Engagement at [morgan.craven@idra.org](mailto:morgan.craven@idra.org).

Sincerely,



Celina Moreno, J.D.  
President and CEO  
IDRA

*The Intercultural Development Research Association is an independent, non-profit organization, led by Celina Moreno, J.D. Our mission is to achieve equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college. IDRA strengthens and transforms public education by providing dynamic training; useful research, evaluation, and frameworks for action; timely policy analyses; and innovative materials and programs.*