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Mr. Ross Santy, Chief Data Officer
Office of Planning, Evaluation, and Policy Development
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

via regulations.gov

Re: Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection (Docket No. ED-2024-SCC-0128)

Dear Mr. Santy:

The National Women's Law Center (NWLC) and the undersigned 11 civil rights organizations submit the following comments to the U.S. Department of Education ("the Department") on its July 2025 Information Collection Request ("ICR") regarding the Mandatory Civil Rights Data Collection ("CRDC"). As organizations collectively working to ensure that every student—including LGBTQI+ students—has access to a safe learning environment free from violence and discrimination, we write with urgent concern for how the Department intends to narrow the CRDC's data collection by discontinuing tracking of harassment and assault faced by transgender, nonbinary, and intersex students.

Transgender, nonbinary, and intersex students have always existed, and efforts to erase their experience will not change that, but depriving stakeholders of relevant data will only increase stigma, harassment, and a greater risk of poor educational and mental health outcomes. As LGBTQI+ students disproportionately face hostile school environments,¹ an inclusive approach in recent iterations had positioned the CRDC to be a critical tool for assessing gender-expansive students' experiences with harassment and schools' compliance with nondiscrimination laws.

The Department's new approach, outlined in the July 2025 ICR, would leave stakeholders without the aggregate data necessary to understand the scope of harassment, assault, and discrimination faced by transgender, nonbinary, and intersex students. This is an abdication of the Department's responsibility to enforce federal civil rights laws and a disservice to schools and stakeholders who are working to ensure educational opportunity for all.

¹ Compare Joseph Kosciw et al., The 2021 National School Climate Survey, GLSEN, 2022, available at <https://www.glsen.org/research/2021-national-school-climate-survey> (hereinafter "GLSEN"), with Nat'l Ctr. for Educ. Statistics (2024), Student Bullying, *The Condition of Education*, U.S. Dep't of Educ., Inst. of Educ. Scis., <https://nces.ed.gov/programs/coe/indicator/a10>.

We collectively urge the Department to reverse course and instead continue an inclusive approach to the CRDC that accounts for the needs of every student, including transgender, nonbinary, and intersex students.

1. We urge restoration and expansion of gender-identity data elements across collections related to harassment, bullying, and local policies.

We strongly oppose the Department’s proposed rollback of data collection related to transgender and intersex students. First, the ICR attempts to erase gender identity (referring to transgender and nonbinary status) and sex characteristics (referring to intersex status) as categories when measuring sex harassment, bullying, violence, and discrimination overall. Second, it discontinues collection of written policies by local education agencies (LEAs) that expressly protect transgender, nonbinary, and intersex students from harassment and bullying because of who they are. Taken together, these actions will leave stakeholders with diminished understanding of the experiences of transgender, nonbinary, and intersex students, and leave schools with fewer resources and strategies to build safe school environments for all students.

The Centers for Disease Control and Prevention (CDC) estimates that 3.3% of high school students identify as transgender,² and studies have repeatedly estimated that at least 1.7% of the population have intersex traits.³ Still, schools, policymakers, and other stakeholders have not consistently had access to federal data that illustrates the experience of these students and informs efforts to improve school climates on their behalf. An inclusive CRDC is urgently needed to ensure schools have the information they need to serve their full student body and to remedy the disparities in educational opportunity facing LGBTQI+ students.

Non-governmental survey data consistently demonstrates that transgender and gender-expansive students face disproportionate bullying, harassment, and violence at school. In 2021, GLSEN’s survey of roughly 6,000 transgender youth found that 74% of transgender students faced in-person victimization—such as bullying, harassment, or assault—at school based on their gender expression.⁴ As a result of their disproportionately hostile school environments, transgender students are 63% more likely than their cisgender LGB+ peers to miss school due to safety concerns and 53% more likely than their LGB+ peers to change schools because they feel unsafe.⁵

Although there is insufficient data on the school experiences of intersex youth, these students are at extremely high risk of privacy infringements and stigma around their bodies at school.⁶ Intersex

² U.S. Dep’t of Health and Human Servs., Ctrs. for Disease Ctrl. & Prev. MMWR Weekly Supp. 73(4):50-58 (Oct. 10, 2024).

³ T Jones (2018) Intersex Studies: A Systematic Review of International Health Literature. *SAGE Open* 8(2). <https://doi.org/10.1177/2158244017745577>.

⁴ GLSEN at 86.

⁵ GLSEN at 90.

