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Manager of Strategic Collections and Clearance  
Governance and Strategy Division  
U.S. Department of Education  
400 Maryland Ave. SW  
LBJ, Room 4C210  
Washington, DC 20202–1200.

**Re: Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection (Docket No. ED–2024–SCC–0128, at 89 Fed. Reg. 83671)**

To Whom It May Concern:

The National Women’s Law Center (NWLC) submits the following comments on the U.S. Department of Education’s (“the Department” or “ED”) Notice for the 2025–26 and 2027–28 Mandatory Civil Rights Data Collection (CRDC). NWLC fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. We use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us—especially those who face multiple forms of discrimination, including women of color, LGBTQI+ people, and low-income women and families.

## **I. General Recommendations on the CRDC**

### **A. The CRDC should be annual, universal, and fully disaggregated and cross-tabulated.**

The Department should return to implementing an annual CRDC, as it did during 2020-21 and 2021-22 during the national COVID-19 emergency. As we have stated in our prior CRDC comments,<sup>1</sup> children and teens experience great bursts in academic, social, and emotional development over short periods of time—regardless of whether there is a nationally recognized pandemic.<sup>2</sup> Therefore, annual data is necessary to intervene quickly, so that they do not lose access to educational opportunities—even if only for a year. Returning to an annual CRDC will ensure that the Department, educators, families, and advocates can best understand students’ experiences in a school in a timely manner and, relatedly, how to protect students’ civil rights.

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<sup>1</sup> Nat’l Women’s L. Ctr., *NWLC Comments Regarding Department of Education Data Collection* (Oct. 31, 2022 and Feb. 11, 2022), <https://nwlc.org/resource/nwlc-comments-regarding-department-of-education-data-collection>.

<sup>2</sup> Although the national COVID-19 emergency ended in May 2023, the pandemic itself continues, with about 4-5% of the population reporting as being infected each week. Centers for Disease Control and Prevention, *United States COVID-19 Deaths, Emergency Department (ED) Visits, and Test Positivity by Geographic Area* (last visited Dec. 12, 2024), [https://covid.cdc.gov/covid-data-tracker/#maps\\_positivity-week](https://covid.cdc.gov/covid-data-tracker/#maps_positivity-week).

We support the Department’s proposal to continue conducting a universal collection.<sup>3</sup> Limiting the scope of the collection to a sample would obscure considerable variability among schools and districts and would make it more difficult to represent the experiences of smaller demographic groups, who often are left out of data reports at the school or district level, or to cross-tabulate student data by race, gender, and disability. With a universal collection, smaller demographic groups can be more easily aggregated

NWLC encourages the Department to further expand its disaggregation and cross-tabulation of collected data to allow for easier identification of schools and districts that must reform policies and practices to create safe and inclusive schools for all students. The current list of categories by which data is disaggregated is not representative of the diverse populations of students, with intersecting identities, who attend schools across the country. To fully capture the experiences of diverse student populations, particularly those most living at the intersections of the most marginalized identities, the Department should strengthen the CRDC by collecting, disaggregating, and cross-tabulating data by sex (including sexual orientation, gender identity, sex characteristics, and pregnancy or related conditions), race/ethnicity, English learner status, native language, socioeconomic status, disability status, foster care status, homeless status, and national origin.<sup>4</sup>

## **B. The Department should ensure full and accurate compliance with the civil rights laws and the CRDC.**

The CRDC is a vital resource for advocates, communities, and parents to ensure that all students have equal access to a quality education. It is therefore critical that the Department receives consistent, complete, and accurate data that can highlight areas of concern. However, certain data included in the CRDC in prior years appear to be based on inaccurate information. For example:

- **School-based arrests.** In the 2015-16<sup>5</sup> and 2017-18<sup>6</sup> CRDCs, about 60% of the largest school districts reported zero school-related arrests, including districts like New York City and Pittsburgh. It is implausible that New York City, the largest school district in the country, which enrolls nearly one million students<sup>7</sup> and employs over 5,500 school police officers or “school safety agents,”<sup>8</sup> arrested zero students during an entire two-year period. Furthermore, despite New York City and Pittsburgh schools districts each reporting zero arrests to the CRDC,<sup>9</sup> each

<sup>3</sup> Department of Education, Office for Civil Rights, Mandatory Civil Rights Collection, *Supporting Statement, Part A: Justification* (Oct. 2024), at 11 [hereinafter Part A].

<sup>4</sup> NWLC recommends including “national origin” as a category for disaggregation and cross-tabulation in alignment with the National Indian Education Association (NIEA). The NIEA recommends that Native American students be pulled out of the race and ethnicity categories because Native American students are identified in statute by their political status, not a racial or ethnic status—and not all Native American students identify as students of color. For Native American students, their political status is defined by their citizenship in tribes that have a government-to-government relationship with the federal government under the United States Constitution.

<sup>5</sup> Daniel J. Losen & Paul Martinez, The Center for Civil Rights Remedies & Learning Policy Institute, *Lost Opportunities: How Disparate School Discipline Continues to Drive Differences in the Opportunity to Learn*, at v (2020), <https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/lost-opportunities-how-disparate-school-discipline-continues-to-drive-differences-in-the-opportunity-to-learn/Lost-Opportunities-REPORT-v17.pdf>.

<sup>6</sup> Daniel J. Losen et al., *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies* 6 (2021), <http://www.schoolsdisciplinedata.org/ccrr/docs/final-Report-03-22-21-v5-corrected.pdf>.

<sup>7</sup> *DOE Data at a Glance*, SCHOOLS.NYC.GOV (last visited Dec. 12, 2024), <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance>.

<sup>8</sup> See Joe Anuta, *School safety agents will stay under NYPD this year, despite city’s claims of \$1B cut*, Politico (Jul. 2, 2020), <https://www.politico.com/states/new-york/albany/story/2020/07/02/school-safety-agents-will-stay-under-nypd-this-year-despite-citys-claims-of-1b-cut-1296868>.

