

The National Coalition ***on*** ***School Diversity***

February 11, 2022

Director of Strategic Collections and Clearance
Office of the Chief Data Officer
Office of Policy, Evaluation and Policy Development,
U.S. Department of Education
400 Maryland Avenue SW, Room 3E231
Washington, DC 20202–6135

Re: Comments on Proposed Amendments to the Civil Rights Data Collection, Docket ID: ED–2021–SCC–0158, 86 Fed. Reg. 70831 (December 13, 2021)

Dear colleagues:

We are writing to comment on the proposed Civil Rights Data Collection (CRDC), and to suggest some changes to make the CRDC more useful as a tool to assess the impacts of modern school segregation policies, and to further the compelling national interest in promoting racial and economic integration of schools.

While the Civil Rights Data Collection provides crucial data on discriminatory policies, practices, and resource disparities, it has strayed from one of its original purposes, to monitor and support the implementation of holistic school desegregation plans.¹ By assessing the multiple aspects of successful school integration plans, consistent with the mandate of *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968),² the CRDC enabled the Office for Civil Rights (OCR) and the Department of Justice to determine how well a district was doing in its efforts to fully integrate.³

Fifty-four years later, at a time when school segregation is increasing for low income children of color,⁴ the CRDC could still be a useful tool for both OCR enforcement of Title VI and local efforts to support school integration, by making it easier to see and compare multiple CRDC factors across racial enrollment of schools and districts, and by assessing the levels and rates of change in segregation within and across districts.

¹ See Gary Orfield, *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act* (1969), at 339 (discussing the March 1968 “Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964”); Frank Brown, “The First Serious Implementation of Brown: The 1964 Civil Rights Act and Beyond” 73 *Journal of Negro Education* 182 (2004).

² The *Green* case called for an assessment or “every facet of school operations,” including “faculty, staff, transportation, extracurricular activities and facilities.” 391 U.S. at 435 (the “Green factors”).

³ Orfield, *supra* note 1.

⁴ Frankenberg, E., Ee, J., Ayscue, J., & Orfield, G. (2019). *Harming our Common Future: America’s Segregated Schools 65 Years After Brown*. Los Angeles, CA: Civil Rights Project/ Proyecto Derechos Civiles and Center for Education and Civil Rights. United States Government Accountability Office, *Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination* (Washington, D.C.: United States Government Accountability Office, GAO-16-345, April 2016), <https://www.gao.gov/assets/680/676745.pdf>.

Integration report cards: In much the same way that HUD has required jurisdictions to self-assess their patterns of segregation, OCR could make more use of the school-by-school racial enrollment data and indicate the degree to which each school varies from the mean racial enrollment data of the district. As with HUD’s AFFH tool,⁵ this data can self-populate from the NCES data, no additional effort would be required on the part of local districts.⁶ The data provided in other sections of the CRDC (school discipline rates, enrollment in advanced classes, etc) could then be easily cross-referenced by school – thus showing the relationships between factors such as graduation rates, suspension rates, and rates of experienced teachers and school/district enrollment composition by race.⁷

School assignment policies: The vast majority of school districts in the U.S. assign children to schools based on their address,⁸ and changes in school assignment zones are a major factor contributing to increased school segregation within districts. A district’s approach to school assignment often determines whether students can access equitable educational opportunities. Districts should be required to report and specify any schools with changed attendance zone boundaries that occurred since the prior CRDC, and to report the resulting change in racial enrollment in the affected schools. In addition, the CRDC should require district reporting of any choice-based student assignment policies in effect.

School desegregation and school integration plans: The Office for Civil Rights and the Department of Justice have extensive files on districts still under desegregation plans, and similar data is compiled by private groups, including Brown University,⁹ The Century Foundation,¹⁰ and ProPublica.¹¹ To further data transparency, in addition to simply requesting that districts report whether they are operating a desegregation program, the Department of Education should automatically include a hyperlink to each plan in the district’s public-facing report.

Dual language programs: Well-designed and implemented dual language programs are associated with linguistic gains for English Learners and the cognitive and social/psychological

⁵ Department of Housing and Urban Development, “Assessment of Fair Housing Tool for Local Governments,” 2017 (<https://www.hud.gov/sites/dfiles/FHEO/documents/Assessment-of-Fair-Housing-Tool-For-Local-Governments-2017-01.pdf>).

