

The Department of Education's Response to Questions Raised by the Office of Management and Budget Regarding the 2009-10 Civil Rights Data Collection

1. Supporting Statement

- a. Has ED given any additional consideration to phasing in these changes?

Response: ED has given considerable thought to this issue. The reason we are requiring it for inclusion in the 2009-10 data collection is because of the importance of this data to ED, the Department of Justice, and the public (as evidenced by the public comments). For each of these new data elements, the information that we are proposing to collect is information that school districts already collect or at least should be aware of because of the significant impact upon its students.

For a small number of items, some districts may need to request additional data from its schools or do further analysis of data that it already collects. For example, if a district permits the use of restraint and seclusion and does not include information about such incidents in its recordkeeping system, it will need to survey its schools to collect this information. The use of restraints or seclusion for a student is, by its nature, an event about which documentation should be maintained at the school level.

To take another example with regard to harassment and bullying, we are only proposing to collect data on reported incidents of harassment and bullying, as opposed to all incidents. Under Section 504, Title VI and Title IX, school districts have an obligation to take steps to address harassment when it has been reported to the district so they should be aware of these incidents.

Since most of the data items are proposed for Part 2 of the data collection, which will occur in the Fall of 2010 (with responses not due until early 2011), school districts will have time to collect and report this data.

To the extent that individual school districts have special circumstances regarding their ability to report the data, we will review individual requests and, if the request is approved, advise school districts to report the data to the best of their ability. We will ask them to use the comment field provided for each table to indicate why they believe that the data they are providing may be incomplete and the reason why they were not able to provide complete data.

- b. Please include some discussion in the supporting statement about ED's rationale for splitting the collection into two parts.

Response: OCR has added the following language to page 2 of the supporting statement which is attached to this response:

The Department is proposing a two-part collection for the 2009-10 CRDC with all data to be from the 2009-10 school year. Previously, the CRDC collected data from two different school years. Data that were counts taken at one point during the school year (e.g., enrollment) were collected for the year in which the CRDC was being administered. Cumulative or end-of-year data (e.g., AP testing, discipline, athletics) was reported for the previous school year. By collecting CRDC data in two parts, we will have all CRDC data collected for the same school year. This is similar to the way that data is collected for programs such as the Individuals with Disabilities Education Act (IDEA).

- c. Part A 10 – it is incorrect to say that the CRDC does not collect any PII. Rather, the need to apply the disclosure avoidance technique known as minimum cell sizes is a recognition that it collects indirect PII, which per the OMB definition, is “PII.” Otherwise, there would be no need to apply minimum cell sizes. The sentence should either say not “direct PII” or say does not “intentionally collect PII.”

Response: We changed the supporting statement to read “direct PII.”

- d. Part B 4 – please include some discussion of the results of the record keeping visits and pilot testing.

Response: The Department has revised Part B 4 to include the results of the record keeping visits and to describe additional pilot testing that will be undertaken. The revised Part B is attached.

- e. Please clarify who will update the 2008 sample for use in the 2010 survey, and how.

Response: The 2009-10 CRDC will include the sample that was drawn for the 2008 CRDC. It will also include all districts with over 3,000 students that had not been previously included in the 2008 CRDC sample. The listing of additional districts with over 3,000 students was added based on information from the 2008-2009 CCD, collected through ED Facts. In addition, state juvenile justice agencies from the 50 states and the District of Columbia were also added.

As part of the CRDC data collection process, school districts log onto a website, provide contact information, and update the list of schools for that school district. This process includes determining whether any school districts in the sample have merged or closed since the sample was drawn. Detailed information is maintained about any changes that may have occurred and

this information is provided to the statistical contractor that develops the state and national estimations.

2. Survey Instrument

- a. Has OCR consulted counterparts who work on the NCES school crime survey about the bullying and discipline items? If not, please do so. It would be beneficial to use the same definitions and constructs where possible across the two surveys, so that there is some comparability.