<sup>9</sup> *Id.*; see also Mark Keierleber, *Exclusive: Pittsburgh Schools Reported Zero Student Arrests While Court Records Show It’s a Discipline ‘Hot Spot’*, The 74 Million (Jan. 19, 2022), <https://www.the74million.org/article/exclusive-pittsburgh-schools-reported-zero-students-arrests-while-court-records-show-its-a-student-discipline-hot-spot> (citing that the Pittsburgh school district reported zero arrests in the CRDC despite its reporting 86 arrests and 395 referrals to law enforcement to the Pennsylvania education department, and the county juvenile court tallying 499 school-related arrests).

city's police department and relevant courts documented hundreds of school-based arrests during the same time period.<sup>10</sup>

- **Seclusion and restraint.** During the 2013-14 school year, nearly 80% of school districts reported zero incidents of restraint or seclusion of disabled students.<sup>11</sup> As with the school-related arrests data, a report of zero restraint and seclusion incidents, particularly for the largest school districts, seems statistically implausible, and some local examples even point to intentional underreporting. For example, in 2019, local journalists uncovered that Fairfax County Public Schools in Virginia had reported zero cases of restraint or seclusion for almost ten years, even though a public records request revealed that the district had internally reported 1,679 incidents of restraint or seclusion that affected 203 students during the 2017-18 school year.<sup>12</sup>
- **Sexual harassment.** In the 2015-16 CRDC, 79% of public schools with grades 7-12 reported zero incidents of sexual harassment or sex-based bullying.<sup>13</sup> Similarly, in the 2017-18 CRDC, 14 states reported zero incidents of rape or attempted rape in every school in their entire state.<sup>14</sup> However, an independent survey of students in grades 7-12 revealed that nearly 48% of them experienced some form of sexual harassment in 2010-11, making the CRDC data extremely difficult to believe.<sup>15</sup> Furthermore, in the 2017-18 CRDC, Maryland reported 71 times more rapes and attempted rapes per student than New Jersey<sup>16</sup>—a massive gap that is particularly difficult to believe when comparing neighboring states that share a similar student population size.

Missing and misreported data erroneously skews statistics and impedes meaningful analysis that can lead to necessary policy change. To address this problem, the Department should offer significant technical assistance, issue guidance, and implement other oversight measures to ensure that respondents fully comply with the mandatory collection and reporting of data in the 2025-26 survey and beyond.

### **C. The Department should collect the contact information of the outgoing and incoming civil rights coordinators.**

We support the Department's proposal in Data Group 916 to collect the names and emails of civil rights coordinators for the following school year,<sup>17</sup> as this allows students, parents, educators, and advocates to access up-to-date contact information when it is published in the Civil Rights Coordinator database (<https://ocrcas.ed.gov/civ-rts-coordinators>). At the same time, we urge the Department to continue collecting the names and emails of the civil rights coordinators for the school year about which data was

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<sup>10</sup> Daniel J. Losen *et al.*, *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies* 6 (2021), <http://www.schoolsdisciplinedata.org/ccrr/docs/final-Report-03-22-21-v5-corrected.pdf>; see Mark Keierleber, *supra* note 9 (citing New York City police department records that reveal about 1200 school-based arrests were logged for the 2017-18 school year).

<sup>11</sup> Christina A. Samuels, *70,000 Students With Disabilities Secluded, Restrained in School*, Education Week (May 16, 2017), <https://www.edweek.org/leadership/70-000-students-with-disabilities-secluded-restrained-in-school/2017/05?intc=eml-contshr-shr-desk>.

<sup>12</sup> Jenny Abamu, *'We Have Fallen Short': Fairfax Schools Officials Release Findings From Isolation Review*, WAMU (Apr. 3, 2019), <https://wamu.org/story/19/04/03/we-have-fallen-short-fairfax-schools-officials-release-findings-from-isolation-review>.

<sup>13</sup> American Association of University Women, *An Underreported Problem: Campus Sexual Misconduct* (last visited Dec. 12, 2024), <https://www.aauw.org/resources/article/underreported-sexual-misconduct>.

<sup>14</sup> Department of Education, Office for Civil Rights, *Civil Rights Data Collection: Sexual Violence in K-12 Schools* 8-9 (2020), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/sexual-violence.pdf>.

<sup>15</sup> Catherine Hill & Holly Kearl, American Association of University Women, *Crossing the Line: Sexual Harassment at School*, at 2 (2011), <https://www.aauw.org/app/uploads/2020/03/Crossing-the-Line-Sexual-Harassment-at-School.pdf>.

<sup>16</sup> *Id.*

<sup>17</sup> Part A, *supra* note 3, at 7-8.

collected, so that students, parents, educators, and advocates who have questions about the data can follow up with that individual.

**D. The Department should not request a full or partial exemption from collecting detailed race and ethnicity data for the CRDC.**

**Directed Question #3:** The updated SPD 15 guidelines are an important step towards collecting more accurate demographic data to better identify and describe the populations reflected in the CRDC and other surveys. We urge the Department not to request either a full or partial exemption from collecting data using the detailed categories of the revised SPD 15. NWLC believes it is crucial to collect and maintain data that is able to be disaggregated with as much detail as possible in order to accurately assess potential disparities among specific racial and ethnic groups that would not be reflected in the aggregate demographic categories. At a moment when reporting agencies will already need to update their data collection to comply with the new minimum categories, it represents minimal additional burden to expand the questions asked and collect information on the detailed categories as well. In addition, we encourage the Department to provide technical assistance, such as updated software and template forms, to local educational agencies (LEAs) to assist in the collection of racial and ethnic data in compliance with the updated SPD 15.

**E. The Department should not reduce data collection on remote instruction.**

We urge the Department not to reduce its important data collection on remote instruction. While we welcome the addition of Data Groups 907 (whether a school offers in-person, remote, or hybrid instruction) and 1048 (whether students receiving remote instruction were in the school), we oppose the proposed removal of Data Groups 1041 (hours per day of remote instruction) and 1042 (percentage of students who received remote instruction).

As an initial matter, we reject the Department’s justification for deleting Data Groups 1041 and 1042 (“[b]ecause the pandemic has ended”).<sup>18</sup> Regardless of whether there is a pandemic, however, there will always be students who need remote instruction—including students who are at high risk for COVID complications<sup>19</sup>—because it is appropriate and equitable for them, as well as students who are inappropriately placed into remote instruction for inequitable and discriminatory reasons. In particular, we note that many young people are currently receiving remote instruction for various reasons, including because schools sometimes implement it as a “remedy” for sex-based harassment, including anti-LGBTQI+ harassment, sexual assault, and dating violence. Since access to remote and in-person instruction may reveal disparities based on protected class status, the CRDC should continue to collect Data Groups 1041 and 1042.

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<sup>18</sup> Although the U.S ended its formal recognition of the COVID national emergency, about 5% of the population nationwide continues to test positive for COVID each week, *see supra* note 2, and that is likely an undercount from the true percentage of people who may be positive but who decline to test or who do not have access to testing.

<sup>19</sup> The CDC has indicated that students at risk for COVID complications include (but are not limited to) students who are immunocompromised or otherwise disabled; students who are pregnant or recently pregnant; students with asthma, diabetes, depression, congenital heart disease, or cancer; students with genetic, neurologic, or metabolic conditions; students who smoke or are physically inactive; and students who have had COVID before, which was reported to be about 90% of children as of July 2023 and is undoubtedly higher today. Centers for Disease Control and Prevention, *People with Certain Medical Conditions and COVID-19 Risk Factors* (June 24, 2024), <https://www.cdc.gov/covid/risk-factors>; *More Than Three-Quarters of Americans 16 and Older Have Been Infected With COVID: CDC*, US News (July 5, 2023), <https://www.usnews.com/news/health-news/articles/2023-07-05/more-than-three-quarters-of-americans-16-and-older-have-been-infected-with-covid-cdc>.

