

United States Senate

WASHINGTON, DC 20510

November 18, 2019

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: Docket ID ED-2019-ICCD-0119

Dear Secretary DeVos:

We write to you today regarding the proposed changes to the Civil Rights Data Collection (“CRDC”) for school year 2019-20. We urge the U.S. Department of Education (“Department”) to withdraw its proposal to eliminate a wide-ranging set of critical data elements that highlight educational inequities in schools and school districts. The Department’s proposed changes to eliminate key data elements related to school climate, discipline, harassment and bullying, early childhood education, pathways to college and career, school finance, teacher quality, and resource equity are deeply concerning.

These changes will make it more challenging to identify and address disparities in resources and educational outcomes that persist in schools across the country. The Department’s proposal to withdraw such data elements will disrupt efforts of parents, researchers, policymakers, and States to monitor compliance with civil rights laws and hamper efforts to improve the inequities in our nation’s schools.

Additionally, while it is appropriate that the Department recognize the importance of collecting sexual assault data as a part of CRDC, we urge the Department to modify its additions regarding harassment and sexual assault to better capture all offenses. There are some glaring gaps in the proposal for collecting that data that must be addressed in order to provide a full understanding of the scope of sexual assault and harassment that students experience in their K-12 education.

Since 1968 and improved over time, the Department biennially collects and publically reports data from nearly every school district across the country through the CRDC. The data collected through the CRDC provides critical information to parents, researchers, policymakers, local communities, and States regarding educational equity, access to educational services, and resource distribution in schools and school districts across the United States. In addition, the Department’s Office for Civil Rights uses CRDC data to guide its efforts to enforce civil rights laws including the Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975. The majority of the data elements that the Department has proposed for elimination have been collected for many years through the CRDC, which allows for longitudinal and trend analysis. In order to tackle educational inequity, the Department must gather data necessary to fully understand the problem. These proposed changes will leave the Department under-informed and ill-equipped to help our most vulnerable students.

The proposed rule would eliminate vital early childhood education data elements.

The CRDC is the only source of comprehensive data on public preschool access and enrollment in the United States. High-quality early learning programs help lay the foundation for healthy child development and school readiness. This CRDC 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.¹ The Department's proposed changes would drastically limit what we know about children's access and experiences in preschool.

The Department's proposed changes eliminate data on preschool enrollment disaggregated by race, sex, disability (child's status under the Individuals with Disabilities Education Act), and English Learner status. This change is extremely concerning given that eliminating this data would mask disparities among the population of children who attend public preschool programs. Additionally, it would undermine research on disparities in children's experiences in preschool. For example, CRDC data has shown significant racial disparities in preschool suspensions and expulsions, with black children representing just 19 percent of preschool enrollment but 47 percent of preschool suspensions.² Without disaggregated enrollment data, research on disparities of this nature would not be possible. Additionally, the Department's proposal includes an elimination of the only information available about whether public preschool programs are universal or targeted to serve a specific group of children, such as low-income children or children with disabilities served under the Individuals with Disabilities Education Act (IDEA).

The Department's proposal also eliminates data collection on the duration and cost to families of preschool and kindergarten programs and would further mask inequity in preschool access. Research confirms that children benefit more from full-day early childhood education programming than part-day,³ yet the CRDC shows that 57 percent of public preschool programs offered only part-day preschool.⁴ Despite the notion that all public programs are free for families, CRDC data also revealed that 14 percent of school districts offering preschool required families to cover all or part of the cost of preschool programming, which could pose a significant barrier for low-income families.⁵

As the nation continues to expand investment in public preschool programs, it is vital to collect robust and high-quality data on public preschool to inform policy decisions, and to identify and address gaps in access to quality, affordable early childhood education programs.

Removing all data elements related to school finance will further hide funding inequities between low-income and more affluent school districts and communities.

Our nation's system for funding schools, highly dependent on local property taxes, has caused deep fiscal inequities among our nation's schools. Numerous studies have shown that investing more resources into schools improves student outcomes.⁶ This is particularly important for schools with high concentrations of low-income students. This proposal would completely eliminate all data elements concerning school finances and staff salaries in the CRDC. This is particularly alarming given that the CRDC is the best source of reliable school-level data on expenditures across the country, providing key information about staffing levels and salaries for teachers, instructional aides,

¹ Deborah A. Phillips et al. "Puzzling it out: The current state of scientific knowledge on pre-kindergarten effects" (April, 2017). <https://www.brookings.edu/research/puzzling-it-out-the-current-state-of-scientific-knowledge-on-pre-kindergarten-effects/>

² U.S. Department of Education Office for Civil Rights "Securing Equal Educational Opportunity: Report to the President and Secretary of Education" (December, 2016) <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf>