⁶ Because school districts report NCES data in the fall and CRDC data typically in the spring, these two data sources may not align perfectly (e.g., in districts/schools with high turnover or dropout rates). Regardless, districts are already required to report enrollment data to the federal government and its inclusion would be a major improvement in CRDC accountability. For the future, the CRDC could also consider aligning its reporting schedule with the NCES.

⁷ For instance, in 2016 the GAO produced a report examining the link between varying school racial/ethnic and poverty composition and civil rights outcomes like access to advanced placement courses. See, United States Government Accountability Office, *Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination* (Washington, D.C.: United States Government Accountability Office, GAO-16-345, April 2016), <https://www.gao.gov/assets/680/676745.pdf>. The proposed data collection would provide such information regularly and accessibly to the public.

⁸ U.S. Department of Education. 2019. Fast facts: Public school choice programs. Available <https://nces.ed.gov/fastfacts/display.asp?id=6>.

⁹ <https://s4.ad.brown.edu/Projects/schoolsegregation/SegDown/>

¹⁰ <https://tcf.org/content/report/school-integration-america-looks-like-today/>

¹¹ <https://projects.propublica.org/graphics/desegregation-court-records>

benefits of integration for all students.¹² Little to no systematic data collection of dual language programs and their students exists, however. We recommend that the CRDC begin reporting on dual language programs, including school name; grade levels; partner language; year program started; type of program (e.g., one-way immersion, two-way immersion); program model (e.g., 90:10, 50:50); enrollment data (language, race, and whether the program is whole-school). Districts should also report whether dual language programs are used as a tool for desegregation through desegregation orders and voluntary efforts.

Additional missing factors in the CRDC: There are several factors not currently included in the CRDC that have a powerful effect on student outcomes, based on recent research:

- > School poverty rate: The concentration of very low income children in racially isolated schools is a significant contributing factor to the racial achievement gap,¹³ and should be reported in the same way that other inputs are currently reported in the CRDC.
- > Educator diversity: Surprisingly, race and ethnicity of certified teaching staff, by school, is not currently included in the CRDC in spite of growing evidence on its importance to student achievement and school climate.¹⁴ This data is also arguably authorized by Title II of the ESEA,¹⁵ and was also one of the original *Green* factors.¹⁶
- > Resources: As the Office for Civil Rights powerfully demonstrated in a 2014 policy guidance,¹⁷ racial disparities in resources across schools within a district (and across districts) present serious civil rights issues. All such disparities should be tracked in the CRDC to determine the relation between segregation and school resources.¹⁸
- > Data on Referrals to law enforcement and school-based arrests: With growing concerns about how police engage with people of color, including students of color, these data,

¹² Elizabeth Uzell & Jenn Ayscue “Integration Through Immersion: The Possibilities of Two-Way Dual Language Programs,” *Poverty & Race* (Sept 2021); See also Patricia Gándara, “The gentrification of two-way dual language programs: a commentary,” 20 *Lang Policy*, 525–530 (2021), <https://doi.org/10.1007/s10993-021-09595-z>.

¹³ Reardon, S. F. (2016), “School segregation and racial academic achievement gaps,” *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 2(5), 34-57.

¹⁴ For a summary of some of this evidence, see <https://www.nytimes.com/2018/09/10/upshot/teacher-diversity-effect-students-learning.html>. See also Anna J. Egalite and Brian Kisida, *The Many Ways Teacher Diversity May Benefit Students* (2016), <https://www.brookings.edu/blog/brown-center-chalkboard/2016/08/19/the-many-ways-teacher-diversity-may-benefit-students/>, which notes that teachers of color can positively impact academic outcomes and school experiences for students of color.

¹⁵ See, e.g., 20 USC §6611(c)(4). See also Department of Education, Office of Elementary and Secondary Education “Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Leading” at 17–18 (2016), <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiipartaguidance.pdf> (This non-binding guidance on Title II states “research shows that diversity in schools, including representation of underrepresented minority groups among educators, can provide significant benefits to all students,” and encourages SEAs and LEAs to “consider supporting a diverse educator workforce as a critical component of all strategies across the career continuum.”)

¹⁶ See *Green*, *supra* note 2.

¹⁷ “Dear Colleague” letter from Catherine Lhamon, October 1, 2014, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

¹⁸ Cf. EdBuild, *\$23 Billion*, <https://edbuild.org/content/23-billion>.

although required by the CRDC since 2009, are often missing or inaccurately reported.¹⁹ Emerging research suggests that rates of referrals to law enforcement may be more prevalent in racially isolated schools. OCR should issue clarifying guidance and provide technical assistance and use other accountability mechanisms to improve the accuracy of these data.