⁶ Henningham, M., & Jones, T. (2021). Intersex students, sex-based relational learning & isolation. *Sex Education*, 21(5), 600-613. Rosenwohl-Mack, A., Tamar-Mattis, S., Baratz, A. B., Dalke, K. B., Ittelson, A., Zieselman, K., & Flatt, J. D. (2020). A national study on the physical and mental health of intersex adults in the US. *PloS one*, 15(10),

youth may also be cisgender, nonbinary, or transgender, and trans intersex youth would be doubly harmed by a CRDC that no longer aims to capture their experiences of harassment and bullying in school. Research by the Trevor Project found over half of intersex youth (51%) ages 13-17 reported seriously considering suicide in the past 12 months, and one in four (24%) reported attempting suicide in the past 12 months.⁷ School climate is a key factor for these youth to access safety and education—intersex students with access to affirming spaces such as an inclusive secondary or post-secondary school are less likely to report suicide attempts in the past year.⁸

Indeed, school policies and practices play a large role in determining whether all LGBTQI+ students will face hostile school climates. For example, when schools enumerate LGBTQI+ status in anti-bullying policies, these policies are associated with better education, health, and wellbeing outcomes for LGBTQI+ youth.⁹ LGBTQI+ students in schools with enumerated policies are 54% more likely to report harassment or assault to school staff and 39% more likely to rate school staff's response as effective than students at a school with a generic anti-bullying policy.¹⁰ Educators also benefit from enumerated policies and report higher levels of comfort addressing bullying based on gender expression (72% vs 52%) when compared to educators in schools with educators whose schools had no anti-bullying policy.¹¹ The Department's proposed halt on collecting data about whether LEAs have a written policy, with a corresponding web link, prohibiting bullying or harassment based on gender identity will prevent researchers, policymakers, and other stakeholders from understanding and analyzing the effects of anti-bullying policies based on gender identity, again leaving schools without the tools and resources they need to build a safer and more effective learning environment for their entire school body.

e0240088. Zeeman, L., & Aranda, K. (2020). A systematic review of the health and healthcare inequalities for people with intersex variance. *International Journal of Environmental Research and Public Health*, 17(18), 6533. Simons, J. D., Gonzalez, J. M., & Ramdas, M. (2020). Supporting intersex people: Effective academic and career counseling. *Journal of LGBT Issues in Counseling*, 14(3), 191-209.

⁷ Price, M.N., Green, A.E., DeChants, J.P., & Davis, C.K. (2021). The mental health and wellbeing of LGBTQ youth who are intersex. New York, New York: The Trevor Project. <https://www.thetrevorproject.org/research-briefs/the-mental-health-and-wellbeing-of-lgbtq-youth-who-are-intersex-dec-2021/> (p. 11-12).

⁸ *Id.*

⁹ Russell, S. T., Horn, S., Kosciw, J., and Saewyc, E. (2010). Safe schools policy for LBGTQ students and commentaries. *Social Policy Report*, 24(4), 1-25. Hatzenbuehler, M. L., & Keyes, K. M. (2013). Inclusive anti-bullying policies and reduced risk of suicide attempts in lesbian and gay youth. *Journal of Adolescent Health*, 53(1), S21-S26. <https://www.sciencedirect.com/science/article/pii/S1054139X12003540>. Kull, R. M., Greytak, E. A., Kosciw, J. G., & Villenas, C. (2016). Effectiveness of school district antibullying policies in improving LGBT youths' school climate. *Psychology of Sexual Orientation and Gender Diversity*, 3(4), 407. Hall, W. (2017). The effectiveness of policy interventions for school bullying: A systematic review. *Journal of the Society for Social Work and Research*, 8(1), 45-69. <https://www.journals.uchicago.edu/doi/full/10.1086/690565>. Seelman, K. L., Walker, M.B. (2018). Do Anti-Bullying Laws Reduce In-School Victimization, Fear-based Absenteeism, and Suicidality for Lesbian, Gay, Bisexual, and Questioning Youth?. *Journal of Youth Adolescence*, 47, 2301-2319. <https://doi.org/10.1007/s10964-018-0904-8>.

¹⁰ GLSEN at 73.

¹¹ Greytak, E.A., Kosciw, J. G., Villenas, C., & Giga, N. M. (2016). From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary School Students and Teachers. New York: GLSEN. <https://www.glsen.org/research/teasing-torment-school-climate-revisited-survey-us-seconda>.