## II. Recommendations on Discipline Data

### A. The Department should expand data collection on informal removals.

NWLC applauds the Department for including informal removals to the discipline data (Data Groups 1004, 1005, and 1006). This information will be critical in assessing the full range of ways students are disciplined and its effects on their education, rights, and overall ability to succeed in school. NWLC strongly opposes the use of informal removals in schools. Schools often use informal removals—sending students home early or requiring parents to pick up their child—to artificially lower their suspension rates or to avoid obligations to provide a free and appropriate public education (FAPE) to disabled students. Previous comments to proposed changes to the CRDC have also noted that schools assign informal detentions, “tardy sweeps,” or “hallway time”; lock students out of remote instruction; and impose longer-term “off the books” removals for longer than 10 days (or even months).<sup>20</sup>

Students may also be informally removed from class due to “dress coding.” When students are “dress coded” they are disciplined for violating a dress or grooming code (e.g., wearing the wrong shoes, dirty uniforms, or ripped jeans), and may be forced to sit in the principal’s office for the rest of the day or until their parents can drop off different clothes.<sup>21</sup> Dress coding disproportionately impacts Black girls when school dress codes rely on race- and sex-based stereotypes and are not equally applied to all students depending on their size and shape. A 2022 Government Accountability Office report on school dress codes found that “an estimated 44 percent of dress codes outlined ‘informal’ removal policies, which included removing a student from class without documenting it as a formal removal.”<sup>22</sup>

Although the Department’s proposed changes include the number of children informally removed, the data does not include the total number of informal removals employed by the school and/or LEA. Providing this additional data is vital to accessing the discipline practices employed by schools and whether the practices are affecting particular demographics of students disproportionately. For example, one child may have been informally removed once and another 20 times in the same school year, but the data would only reflect that two children were informally removed. We strongly recommend the Department require schools and LEAs to report:

- The total number of informal removals
- The number of hours of lost instruction time due to informal removals
- The “Sex (Membership)—Expanded” data category for Data Group 1004 (informal removals of preschool children), consistent with what is required for Data Groups 1005 and 1006 (informal removals of K-12 children). This is important as children can identify as nonbinary as early as age 3,<sup>23</sup> and the CRDC should include this option to identify possible disproportionate informal removals of nonbinary preschool children.

<sup>20</sup> Department of Education, Office for Civil Rights, Mandatory Civil Rights Collection, *Attachment B: CRDC Data Set for School Years 2021–22 and 2023–24: Response to First Round Public Comment* (Sept. 2022), at 15 [hereinafter 2022 Attachment B].

<sup>21</sup> See National Women’s Law Center, *Dress Coded: Black Girls, Bodies, and Bias in D.C. Schools* at 24-25 (2018), <https://nwlc.org/dresscoded>.

<sup>22</sup> U.S. Gov’t Accountability Off., GAO-23-105348, *K-12 Education: Department of Education Should Provide Information on Equity and Safety in School Dress Codes* (2022), <https://www.gao.gov/assets/gao-23-105348.pdf> (see PDF p.2).

<sup>23</sup> Priscilla Blossom, *My child might be nonbinary: What experts say parents need to know*, Care (June 6, 2024), <https://www.care.com/c/my-child-might-be-nonbinary-what-experts-say-parents-need-to-know>; Human Rights Campaign, *Transgender Children & Youth: Understanding the Basics* (last visited Dec. 12, 2024), <https://www.hrc.org/resources/transgender-children-and-youth-understanding-the-basics>; Planned Parenthood, *How do I talk with my preschooler about identity?* (last visited Dec. 12, 2024), <https://www.plannedparenthood.org/learn/parents/preschool/how-do-i-talk-with-my-preschooler-about-identity>.

## Directed Question #1

The definition for “informal removal” should not be limited by time constraints or requirements that students are removed from their school campus. Rather, an informal removal should include any period of time that a student is removed from their classroom without formal documentation. Furthermore, informal removals should include any removal from an “education program or activity” (as the Department proposes), which appropriately includes removals of children who remain on campus. As discussed above, informal removals are harmful because they are used to remove students from their learning environment without documentation. Over time this can lead to hours of learning loss for a student, so it is important to track any time a student is removed from their classroom.

### **B. The Department should expand data collection on threat assessments.**

NWLC appreciates the additional collection of Data Group 1050 regarding threat assessment teams to the discipline data. However, the minimal question of whether a school has a threat assessment team does not address the harmful effects that threat assessments have on students.

NWLC strongly opposes the use of threat assessments in schools. “The very concept of ‘threat assessment’ as it is actually implemented, turns the goal of school safety on its head by encouraging school officials to see the students themselves as potential dangers to the school community, rather than valued community members and children worthy of protection. Within that lens, not all students are viewed equally.”<sup>24</sup> Indeed, the use of threat assessments poses a threat of severe mischaracterization of Black children and disabled students as more dangerous and therefore justifies use of disproportionate school discipline and other discriminatory practices. For example, in a study of four Colorado school districts, male students, students in special education, and African American and Native American students were overrepresented in the threat assessment sample.<sup>25</sup> During the 2018-19 school year, Albuquerque Public Schools reported that students with disabilities made up 56% of threat assessments despite accounting for only 18% of the student population, and Black students accounted for 9.6% of threat assessments despite making up only 2.6% of the student population.<sup>26</sup> A study by the University of Virginia on threat assessments in Florida schools demonstrated that Black students made up 36.5% of threat assessment referrals while accounting for only 21.2% of the student population, and that students with disabilities (IEP or 504 plan) were twice as likely to be referred for a threat assessment.<sup>27</sup>

Furthermore, threat assessments in schools can mirror zero-tolerance policies, which disproportionately affect Black and Brown students and students with disabilities.<sup>28</sup> This is particularly dangerous where school police have the authority to arrest or involuntarily commit a student or trigger deportation or probation consequences.<sup>29</sup> For example, a study conducted in Texas school districts found that

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<sup>24</sup> Council of Parent Attorneys and Advocates *et al.*, *K-12 Threat Assessment Processes: Civil Rights Impacts* (2022), [https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2022\\_docs/k-12\\_threat\\_assessment\\_proce.pdf](https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2022_docs/k-12_threat_assessment_proce.pdf).

<sup>25</sup> Franci Crepeau-Hobson & Nancy Leech, *An Exploratory Investigation of Threat Assessment Practices in Colorado Schools*, 26 *Contemp. Sch. Psychol.* 458–68 (2022), <https://doi.org/10.1007/s40688-021-00356-7>.

<sup>26</sup> Ike Swetlitz, *Who's the Threat?*, Searchlight New Mexico, Independent Investigative Journalism (Oct. 15, 2019), <https://searchlightnm.org/whos-the-threat>.