Data transparency: We commend the Department for its improvements in data transparency during the Obama Administration, but there is still significant room for improvement. For example, it is still virtually impossible to compare CRDC data across district boundaries, without downloading the data to analyze. That may limit its usefulness for communities and families. In addition, we applaud that OCR will collect universal for two consecutive years and urge DOED to make the CRDC an annual and universal collection. Having annually reported data from every school and district will make the data more useful for the purposes of civil rights enforcement and for monitoring civil rights remedies.

Thank you for your consideration of these comments.

Sincerely,

Gina Chirichigno
National Coalition on School Diversity
Washington, DC

Philip Tegeler
Darryn Mumphery
Poverty & Race Research Action Council
Washington, DC

Gary Orfield
Daniel Losen
The Civil Rights Project /Proyecto Derechos Civiles at UCLA
Los Angeles, CA

Margaret Fung
Asian American Legal Defense and Education Fund
New York, NY

Dennis Parker
National Center for Law and Economic Justice
New York, NY

Arnold F. Fege
Public Advocacy for Kids
Washington, DC

¹⁹ Daniel Losen and Paul Martinez, *Lost opportunities: How disparate school discipline continues to drive differences in the opportunity to learn* (Learning Policy Institute and Center for Civil Rights Remedies at the Civil Rights Project, UCLA, 2020).

Vito J. Borrello
National Association for Family, School and Community Engagement
Alexandria, VA

Myron Orfield
Will Stancil
Institute for Metropolitan Opportunity
University of Minnesota
Minneapolis, MN

Sara P. Suchman
National Center for Montessori in the Public Sector
West Hartford, CT

Beatriz Diaz-Pollack
Chris Bridges
Ameil Kenkare
Chicago Lawyers Committee for Civil Rights
Chicago, IL

Peter Piazza
School Diversity Notebook
Malden, MA

Joshua A. Bassett
Institute for Social Progress at Wayne County Community College District
Detroit, MI

David S. Glaser
Voluntary Interdistrict Choice Corporation
St. Louis, MO

Kris Nordstrom
North Carolina Justice Center
Raleigh, NC

Lauren Fox
Public School Forum of North Carolina
Raleigh, NC

David D. Troutt
Center on Law, Inequality and Metropolitan Equity
Rutgers Law School
Newark, NJ

Paul Tractenberg
Center for Diversity and Equality in Education
Rutgers Law School
Newark, NJ

Elaine Gross
ERASE Racism
Syosset, NY

Nyah Berg
New York Appleseed
New York, NY

Rachel Norman
Yotam Pe'er
IntegrateNYC
New York, NY

Marilyn Zlotnik
Metis Associates
New York, NY

Colin Page McGinnis
South Side Early Learning
Columbus, OH

Richard Kahlenberg
Halley Potter
Conor Williams
The Century Foundation
Washington, DC
(Organization listed for identification purposes only)

Jenn Ayscue
North Carolina State University
Raleigh, NC
(University listed for identification purposes only)

Derek Black
University of South Carolina
Columbia, SC
(University listed for identification purposes only)

Elise C. Boddie
Rutgers Law School
Newark, NJ
(University listed for identification purposes only)

John C. Brittain
David A. Clarke School of Law
University of the District of Columbia
Washington, DC
(University listed for identification purposes only)

Casey D. Cobb
Glenn Mitoma
University of Connecticut
Storrs, CT
(University listed for identification purposes only)

Susan Eaton
The Heller School for Social Policy
Brandeis University
Waltham, MA
(University listed for identification purposes only)

Erica Frankenberg
Penn State University
State College, PA
(University listed for identification purposes only)

Jennifer Jellison Holme
University of Texas
Austin, TX
(University listed for identification purposes only)

Roslyn Arlin Mickelson
University of North Carolina at Charlotte
Charlotte, NC
(University listed for identification purposes only)

sean f. reardon
Stanford University
Stanford, CA
(University listed for identification purposes only)

Genevieve Siegel-Hawley
Virginia Commonwealth University
Richmond, VA
(University listed for identification purposes only)

Linda R. Tropp
University of Massachusetts Amherst
Amherst, MA
(University listed for identification purposes only)

Kevin G. Welner
University of Colorado
Boulder, CO
(University listed for identification purposes only)