³ U.S. Department of Education Institute of Education Sciences, "Full-day and Half Day Kindergarten in the United States" <https://nces.ed.gov/pubs2004/2004078.pdf>; Reynolds, Arthur J., et al. "Association of a full-day vs part-day preschool intervention with school readiness, attendance, and parent involvement." *Jama* 312:20 (2014): 2126-2134. <https://jamanetwork.com/journals/jama/fullarticle/1938567>;

⁴ U.S. Department of Education Office for Civil Rights "Securing Equal Educational Opportunity: Report to the President and Secretary of Education" (December, 2016) <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf>

⁵ U.S. Department of Education Office for Civil Rights "Securing Equal Educational Opportunity: Report to the President and Secretary of Education" (December, 2016) <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf>

⁶ <https://www.nber.org/papers/w25368.pdf>

administrators, and support services staff. This data helps capture the deep disparities in staffing, level of experience amongst staff, and resources between high-poverty, and low-poverty schools and school districts. The CRDC is critical to documenting these inequities. While the Every Student Succeeds Act contains a new per-pupil expenditure reporting requirement related to federal, state, and local funds, that requirement is not disaggregated by salary and staff type as the CRDC elements. These combined reporting requirements provide important data on the spending decisions made in our nation's schools and school districts. We urge the Department to be focused on improving reporting on fiscal equity rather than eliminating it.

Eliminating data regarding teacher quality at the school level would mask the high rates of inexperienced teachers working in schools and communities with the greatest needs.

Research shows that teachers are the most significant school factor to improving student achievement.⁷ Identifying teacher experience levels, whether they are in the first year of teaching or the fifteenth year of teaching, helps districts, states, and policymakers understand the support teachers need to provide high-quality instruction to their students. The Department is proposing to eliminate data elements regarding the numbers of teachers in their first or second years of teaching as well as the number of full time teachers absent more than ten school days, excluding professional development. This elimination will make it significantly more difficult for districts and states to tailor their professional development and teacher support based on need. Additionally, this will undermine the ability of parents and school districts to know if their children are being taught by less experienced teachers or teachers who are chronically absent. Data have shown that novice teachers are more common in underserved districts, including rural schools, schools in communities with a high degree of poverty, and schools that enroll a high percentage of students of color.⁸ The Department's proposal to remove these data elements eliminates critical CRDC measures for teacher quality, which undermines our ability to improve resources and supports for teachers.

Removing data regarding English language learners with disabilities who also receive special education services will mask the systemic barriers that oftentimes poorly serve these students.

Students who are English language learners with disabilities are entitled to rights under the IDEA, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. However, research shows that nationwide there is a high degree of variability in how school districts identify students who are English language learners who are eligible for special education services, with some school districts systematically under-identifying or over-identifying students for English language services.⁹ The Department has proposed to no longer collect disaggregated information about students with disabilities who are receiving English language learner services and services under IDEA. This will remove data concerning an important student population that is oftentimes facing systemic barriers to accessing educational services. We urge you to withdraw the proposal to remove this disaggregation and continue to ask schools to report the numbers of students with disabilities receiving English language learner services enrolled in their school.

⁷ <https://www.rand.org/education-and-labor/projects/measuring-teacher-effectiveness/teachers-matter.html>

⁸ <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1172&context=carsey>

⁹ <https://journals.sagepub.com/doi/10.1177/001440290507100305>

Eliminating disaggregated information about access to advanced coursework and college credit will mask persistent barriers in access to postsecondary credit.

The Department proposed eliminating disaggregated information regarding students who took one or more Advanced Placement (AP) exams or who were enrolled in AP courses but did not take AP exams. While the 2019-20 CRDC preserves questions about AP class enrollment, by eliminating the proposed data elements, the CRDC data will no longer capture which students took AP exams in order to receive college credit. One of the biggest benefits of AP courses for students is the ability to take AP exams and potentially receive college credit. Further, many states are using federal, state, and local dollars to help cover the costs of AP exam fees for low income students to ensure students can take these exams. Without these data elements and the disaggregation requirements of these elements, policymakers will no longer be able to ascertain in a comprehensive way which students take AP exams and therefore will have a more difficult time designing policies to help improve access to AP exams. We urge you to preserve these data elements.

Removing information about credit recovery program enrollment would hamper efforts to understand how many students are participating in credit recovery programs.

The Department proposes to no longer collect information regarding the number of students enrolled in a credit recovery program in order to earn missed credit for high school graduation. While the quality of credit recovery programs varies widely across the nation, understanding the number of students enrolled in credit recovery programs is necessary to improve those programs and ascertain how many students seek to obtain credit towards finishing high school after they have not completed a traditional high school program. Eliminating this data element will harm data analysis regarding efforts to improve high school graduation rates and help non-high school graduates receive the credit they need to obtain a high school degree and move onto postsecondary education or the workforce.