<sup>27</sup> Jennifer L. Maeng *et al.*, *School Threat Assessment in Florida: Technical Report of 2021-2022 Case Data*, Univ. of Virginia (June 1, 2023), [https://education.virginia.edu/sites/default/files/2023-06/yvp\\_fl-nij-case-technical-report-year-2\\_06-01-2023.pdf](https://education.virginia.edu/sites/default/files/2023-06/yvp_fl-nij-case-technical-report-year-2_06-01-2023.pdf).

<sup>28</sup> Aliyya Swaby, *Tennessee Is Ramping Up Penalties for Student Threats. Research Shows That's Not the Best Way to Keep Schools Safe*, ProPublica (Apr. 17, 2024), <https://www.propublica.org/article/how-schools-should-handle-student-threats>.

<sup>29</sup> For example, the Baker Act is a Florida statute that allows for detainment and the voluntary and involuntary admission of individuals for psychiatric care. The Baker Act requires that a person be afforded due process rights, particularly before involuntary

inconsistent and incomplete threat assessments are leading to racial disparities in discipline for similar behaviors as well as suspensions and expulsions of students without mental health interventions and other supports required by law.<sup>30</sup>

To track and minimize schools' use of threat assessments, we strongly urge the Department to include disaggregated and cross-tabulated data on:

- The number of students subjected to threat assessments
- The number of threat assessments conducted
- The outcomes of these assessments
- Whether a member of law enforcement is a member of the threat assessment team.

In addition, we ask the Department to define a "threat assessment" team to be distinct from an IEP or 504 team.

**C. The Department should collect and disaggregate referral and arrest data for Section 504-only students by race/ethnicity for internal analysis.**

**Directed Question #4:**

NWLC recognizes the importance of protecting the privacy of students and appreciates the precautions to restrict public access of disaggregated data that could be used to identify individuals. However, in the interest of addressing inequities among specific demographics of students, it is essential that data on arrests and referrals, disaggregated by race and ethnicity for students with disabilities served only under Section 504 continue to be collected and used for internal Department analysis and through regulated access to a restricted use data file.

There is growing evidence that students of color, especially Black students, face substantial barriers to diagnosis of autism<sup>31</sup> and other intellectual and developmental disabilities that meet eligibility criteria for students to receive IEP services, and it is thus likely that many students of color with disabilities who are served only under Section 504 may have greater unmet support needs which they are unable to access due to diagnostic barriers. Furthermore, students of color, especially Black students, have long been disproportionately targeted for arrest and referrals.<sup>32</sup> Therefore, it is essential that data is collected, disaggregated by race and ethnicity, in order to investigate racial disparities in the arrest and referral rates of children with disabilities receiving services only under Section 504.

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admission; however, schools and police have inappropriately used this statute in recent years to detain and commit children, as a form of student control and discipline. In a recent report, the Southern Poverty Law Center revealed that children have had the Baker Act used against them more than 37,000 times each year. See Southern Poverty Law Ctr., *Costly and Cruel: How Misuse of the Baker Act Harms 37,000 Florida Children Each Year* (2021),

[https://www.splcenter.org/sites/default/files/com\\_special\\_report\\_baker\\_act\\_costly\\_and\\_cruel.pdf](https://www.splcenter.org/sites/default/files/com_special_report_baker_act_costly_and_cruel.pdf).

<sup>30</sup> Josephine Lee, *Students Pay as Texas School Districts Violate 'Threat Assessment Law'*, Texas Observer (May 3, 2023), <https://www.texasobserver.org/students-pay-as-texas-school-districts-violate-threat-assessment-law>.

<sup>31</sup> Casey Rentz, *Black And Latino Children Are Often Overlooked When It Comes To Autism*, NPR (Mar. 19, 2018), <https://www.npr.org/sections/health-shots/2018/03/19/587249339/black-and-latino-children-are-often-overlooked-when-it-comes-to-autism>.

<sup>32</sup> Evie Blad & Alex Harwin, *Analysis reveals racial disparities in school arrests*, PBS (Feb. 17, 2017), <https://www.pbs.org/newshour/education/analysis-reveals-racial-disparities-school-arrests>.

**D. The Department should collect data on students who are served in non-LEA Facilities and restraint or seclusion in non-LEA facilities.**

We applaud the Department for adding data collection on the number of students served in non-LEA facilities, including the number of students who experience restraint and seclusion in these settings (Data Groups 910, 939, and 1049). This data will provide better data transparency about students who are served in private school through the public school district, and other facilities like juvenile detention facilities, mobile school sites, and schools managed by other state agencies. Many students that we advocate for such as student parents, girls of color, LGBTQI+ students, students with disabilities, and students with these intersecting identities may attend schools in these settings. It is important to ensure that we can identify where there are gaps in access to education for these students, particularly in schools where civil rights protections for students are different from the protections in traditional public schools.<sup>33</sup>

In addition, we recommend using the “Sex (Membership)—Expanded” data category for Data Group 939 (number of preschool children served in non-LEA facilities), consistent with our recommendation for Data Group 1004 (informal removals of preschool children), to accurately capture any disproportionate impacts on nonbinary preschool children.

**E. The Department should collect more comprehensive data on the number of law enforcement and security staff in schools.**

We applaud the Department for collecting data on law enforcement personnel in schools including security guards and law enforcement officers. However, we urge the Department to expand the permitted values for the “Security Staff Type” data category to include private security and correctional officers (not just law enforcement officers and security guards). The presence of law enforcement or security officers in schools can make students feel less safe and is connected to a variety of negative outcomes including increased exclusionary discipline and increased student involvement with the legal system.<sup>34</sup> The Department must monitor the presence and law enforcement and quasi-law enforcement in schools.

We also request that the Department require LEAs to report the number of FTE law enforcement officers and other security assigned to, contracted by, or employed by the district as part of both the school and LEA surveys, which would ensure that the hours of security staff with less consistent school-based assignments are captured as accurately as possible across a district. This is because the current Security Staff instructions ask school staff to report the “number of FTE security staff” who were “present at the school, at least once a week, to perform his/her duties,”<sup>35</sup> but law enforcement officers are not typically school staff, so their hours are unlikely to be fully allocated to schools under the current instructions.

**F. The Department should collect data on assaults by police and other school security staff.**

The Department should begin to collect data on assaults by police and other school security staff against students, including physical, sexual, chemical or irritant assaults, and assaults using firearms and so-

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<sup>33</sup> Bayliss Fiddiman & Jessica Yin, *The Danger Public School Voucher Programs Pose to Civil Rights*, Center for American Progress (May 2019), <https://eric.ed.gov/?id=ED596183>.

<sup>34</sup> National Women’s Law Center, *Stop Flushing Money Down the Pipeline: A Call to Divert Federal Money from Cops to Counselors in Schools* (June 2022), <https://nwlcc.org/wp-content/uploads/2021/11/Stop-Flushing-Money-Down-the-Pipeline-Fact-Sheet-SRO-Funding-6.27.22.pdf>.