Response: Yes, OCR has consulted with our counterparts on the School Survey on Crime & Safety (SSOCS). The SSOCS does not define harassment on the basis of sex, race, or disability, as does the CRDC. The SSOCS does define sexual harassment. While the terms used in the SSOCS and CRDC are different, we can modify our definitions to take into account the additional explanation provided in the SSOCS sexual harassment definition.

Our revised definitions are listed below; the information added from SSOCS is in **bold**:

➤ Harassment or Bullying on the Basis of Sex

Harassment or bullying on the basis of sex is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Harassment or bullying on the basis of sex also includes gender-based, nonsexual harassing conduct, such as harassment based on gender stereotyping. **The conduct can be carried out by school employees, other students, and non-employee third parties. Both male and female students can be victims of sexual harassment, and the harasser and the victim can be of the same sex.**

➤ Harassment or Bullying on the Basis of Race, Color or National Origin

Racial harassment or bullying is intimidation or abusive behavior toward a student based on race, color or national origin. Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful or humiliating. **The conduct can be carried out by school employees, other students, and non-employee third parties.**

➤ Harassment or Bullying on the Basis of Disability

Disability harassment is intimidation or abusive behavior toward a student based on disability. Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful or humiliating. **The conduct can be carried out by school employees, other students, and non-employee third parties.**

- b. Are any of the new data – in particular on discipline, bullying, etc. – collected through program-based collections?

Response: No. In order to avoid duplication, the data that the CRDC is proposing to collect is not collected through program-based collections at the school level.

- i. If not, can they be used for programmatic purposes?

Response: Yes.

- ii. Will the structure of the sample allow the data to be used for program improvement and to track changes over time?

Response: Yes, the structure of the sample should provide valuable information that can be used for programmatic purposes and to track changes over time. OCR is planning to continue to include all districts with over 3,000 students in the sample. (Previously all school districts with over 25,000 were sampled with certainty.) This will enable longitudinal comparisons of the data for these districts. All districts in states with fewer than 25 school districts (NV, MD, DE) are also included in each CRDC. State and national estimations will also be developed for these data that will enable comparisons over time.

- iii. If not, should these data instead be collected in a way that allows for that use?

Response: Please see above.

- iv. Did OCR collaborate with OSDFS on the questions related to discipline, bullying and school safety?

Response: Yes, there has been significant coordination with OSDFS at all stages of the development of the proposed data items and the definitions.

- c. Did ED consider collecting data on out of field teaching? If so, what was the rationale for not including it in this collection?

Response: We recognize the value and importance of information on out of field teaching and did consider whether to collect it. ED decided not to collect these data as part of the 2009-10 CRDC. Collecting separate data on out of field teaching would be more burdensome to districts than the elements we are proposing (teachers with two or less years of experience, teacher absenteeism). Second, ED already collects data on “highly qualified” teachers through the ESEA, one component of which is in-field teaching.

- d. The definition of teacher absence includes approved time for professional development. What is the rationale for including that along with sick days and personal days? Should approved time off for PD be in a separate category, or excluded from the definition?

Response: ED will revise the definition of teacher absence to exclude approved time for professional development. The definition in the 30 day notice was based upon the definition of the class absence rate per Full-Time Equivalency (FTE) teacher in the NCES "Forum Guide to Education Indicators" (2005), which includes absences from the classroom for approved professional development. The rationale for including professional development is that the cumulative impact upon students is the same regardless whether a teacher is absent for personal reasons or to attend professional development.

The revised definition is:

A teacher is absent if he or she is not in attendance on a day in the regular school year when the teacher would otherwise be expected to be teaching students in an assigned class. This includes both days taken for sick leave and days taken for personal leave. Personal leave includes voluntary absences for reasons other than sick leave. Do not include administratively approved leave for professional development, field trips, or other off-campus activities with students.

3. Data usage

- a. On the CRDC website, the national and state-wide data products are referred to as "projections." Shouldn't this be "estimates" because these are not future projections?

Response: For the past 30 years the CRDC has used the term "projections." However, we agree that "estimates" is a more accurate term.