Instead of discontinuing data elements that provide crucial insight, the Department could enhance stakeholder understanding by collecting more data on students reporting and being disciplined for harassment and bullying on the basis of gender identity, which could shed light on disparities that may indicate underreporting or discriminatory school practices. Collecting data on the number of students who reported harassment or bullying on the basis of sexual orientation and gender identity and the number of students who were disciplined for harassing or bullying a student on the basis of sexual orientation and gender identity will shed much-needed light on school practices in response to anti-LGBTQI+ harassment and bullying. Non-governmental data already suggests that LGBTQI+ students significantly underreport harassment and bullying, with 62% of those who faced victimization never reporting the incident to school staff.¹² Research suggests LGBTQI+ students—particularly students who are transgender, nonbinary, and LGBTQI+ students who are BIPOC and/or disabled—are subjected to discriminatory school discipline at elevated rates,¹³ and more comprehensive data from CRDC can inform local interventions to address these disparities.

We therefore urge the Department to revise the proposed “Civil Rights Data Category (Counts)” to list sexual orientation and gender identity as two additional permitted values. This will not increase the burdens on LEAs or raise privacy concerns because the relevant Data Groups ask educators to look to “likely motives of the alleged harasser/bully and not the actual status of the alleged victim.”

2. We urge restoration of the nonbinary category and definition.

We similarly oppose the Department’s proposed erasure of the nonbinary category, including erasing the definition of “nonbinary” as meaning “not exclusively male or female.” Previously, schools that collected this data were able to accurately report it and to shed light on disparities faced by nonbinary students, who constitute approximately 3% of the current school population.¹⁴ There is no federal statutory requirement, in the CRDC or anywhere else, necessitating reporting of student’s sex demographic data as a binary, and a narrow approach to data collection writes out experiences that are lived every day in schools across the country. The Department should maintain the nonbinary category and definition to ensure CRDC’s data collection accurately informs LEAs.

Similarly to transgender and intersex students, non-governmental survey data shows nonbinary students experience hostile school environments more frequently than lesbian, gay, and bisexual students. Fully 74.2% of all transgender *and* nonbinary students experienced being unsafe at school

¹² GLSEN at 17.

¹³ Palmer, N. A. and Greytak, E. A. (2017). LGBTQ student victimization and its relationship to school discipline and justice system involvement. *Criminal justice review*, 42(2), 163-187. Arredondo, M., Gray, C., Russell, S., Skiba, R., & Snapp, S. (2016). Documenting disparities for LGBT students: Expanding the collection and reporting of data on sexual orientation and gender identity. *Discipline Disparities: A Research-to Practice Collaborative*. The Equity Project. Bloomington, IN. Palmer, N.A., Greytak, E.A., & Kosciw, J.G. (2016). *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth*. New York: GLSEN. <https://www.glsen.org/research/educational-exclusion-drop-out-push-out-school-prison-pipeline>.

¹⁴ Pew Res. Ctr., “About 5% of young adults in the U.S. say their gender is different from their sex assigned at birth,” (June 7, 2022), <https://pewrsr.ch/3Qi2Ejd>.

in the past year due to their gender, along with 51% of all other nonbinary students,¹⁵ compared to 7.8% of LGBTQ+ students.¹⁶ Nonbinary students are about 15% more likely to miss school due to safety concerns compared to their queer and cisgender peers,¹⁷ and almost two-thirds of nonbinary students reported in-school discipline, meaning these students are disciplined 23% more harshly than their queer and cisgender peers.¹⁸

Implementing the ICR's proposed changes will obscure these disparities and retrench problematic data collection practices of the past. For example, the Department previously directed LEAs and State Education Agencies that capture nonbinary students' gender in enrollment records to assign these students a binary male/female sex "as best it can." Schools were therefore forced to submit inaccurate data that misgendered their own nonbinary students, resulting in data sets that did not accurately reflect the lived experience of students.

3. We urge restoration of comprehensive definitions of sexual assault and rape.

We collectively condemn the Department's proposed removal of "gender identity" from definitions of sexual assault and rape. Though the Department makes clear that this change should not alter any student's material rights and that "[a]ny student" can be a victim of rape or sexual assault, the Department's attempts to narrow these definitions sends an inappropriate message that diminishes the disproportionate rate of sexual assault faced by transgender and gender-expansive people. There is no justification for this change in the Department's definition, and the more comprehensive definition should be maintained to ensure deterrence and effective response to complaints of sexual assault and rape.

CDC data shows LGBTQI+ youth experience elevated risks of rape and sexual assault,¹⁹ and surveys of LGBTQ+ students have found that the majority of LGBTQ+ students (54%) reported sexual harassment at school in the prior year.²⁰ There is a correlation between sex-based violence and policies seeking to ban transgender and nonbinary youth from fully participating in school,

¹⁵ While some nonbinary people identify as transgender and nonbinary, some identify only as nonbinary. This is a personal matter.

¹⁶ GLSEN at 85.