<sup>35</sup> U.S. Dep’t of Educ., Office for Civil Rights, 2023-24 Civil Rights Data Collection – School Form 68, <https://civilrightsdata.ed.gov/assets/downloads/2023-24-crdc-school-form-final.pdf>.



called “less lethal” weapons. Although the Department has previously stated it believes this collection would be too burdensome,<sup>36</sup> the increasing documentation of inappropriate behavior by school police and school security guards<sup>37</sup> indicates that the benefits of this data to help to document this behavior and prevent these harms outweighs any perceived administrative burden.

The presence of school-based law enforcement is harmful to the academic, social, and emotional wellbeing of students—especially girls of color, disabled students, and LGBTQI+ students. The CRDC includes data elements that address referrals to law enforcement agencies and school-based arrests, but it should also include the instances of assaults students experience from school-based law enforcement. In addition to pepper spray and chemical restraints, school-based law enforcement officers may also carry firearms and other weapons, such as conducted electrical weapons (*i.e.*, tasers), batons, rubber bullets, and “bean-bag rounds.” Armed with these weapons, school-based law enforcement officers have too often carried out physical assaults on students, especially Black girls and other girls of color, in direct violation of these students’ civil rights. From our work with Black girls as well as widespread media accounts, we know that Black girls have frequently been targets of physical and sexual harassment and abuse at the hands of school police and other school-based law enforcement, with dire health consequences, including loss of consciousness, traumatic brain injury, and even death. For example, a 2022 report found that over 80% of victims of school police assault from 2011 to 2021 were Black students, and that 60% of these assaults resulted in serious injury, including hospitalizations, broken bones, or concussions.<sup>38</sup> A 2024 report also highlights the sexual harassment that Black girls experienced by school police, including inappropriate comments and unwanted touching disguised as “security checks.”<sup>39</sup> Similarly, in another 2024 report co-authored by NWLC, Black girls called attention to inappropriate behavior by school police in addressing their bodies, their race, and even their sexual orientation.<sup>40</sup>

We have also heard from Black girls who report being sexually harassed or abused by school police and who feel like they have no means of reporting the abuse because of their schools’ allegiances to school police. Requiring the collection of data on assaults by police will encourage schools to provide and publicize reporting mechanisms for such abuse, allow for the publication of data on school police misconduct, provide a mechanism for accountability, and help give students meaningful avenues for relief and healing.

In an era when police presence on school campuses is the unfortunate norm, it is imperative that OCR collects data on police and security guard assaults on students, including assaults with and without weapons of various types. At a minimum, the CRDC should include a full table of elements related to actions against students taken by law enforcement officers and other school security that includes incidents of the use of chemical or irritant restraints, incidents of the use of firearms, incidents of use of

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<sup>36</sup> 2022 Attachment B, *supra* note 20, at 88-89.

<sup>37</sup> Advancement Project., *Safe Not Sexualized: Protecting Black Girls and Gender Expansive Youth from School Police Sexual Violence* (Oct. 2023), <https://policefreeschools.org/policesexualviolence>; Eesha Pendharkar, *Students of Color Disproportionately Suffer from Police Assaults at School, Says Report*, Education Week (Jan. 13, 2023), <https://www.edweek.org/leadership/students-of-color-disproportionately-suffer-from-police-assaults-at-school-says-report/2023/01>.

<sup>38</sup> Tyler Whittenberg *et al.*, Advancement Project & Alliance for Educational Justice *#AssaultAtSpringValley: An analysis of police violence against Black and Latine students in public schools* (2022), <https://advancementproject.org/resources/assaultatreport>.

<sup>39</sup> Interrupting Criminalization & In Our Names Network, *Sexualization Not Safety: Black Girls, Trans, and Gender Nonconforming Youth’s Experiences of Police Presence in Schools: Report* (2024), <https://www.interruptingcriminalization.com/resources-all/sexualization-not-safety-black-girls-trans-and-gender-nonconforming-youths-experience-of-police-presence-in-schools-report>.

<sup>40</sup> Sabrina Bernadel *et al.*, National Women’s Law Center & Southern Poverty Law Center, *Keep Her Safe: Centering Black Girls in School Safety* (2024), <https://nwlc.org/resource/keep-her-safe-centering-black-girls-in-school-safety>.

other “less-lethal” weapons, incidents of physical assault without a weapon, and incidents of sexual assault.

### **III. Recommendations on Harassment Data**

#### **A. The Department should expand data collection on sexual assault, dating violence, and stalking.**

NWLC urges the Department to specifically collect data on sexual assault, dating violence, and stalking when collecting harassment data.

First, the Department should require disaggregation of data on harassment allegations, disciplined harassers, and harassment victims (Data Groups 933, 934, and 935) by “sexual assault,” “dating violence,” and “sex-based stalking”—similar to how the CRDC already disaggregates by “sexual orientation” and “gender identity.” This would require schools to disaggregate by sexual assault, dating violence, and stalking when they report the number of harassment allegations, the number of students disciplined for harassment, and the number of student harassment victims (Data Groups 933, 934, and 935). For consistent disaggregation, the Department should also revise the definition of “harassment or bullying on the basis of sex,” which already includes “sexual assault,”<sup>41</sup> to include “dating violence” and “stalking” as well (Data Groups 933, 934, 935, 988, and 1022; and Data Categories “Civil Rights Category (Student Counts)” and “Civil Rights Category (Allegations)”). This would also allow the Department to identify specific patterns of and differentiate between different forms of sex-based harassment and therefore tailor its outreach, education, and technical assistance to schools accordingly.

Second, the Department should define “sexual assault,” “rape,” “dating violence,” and “stalking” with more specificity and inclusivity, similar to how the Department already defines these terms under the Clery Act.<sup>42</sup> The CRDC’s current definition of “sexual assault” relies on terms like “fondling,” “indecent liberties,” and “child molestation,” which are vague and not defined, and which make it more likely for a school to underreport the number of reported sexual assaults. For example, the Department could define “sexual assault” to precisely identify body parts that are private, to include instances where the victim is made to touch the assailant’s private body parts, and to focus on “intentional” touching, which would both exclude accidentally bumps and encompass sexual misconduct that is perpetrated either for the for the purpose of sexual gratification or to haze, threaten, or otherwise assert dominance over the victim<sup>43</sup>:

*the intentional touching, over or under clothing, of:*

- (i) a private body part (which includes the breast, vagina, vulva, penis, testicle, anus, buttock, or inner thigh) of another person, with any body part or object; or*

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<sup>41</sup> Department of Education, Office for Civil Rights, Mandatory Civil Rights Data Collection, *Data Groups for Civil Rights Data Collection for School Years 2025-26 and 2027-28* (Oct. 2024) [hereinafter CRDC Data Groups], at A2-37, A2-39; Department of Education, Office for Civil Rights, Mandatory Civil Rights Data Collection, *Data Categories for Civil Rights Data Collection for School Years 2025-26 and 2027-28* (Oct. 2024) [hereinafter CRDC Data Categories], at A3-8, A3-9.