- b. Please describe the weighting and estimation procedures designed to produce national and state-level estimates and clarify who, in terms of expertise and organization, will be responsible for applying those procedures.

Response: OCR has been providing estimations since 1968. We have separately provided information that includes the details of the weighting and estimation procedures that were used for the 2006 CRDC along with other relevant information. The contractor who will develop the 2009-10 CRDC estimates will be expected to meet the same high standards. This aspect of the processing of the 2009-10 CRDC data will be undertaken by the OPEPD contractor for ED Facts, 2020. 2020 is also the contractor for the collection of the CRDC data.

- c. Given the interest in having bullying/harassment and restraint/seclusion data collected in the CRDC, could OCR please explain how it plans to release that data?

Response: OCR plans to make the de-identified data available through its public website. Appropriate OCR and other ED staff will also have access to the actual data through a website made available through ED's intranet. OCR will also make the data available, in data files that include Excel, Access, ASCII and CSV, to researchers who agree to abide by ED's confidentiality protections. The data will also be included in the EDFacts data warehouse. Furthermore, OCR will work with ED programs, the Civil Rights Division of DOJ, and OJJDP to encourage analysis and use of the data.

- d. In our meeting, we discussed how ED uses the CRDC data to help inform whether to bring enforcement actions. How, if at all, does ED plan to use the bullying/harassment and restraint/seclusion data for civil rights enforcement purposes?

Response: OCR plans to use this data in a number of ways including to identify school districts for OCR compliance reviews, in enforcement actions, and for technical assistance activities (TA). Before initiating any compliance review, ED would also rely on other sources of information. If ED receives a complaint that relates to the discriminatory use of restraint/seclusion in school or unaddressed harassment, having the CRDC data available for OCR to review before contacting the school district should expedite the investigation.

In addition, OSEP has been a leader in funding the development and dissemination of effective behavioral interventions that are alternatives to the use of restraint and seclusion. The CRDC data will provide both OSEP and OCR with valuable information about which school districts would benefit the most from receiving TA. We are also planning to make this information available to the Civil Rights Division of DOJ to aid in their enforcement and technical assistance activities.

4. Response to 60-day public comments

- a. Page 2 – Under public availability of data, discussion – the phrase “importance of making privacy protected CRDC data available” sounds like the opposite of what ED might mean to say (i.e., it sounds like ED wants to release “private” data). Perhaps change “privacy protected” to “de-identified” which is a term we use in the FERPA context.

Response: Page 2 has been revised by replacing “privacy protected” with “de-identified.” A revised version is attached.

- b. Page 3 – In the relationship to civil rights discussion, this document cites the authority to collect data determined to be necessary. However, this does not

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explain why they are necessary. Could ED please expand this discussion, particularly regarding bullying/harassment and restraint/seclusion?

Response: The following language has been added to page 3:

OCR's fundamental mission is to ensure access to equal educational opportunity for all students. The new data items represent important areas of access to equal educational opportunities and are aligned with the Department's focus on providing equal access to educational opportunities to achieve college and career readiness. Access to a curriculum that includes algebra and other challenging math and sciences courses are critical foundations for college and career readiness. Data on school finances and teacher experience also provide important information about access to equal educational opportunity.

The Department is also proposing to collect data on bullying and harassment and of the use of restraint and seclusion. Under Title VI, Section 504, and Title IX, school districts have an obligation to address harassment and bullying when it has been reported to the district. The use of restraint and seclusion is also directly relevant to OCR's work because of the importance of ensuring that these techniques are not used in a discriminatory manner on the basis of race, gender, or disability.

- c. Page 3 – racial/ethnic categories. Please note the categories are “racial/ethnic” categories or “race and ethnicity” categories not just “race” as stated in the text and the footnote.

Response: The text and footnote have been revised to replace “race” with “racial/ethnic.”

- d. Page 4 – privacy protection discussion – Shouldn't FERPA be cited here also?

Response: The response has been revised to cite FERPA.