Changing sex-based harassment definition would result in incomplete information about bullying and harassment.

We remain concerned that the Department is defining sex in a way that fails to reflect the “designation of female or male as indicated in a student’s record”. Rather than allowing States and school districts to allow a student’s record to be consistent with the student’s gender identity, this definition would require school employees to make inquiries into students’ medical and social histories in an extremely invasive manner that violates students’ privacy. In addition to the clear privacy concerns, the Department is asking school officials to compile information for the CRDC that is more burdensome than simply referring to a student’s record.

The Department proposes to use a definition of sex-based harassment in the CRDC that fails to recognize gender-based harassment, including harassment based on gender identity, gender expression or conforming with gender stereotypes without justification for making such a change. Additionally, the removal of harassment based on sexual orientation from the harassment and bullying data element means the Department will no longer be capturing specific information about harassment or bullying based on a student’s actual or perceived sexual orientation. Bullying and harassment of individuals based on their sexual orientation is a serious problem that has led to students who identify as LGBTQ being more likely to die by suicide. It is simply unacceptable that the Department would suggest eliminating these data and we strongly urge you to include these data in the final CRDC for 2019-20.

Including data on incidents of sexual assault would be an important step, but must be done in a way to fully include all information regarding a potentially discriminatory environment.

The data element proposed for the 2019-20 CRDC regarding allegations of offenses committed by students is too narrow as it only requires collecting data on “documented incidents”. When it comes to sexual assaults, rapes and attempted rapes committed by school staff members, the proposed 2019-20 CRDC requires reporting on all allegations and breaks down the reporting by a number of different outcomes. Important information is omitted when the number of allegations of offenses are not collected. It has been estimated that for every sexual assault of a child by an adult on school grounds that is reported to police, there are seven sexual assaults where a student has committed the assault.¹⁰ These assaults should be properly accounted for in order to help assess the effectiveness of efforts to reduce sexual assaults of children.

Additionally, the 2019-20 CRDC only requires schools to report documented incidents of rapes and attempted rapes by school staff members – not sexual assaults. By not requiring data collection when it comes to non-rape sexual assaults, the Department is failing to fully document all sex-based discrimination students may be experiencing.

The proposed CRDC limits the reporting of sexual assaults, rapes and attempted rapes exclusively to those having occurred on campuses. Title IX of the Education Amendments Act of 1972 (“Title IX”) protects students from sex-based discrimination that interferes with a student’s education. In order to ensure that the CRDC data accurately reflects instances that are impacting a student’s education, the data should include reports of assaults, rapes and attempted rapes that occur outside of school as well. Schools have a responsibility to respond to sexual assaults that interfere with a student’s education regardless of whether they occur on or off school property. For instance, in *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998), the Court considered the school’s liability in a sexual assault that first occurred while a teacher was visiting the student’s home, and never on school property. And in *Mitchell v. Cedar Rapids Community School District*, 832 N.W.2d 689 (Iowa 2013), a school district was found to have breached its duty of reasonable care for a rape that occurred off school grounds and in a non-school activity.

Overall, while the CRDC takes some important steps to better quantify sexual assaults, there are gaps in the required data that will prevent the ability to understand the full scope of sex-based discrimination. The Department should include additional requirements, including capturing all allegations of offenses, and not just those involving a staff member or that occur on school grounds, to ensure data collection efforts result in accurate information about the scope of sexual assaults for all students enrolled in grades K-12.

The proposed rule should clarify the appropriate use of information collected on the basis of perceived religion.

The rising number of allegations of harassment on the basis of religion in schools is highly concerning, and we support the collection of data in order to understand and assist in addressing this worrying trend. As part of the 2013-2014 CRDC data collection, the Department’s Office for Civil Rights (“OCR”) began gathering information about allegations of harassment on the basis of religion, and for the 2015-2016 CRDC, OCR approved a mandatory collection of these data. In providing

¹⁰ <https://www.ap.org/explore/schoolhouse-sex-assault/stats-revealed-by-ap-investigation-of-student-sex-assaults.html>

guidance about the collection, OCR instructed districts to look at the likely motives of the alleged harasser rather than the status of the alleged victim.

For the 2019-2020 CRDC, OCR is proposing to collect new information on the number of allegations of harassment or bullying reported by students on the basis of perceived religion. But OCR has not provided any additional instructions or guidance for school districts on how they can collect data on perceived religion without eliciting private information from students. We encourage the Department to clarify the appropriate use of the information collected, and that any determination about perceived religion should reflect the school district's understanding about the harasser's perceived motivation and not stereotyped perceptions of the bullied student.

Removing the requirement for school districts to post a web link to their harassment policy would discourage some school districts from posting online any written policy on harassment and bullying.