<sup>42</sup> The Clery regulations define “sexual assault” as “[a]n offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s UCR program and included in Appendix A of this subpart.” 34 C.F.R. § 668.46. Appendix A of the Clery regulations, in turn, define “fondling” as “[t]he touching of the private body parts of another person for the purpose of sexual gratification, *without the consent of the victim*, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.” 34 C.F.R. App’x A to Subpart D of Part 668 (emphasis added).

<sup>43</sup> In contrast, the Clery regulations define “fondling” as “[t]he touching of the private body parts of another person *for the purpose of sexual gratification*, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.” 34 C.F.R. App’x A to Subpart D of Part 668 (emphasis added).

*(ii) any part of another person's body with a private body part; without the consent of one of the people, including instances where the victim is incapable of giving consent, including, for example, because of the victim's temporary or permanent mental or physical incapacity. Classification of these incidents should take into consideration the age of the victim and the age and developmentally appropriate behavior of the respondent."*

Third, the Department should not count "rape" separately from other types of "sexual assault." Having separate categories creates more potential for confusion for school officials who are tasked with reporting this data, and there does not seem to be any specific benefit to collecting this data separately. However, if the Department chooses to continue counting rape and other sexual assault separately, we recommend the following two changes:

- The Department should define "rape" by relying on the absence of "consent" and not by reference to the existence of "force," consistent with how the Department already defines "rape" under the Clery Act.<sup>44</sup> The Department should also ensure that the definition of "rape" encompasses a more diverse range of situations, including when an individual with a penis is made to penetrate another person's vagina, anus, or mouth; and when one person performs non-penetrative oral sex on another person with a vagina without the consent of one of the people involved. For example, the Department could define "rape" as:

*(i) Any penetration, no matter how slight, of one person's vagina or anus by another person's body part or object; or*  
*(ii) Any sexual contact, no matter how slight, between one person's mouth and another person's penis or vagina;*  
*without the consent of one of the people, including instances where the victim is incapable of giving consent, including, for example, because of the victim's temporary or permanent mental or physical incapacity. Classification of these incidents should take into consideration the ages of the victim and the respondent.*

- The Department should change the list of permitted values to "Rape" and "Sexual assault (other than rape)." The current permitted values are "Rape or attempted rape" and "Sexual assault (other than rape)." Removing "attempted rape" from the list of permitted values would reduce confusion for schools, since the CRDC does not currently define "attempted rape" or explain how "attempted rape" is different from "sexual assault (other than rape)."

Fourth, the Department should define "dating violence" broadly to include physical, sexual, and emotional abuse; engaging in economic coercion of a victim by interfering with the victim's ability to secure a job or save money; violence or threats of violence toward the complainant's family members, friends, pets, or property; threats by the respondent to kill themselves; and threats by the respondent to report the victim or the victim's family members to police, immigration officials, child protective services, or a mental health institution. This would be consistent with the definition of "domestic violence" in the 2022 reauthorization of the Violence Against Woman Act, which includes "a pattern of any other coercive behavior committed,

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<sup>44</sup> The Clery regulations define "rape" as "[t]he penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, *without the consent of the victim.*" 34 C.F.R. App'x A to Subpart D of Part 668 (emphasis added).

enabled, or solicited to gain or maintain power and control over a victim, *including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior.*"<sup>45</sup>

Finally, the Department should define "stalking" in the CRDC as it is defined in the Clery regulations to maintain consistency across reporting of stalking incidents in all levels of education.<sup>46</sup>

### **B. The Department should collect more data on harassment by staff and students.**

First, the Department should collect data on all staff-on-student harassment (not just sexual assault) regarding the number of allegations, disciplined harassers, and victims, analogous to the existing Data Groups 933, 934, and 935 regarding student-on-student harassment. By doing so, the Department would also be able to retire Data Group 1025, which treats staff-on-student sexual assault only as a "criminal act" rather than a type of a civil rights violation (*i.e.*, harassment). This change would ensure a more comprehensive and streamlined CRDC that accounts for all types of harassment targeting students and would avoid using a criminal legal framework that is inapposite for analyzing civil rights violations.

Second, we ask the Department to collect data on outcomes for staff-on--student *stalking* as well as outcomes for *student*-on-student sex assault, dating violence, and stalking—consistent with how the Department already collects data on the outcomes of reports of staff-on-student sexual assault (Data Groups 1026-1029). Having access to this data is critical to ensuring that the Department, as well as students and families, can identify schools that are in potential violation of their Title IX obligations. Reporting this data would not impose a significant burden on schools, as schools are already required under the Title IX regulations to provide notice to parties of the outcome of all formal complaints and to retain records of all outcomes for at least seven years.<sup>47</sup>

Third, the Department should collect separate data on how often staff and students are found responsible *and* how often they are found not responsible for sexual assault, dating violence, or stalking. Currently, under Data Group 1027, the Department collects only a *single data point* on how often a staff member is found *either* responsible *or* not responsible for a staff-on-student sexual assault. This obscures important information, as a school may report that 100% of reports of sexual assault result in a determination that the respondent was *either* "Responsible" *or* "Not Responsible," but this may obscure the fact that 100% of determinations were in fact "Not Responsible." Collecting separate data on "Responsible" and "Not Responsible" determinations would allow the Department, as well as students and families, to identify situations where a school is potentially conducting sham investigations to sweep sexual assault, dating violence, and stalking under the rug.

### **C. The Department should collect data on off-campus incidents.**

The CRDC should reflect students' real-life experiences with harassment, including off-campus and online harassment. This is particularly important given the recent and alarming rise of digital sexual

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<sup>45</sup> 34 U.S.C. § 1221(a)(12) (emphasis added).

<sup>46</sup> 34 C.F.R. § 668.46 (defining "stalking" as "(i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to - (A) Fear for the person's safety or the safety of others; or (B) Suffer substantial emotional distress. (ii) For the purposes of this definition - (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.").

<sup>47</sup> 34 C.F.R. §§ 106.45(h)(2) (notice), 106.8(f) (recordkeeping).

harassment, which includes image-based sexual abuse (often referred to as “revenge pornography”), artificially generated explicit materials (often referred to as “AI porn” or “deepfake pornography”), and child sexual abuse material. As of 2023, over 98% of deepfakes on the internet were pornographic, and the number of deepfakes doubles every six months.<sup>48</sup> Across the country, K-12 students have been victimized by digital sexual harassment, including high-profile and disturbing cases in California, Florida, Iowa, New Jersey, and Washington.<sup>49</sup>

For more than two decades, schools have been responsible for addressing any harassment based on sex, race, or disability that creates a hostile educational environment, including when the harassment occurs off campus.<sup>50</sup> In 1998, the Supreme Court recognized that schools may be liable for money damages under Title IX, even if the harassment at issue “never [occurred] on school property.”<sup>51</sup> From 2001 to 2020, the Department recognized that schools’ Title IX obligations to address sexual harassment depended not on where the *underlying conduct* occurred, but rather whether the harassment created a hostile environment at school.<sup>52</sup> While the 2020 Title IX regulations narrowed this responsibility, in conflict with Supreme Court precedent, schools were still required to address many off-campus incidents of sexual assault, dating violence, and stalking, including any off-campus incident that occurred during a school-sponsored program or activity or where the school had “substantial control” over the respondent and the incident.<sup>53</sup> And under the current 2024 Title IX regulations, schools must address all off-campus incidents of sex discrimination that occur under an education program or activity, as well as any hostile environment that arises in an education program or activity inside the United States, even if the underlying incident of sex discrimination occurred off campus, online, or outside the United States.<sup>54</sup> Accordingly, the Department should require schools to include off-campus incidents when reporting data regarding staff-on-student or student-on-student harassment or bullying.

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<sup>48</sup> Letter to Miguel Cardona, Sec’y of Education, and Catherine E. Lhamon, Ass’t Sec’y for Civil Rights, Dep’t of Educ., from Sexual Violence Prevention Assoc. & 37 Organizations 1 (July 29, 2024), <https://drive.google.com/file/d/1tYU6SSC3npjfHdqhyx9vtuzkTYqgPN8K/view>.

<sup>49</sup> Beau Bowman, *Central Iowa Sheriff’s Office Investigating Explicit AI Photographs of High School Students*, KCCI (Apr. 23, 2024), <https://www.kcci.com/article/story-count-sheriff-investigating-explicit-ai-photographs-of-nevada-high-school-students/60584800>; Caroline Haskins, *Florida Middle Schoolers Arrested for Allegedly Creating Deepfake Nudes of Classmates*, Wired (Mar. 8, 2024), <https://www.wired.com/story/florida-teens-arrested-deepfake-nudes-classmates>; Kat Tenbarge, *Beverly Hills Middle School Expels 5 Students after Deepfake Nude Photos Incident*, NBC News (Mar. 8, 2024), <https://www.nbcnews.com/tech/tech-news/beverly-hills-school-expels-students-deepfake-nude-photos-rcna142480>; Bridget Chavez, *No Charges as AI-Generated Nude Pictures of Female Students Circulate around Issaquah School*, KIRO 7 News Seattle (Nov. 9, 2023), <https://www.kiro7.com/news/local/no-charges-ai-generated-nude-pictures-female-students-circulate-around-issaquah-school/MCQTOKWRVREPTK3K2IAQWTRR6U>; Julie Jargon, *Fake Nudes of Real Students Cause an Uproar at a New Jersey High School*, Wall Street Journal (Nov. 2, 2023), <https://www.wsj.com/tech/fake-nudes-of-real-students-cause-an-uproar-at-a-new-jersey-high-school-df10f1bb>.

<sup>50</sup> Department of Education, Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, of Third Parties*, at 7 (issued Jan. 19, 2001; rescinded Aug. 26, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>; Department of Education, Office for Civil Rights, *Prohibited Disability Harassment* (July 25, 2000), *Racial Incidents and Harassment Against Students*, (Mar. 10, 1994), <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>.

<sup>51</sup> *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 278 (1998).

<sup>52</sup> Department of Education, Office for Civil Rights, *Q&A on Campus Sexual Misconduct*, at 1 n.3 (issued Sept. 22, 2017; rescinded Aug. 26, 2020) [hereinafter 2017 Guidance] (“Schools are responsible for redressing a hostile environment that occurs on campus even if it relates to off-campus activities”); Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence* (issued Apr. 29, 2014; rescinded Sept. 22, 2017) (“a school must process all complaints of sexual violence, regardless of where the conduct occurred”); Department of Education, Office for Civil Rights, *Dear Colleague Letter on Sexual Violence* (issued Apr. 4, 2011; rescinded Sept. 22, 2017) (“Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school’s education program or activity”); Department of Education, Office for Civil Rights, *Dear Colleague Letter on Harassment and Bullying*, at 2 (issued Oct. 26, 2010; partially rescinded Aug. 26, 2020) (finding Title IX violation where “conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school,” regardless of location of harassment).

<sup>53</sup> 34 C.F.R. § 106.44(a) (2020) (rescinded Aug. 1, 2024, but remains in effect in 26 states and thousands of schools).

<sup>54</sup> 34 C.F.R. § 106.11.

#### **IV. Recommendations on LGBTQI+ Student Data**

##### **A. The Department should continue collecting information about nonbinary students.**

We appreciate the Department’s inclusion of the “Sex (Membership)—Expanded” data category and urge the Department to retain it in future collections. We continue to urge the Department to make clear that neither CRDC nor any other federal requirement necessitates reporting a student’s sex assigned at birth. Additionally, we note that some LEAs use more than one data element related to students’ sex or list a student’s sex differently in different types of records, and some LEAs may use varying terminology for sex data fields. In such cases, the Department should clarify that LEAs have discretion to determine how to best translate information in their records into the sex categories in the CRDC.

##### **B. The Department should expand its definitions of sexual orientation and gender identity.**

The Department should define “sexual orientation” and “gender identity” to include more identities and to include associational harassment (Data Groups 1034, 1035, and 933; and Data Category “Civil Rights Category (Allegations)”):

Sexual orientation harassment or bullying refers to harmful conduct based on actual or perceived sexual orientation (including but not limited to harassment because a student identifies as, or is perceived to be, or is associated with people who are gay, lesbian, bisexual, asexual, pansexual, or heterosexual).

Gender identity harassment or bullying refers to harmful conduct based on actual or perceived gender identity (including but not limited to harassment because a student identifies as, or is perceived to be, or is associated with people who are transgender, cisgender, or nonbinary).<sup>55</sup>

##### **C. The Department should define sex to include sex characteristics (including intersex traits) when collecting data on harassment and bullying.**

First, we recommend the Department adopt the following definition of “harassment or bullying on the basis of sex characteristics” in Data Groups 1034 and 1035 and in the Data Categories “Civil Rights Category (Allegations)” and “Civil Rights Category (Student Counts)”:

*Harassment or bullying on the basis of sex characteristics – Sex characteristics harassment or bullying refers to harmful conduct on the basis of actual or perceived variations in sex characteristics (including, but not limited, to harassment because a student has or is perceived to have variations in sex characteristics, is or is perceived to be intersex, or is associated with such an individual). Sex characteristics include (but are not limited to) sexual or reproductive anatomy, chromosomal patterns, hormone function, secondary sex characteristics, or any combination thereof. Variations in sex characteristics, sometimes called intersex traits, include any combination of sex characteristics that may be perceived as not fitting typical, binary definitions of male or female in terms of development, appearance, or function. Harassment or bullying may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that is physically threatening,*

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<sup>55</sup> We recognize that some nonbinary people identify as transgender and nonbinary, and some identify only as nonbinary.