We are concerned that OCR has proposed eliminating the collection of information on whether school districts have posted a web link to its written policy or policies prohibiting discriminatory harassment and bullying on the basis of sex, race, color, national origin, and disability. In defense of this proposed elimination, OCR argues that requiring school districts to report whether they have posted an online written policy on harassment imposes unnecessary regulatory burdens and levies additional costs that exceed benefits for school districts. But, removing the requirement may discourage some school districts from posting online any written policy on harassment that helps parents and students; a cost that likely far outweighs the administrative burden of simply reporting that a link has been posted. OCR has not provided sufficient reasons for why the cost of posting a web link to a harassment policy outweighs the social benefits to families and students who want to learn more about how their schools combat harassment and bullying, and we encourage the Department to maintain this reporting requirement.

Changing reporting around single-sex athletics must only be done to improve understanding about potential discrimination – not undermine it.

While the proposed CRDC does not remove any requirements related to single-sex athletics, the Department is asking for public input regarding the way the data on single-sex teams is being used and what modifications could be made to better reflect the opportunities for nondiscriminatory athletic participation opportunities. Title IX prohibits discrimination on the basis of sex in education programs receiving federal financial assistance, which includes the right to be able to participate equally in sports. Data regarding opportunities to participate in single-sex sports is vital to understanding whether discrimination is occurring. Participation in sports has been tied to self-esteem and overall well-being as well as to scholarship opportunities in higher education. While girls' high school athletics participation rate is more than ten times greater the level it was when Title IX passed, girls' participation levels have still never reached that of boys' participation levels when it passed.¹¹ We must continue to support nondiscriminatory opportunities to participate in athletics. Any changes to the CRDC regarding collection of data around single-sex opportunities should be made with the goal of quantifying any potential discrimination based on sex, which includes discrimination based on gender identity. The Department should not consider any changes that would undermine or run counter to that goal.


¹¹ <https://nces.ed.gov/fastfacts/display.asp?id=93>

Conclusion


Parents, advocates, members of Congress, other policymakers, and researchers use the CRDC to understand where inequities still exist in our nation’s school districts and inform efforts to eliminate those disparities. The Department’s proposal to eliminate many critical data elements will hinder efforts to remedy these educational inequities and masks the challenges students face in accessing a high-quality education.

We urge the Department to withdraw its proposal to eliminate these data elements and improve the elements related to sexual assault so that it can continue to use these important data to conduct civil rights’ enforcement, identify trends, and conduct longitudinal analysis to direct its resources and inform its efforts, including providing technical assistance, issuing guidance, identifying best practices, and if warranted, beginning civil rights investigations to uphold students’ civil rights.

Sincerely,


PATTY MURRAY
Ranking Member, Senate Committee on
Health, Education, Labor & Pensions


ELIZABETH WARREN
United States Senator


BRIAN SCHATZ
United States Senator



TAMMY BALDWIN
United States Senator



TINA SMITH
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RICHARD J. DURBIN
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JACK REED
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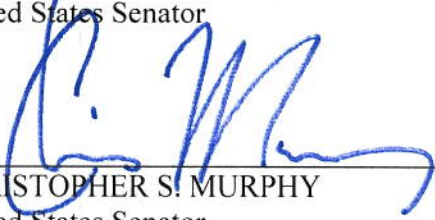

JEFFREY A. MERKLEY
United States Senator



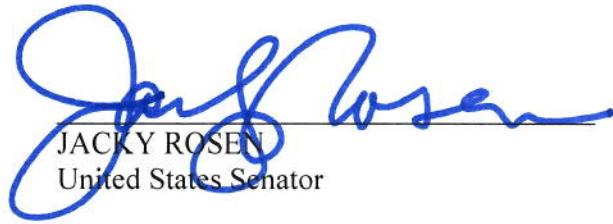
SHERROD BROWN
United States Senator



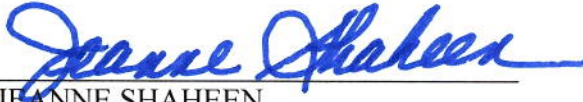
TIM KAINÉ
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CHRISTOPHER S. MURPHY
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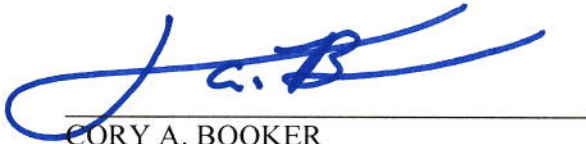
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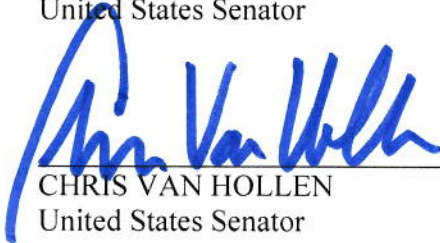
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