*harmful, or humiliating. Harassment or bullying includes conduct carried out by school employees, other students, or third parties.*

Second, we recommend that, as with sexual orientation and gender identity, the Department include a separate permitted value for allegations of harassment and bullying on the basis of sex characteristics in the Data Categories “Civil Rights Category (Allegations)” and “Civil Rights Category (Student Counts).” A separate permitted value is justified by evidence of harassment and bullying against intersex students, together with increasing visibility of this population, and the potential for increased scrutiny of student’s sex characteristics, including intersex traits, in light of recently enacted and proposed state legislation.

## **V. Recommendations on Pregnant and Parenting Student Data**

### **A. The Department should collect non-personally identifiable data on enrollment and graduation rates for pregnant and parenting students.**

Pregnant and parenting students face a variety of barriers that make it challenging for them to complete their high school education. From the most recent data available (an analysis by Child Trends of the National Longitudinal Survey of Youth, 1997 cohort), we know that 51% of teenage mothers complete their high school diploma by age 22, compared to 89% of young women who did not give birth as a teenager.<sup>56</sup> Young to navigate education systems that were not designed to accommodate the realities of being a student parent. Research from the National Women’s Law Center found that most states do not have flexible attendance policies<sup>57</sup> or policies that ensure lactation accommodations<sup>58</sup> for pregnant and parenting students. Flexible school attendance policies and lactation accommodations are just a few things that schools can offer to remove the barriers that make it difficult for pregnant and parenting students to stay enrolled in school. Students, families, educators, and advocates need recent and consistently collected data at the national level to better understand how many young parents are enrolled in public schools and how many complete their high school diploma to help to identify where there are concentrated populations of teenage parents and where services are needed for this student population. We urge the Department to start collecting data on enrollment and graduation rates of students who are pregnant or parenting and to ensure that schools maintain student privacy where this data is collected.

At the same time, collecting data on students’ pregnancy status raises particularly urgent privacy concerns. We acknowledge that students are at risk of being targeted and criminalized for seeking or obtaining abortions. It is also the case, however, that the growing hostility towards students exercising reproductive decision-making is likely to result in disproportionate school discipline against this population. The CRDC is a crucial mechanism to track this trend so advocates can better advocate for civil rights enforcement. However, the Department must make it clear to schools that compliance with the CRDC must not be used as a ruse to harass, discipline, criminalize, or otherwise discriminate against pregnant students. For example, schools should be instructed not to maintain any lists of pregnant students, and to only report data to the CRDC based on information they already have. In other words, LEAs should only count the students they already know to be pregnant or parenting and are not required to do investigative work to

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<sup>56</sup> Kate Perper, Kristen Peterson, & Jennifer Manlove, *Diploma Attainment Among Teen Mothers*, Child Trends Fact Sheet (Jan. 2010), [https://cms.childtrends.org/wp-content/uploads/2010/01/child\\_trends-2010\\_01\\_22\\_FS\\_diplomaattainment.pdf](https://cms.childtrends.org/wp-content/uploads/2010/01/child_trends-2010_01_22_FS_diplomaattainment.pdf)

<sup>57</sup> Cassandra Mensah, National Women’s Law Center, *Supporting Pregnant and Parenting Students in Middle Schools and High Schools: Flexible Attendance Laws*, <https://nwlc.org/wp-content/uploads/2023/06/ExcusedAbsenceReport.pdf>.

<sup>58</sup> Cassandra Mensah, National Women’s Law Center, *Supporting Pregnant and Parenting Students in Middle and High Schools: Lactation Accommodations*, [https://nwlc.org/wp-content/uploads/2023/06/final\\_nwlc\\_LactationReport\\_PPS.pdf](https://nwlc.org/wp-content/uploads/2023/06/final_nwlc_LactationReport_PPS.pdf).

discover new information regarding students' pregnancy or parenting status.

To balance the goals of protecting pregnant and parenting students' privacy and ensuring they are not disproportionately disciplined, we urge you to take steps to address privacy concerns and to work toward disaggregation of pregnant and parenting status in a future CRDC. We also ask the Department to clarify the LEAs that in order to protect the privacy of students who may have miscarried or had an abortion, data collected about pregnant and parenting students for the CRDC should be protected from law enforcement agencies to the greatest extent possible under state and federal law. Additionally, the Department must provide guidance and technical support to school administrators on handling confidential data.

**B. The Department should collect data on whether schools have alternative education programs for pregnant and parenting students.**

The Department should collect data on whether districts and schools have policies, programs, and/or alternative schools for pregnant and parenting students, in the same way that data is currently collected on alternative schools generally and on bullying and harassment policies. To address the troubling history of school districts forcing pregnant and parenting students into inferior alternative programs,<sup>59</sup> Title IX explicitly requires such programs to be voluntary and equal in quality. Some schools still steer or even force pregnant and parenting students to participate in inferior programs that do not keep them on track to graduate or prepare them for post-secondary opportunities. There is currently no repository of information identifying which districts or schools have separate programs for or offer services to pregnant and parenting students. Simply asking the question about whether the school or district maintains an alternate school for pregnant or parenting students will enable greater accountability to stakeholders and enhance the Department's ability to undertake Title IX enforcement in this area. NWLC recognizes that this would add a new category to the CRDC, but it would not be burdensome for districts to simply identify whether they have schools and programs available to pregnant and parenting students in their districts, and if so, where those programs are. The utility of collecting data on the educational opportunities afforded pregnant and parenting students far outweighs any perceived burden.

**C. The Department should collect data on the type of education received by pregnant and parenting students.**

As stated above there is currently little to no data on how many students in our schools are pregnant and/or parenting. Similarly, there is no information on whether they attend mainstream or alternative schools or the rigor of their coursework. Therefore, we urge the Department to collect *non-personally identifiable* data on the type of education received by pregnant and parenting students—*i.e.*, their enrollment levels in AP and IB courses, SAT or ACT test preparation, and high school equivalency exam preparation. The Department should also collect data on the number of pregnant and parenting students not promoted to the subsequent grade. Inflexible attendance policies, and lack of other accommodations often make it difficult for pregnant and parenting students to stay in school. Balancing their health, parenting responsibilities, and school may result in more absences than their peers who are not pregnant or parenting. As such, the CRDC should further disaggregate Data Groups 814 (number of students who are chronically absent) and 306 (number of students who graduate from high school) to include the number of pregnant and parenting students who are chronically absent and who graduate as well. If the “n” size is too small at the school level,

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<sup>59</sup> See, e.g., Julie Bosman, *New York's Schools for Pregnant Girls Will Close*, NY Times (May 24, 2007), <https://www.nytimes.com/2007/05/24/education/24educ.html>.



this data could still be reported at the district level. Collecting non-personally identifiable data on enrollment and coursework for pregnant and parenting students will help to identify schools that need more support and resources to better serve this student population.

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Thank you for considering NWLC's recommendations. For questions or additional information, please contact Elizabeth Tang ([etang@nwlc.org](mailto:etang@nwlc.org)).

Sincerely,

National Women's Law Center