¹⁷ GLSEN at 90 (In the month surveyed, 32% of all LGBTQ+ secondary students missed at least one day of school due to feeling unsafe; but queer cisgender students had a 23.5% rate of missing school due to safety concerns, whereas fully 37% of nonbinary students were forced to miss school for safety.).

¹⁸ GLSEN at 91 (65% of nonbinary students experienced school discipline).

¹⁹ Williams, R. D., & Gutierrez, A. (2021). Increased likelihood of forced sexual intercourse, sexual violence, and sexual dating violence victimization among sexual minority youth. *Journal of community health*, 1-8. Johns, M. M., Lowry, R., Andrzejewski, J., Barrios, L. C., Demissie, Z., McManus, T., Rasberry, C. N., Robin, L., & Underwood, J. M. (2019). Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students - 19 States and Large Urban School Districts, 2017. *MMWR. Morbidity and mortality weekly report*, 68(3), 67-71. <https://doi.org/10.15585/mmwr.mm6803a3>. Kann, L., Olsen, E. O. M., McManus, T., Harris, W. A., Shanklin, S. L., Flint, K. H., ... & Zaza, S. (2016). Sexual identity, sex of sexual contacts, and health-related behaviors among students in grades 9-12—United States and selected sites, 2015. *Morbidity and Mortality Weekly Report: Surveillance Summaries*, 65(9), 1-202. <https://files.eric.ed.gov/fulltext/ED575473.pdf>.

²⁰ GLSEN at 22.

especially by blocking their access to sex-separated facilities such as restrooms and locker rooms.²¹ These policies encourage intrusive scrutiny of student's bodies and rampant gender policing that may exacerbate the risk of sexual assault against transgender and nonbinary students. The American Academy of Pediatrics found that transgender and nonbinary students barred from restrooms and locker rooms consistent with their gender identity were much more likely to have been sexually assaulted in the previous 12 months.²² Transgender boys faced a 30% increase in risk of sexual assault (1.3 times higher than their peers),²³ a subset of nonbinary teenagers faced a 40% increase in risk of sexual assault (1.4 times higher than their peers),²⁴ and transgender girls faced a 250% increase in sexual assault risk (2.5 times their peers).²⁵

There are significant improvements the Department could make to the CRDC's rape and sexual assault definitions and related data collection measures.²⁶ But here, the Department cruelly seeks to diminish the heightened risk faced by transgender and gender-expansive students, sending a dangerous message to schools that enforcement should not be prioritized. This is the wrong approach, and the Department should maintain its comprehensive definitions that ensure all students—regardless of sex, sexual orientation, or gender identity—are protected from sexual assault and rape.

Conclusion

We appreciate the Department's serious considerations of these recommendations, as the CRDC is an essential tool for building stakeholder understanding about students' experiences with harassment and discrimination in school. We urge the Department to reconsider the flawed proposal to narrow the CRDC collection in a manner that deprives stakeholders of relevant data related to transgender, nonbinary, and intersex students. Only through robust data collection and a comprehensive approach to the barriers to equal educational opportunity can the CRDC and the Department build a safer and brighter learning environment for *all* students, including LGBTQI+ and other marginalized youth. If you have questions regarding these recommendations, please contact Auden Perino, NWLC's Senior Counsel for LGBTQI+ Equality, at aperino@nwlc.org.

²¹ Nineteen states have enacted laws that ban transgender people from using restrooms and facilities consistent with their affirmed gender in K-12 schools, with two states making it a criminal offense in some circumstances for trans people to use restrooms and other facilities that are consistent with their affirmed gender. See Movement Advancement Project, *Bans on Transgender People Using Bathrooms*, available at https://www.lgbtmap.org/equality-maps/youth/school_bathroom_bans.

²² Ehrensaft, D., & Rosenthal, S. M. (2019). Sexual assault risk and school facility restrictions in gender minority youth. *Pediatrics*, 143(6). <https://pubmed.ncbi.nlm.nih.gov/31061221>. See also: Murchison, G. R., Agénor, M., Reisner, S. L., & Watson, R. J. (2019). School restroom and locker room restrictions and sexual assault risk among transgender youth. *Pediatrics*, 143(6). <https://publications.aap.org/pediatrics/article/143/6/e20182902/76816/School-Restroom-and-Locker-Room-Restrictions-and>.

²³ Ehrensaft, D., & Rosenthal, S. M. (2019). Sexual assault risk and school facility restrictions in gender minority youth. *Pediatrics*, 143(6). <https://pubmed.ncbi.nlm.nih.gov/31061221>. p. 5.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See NWLC, Comment on ED's CRDC, Dec. 18, 2024, available at <https://nwlc.org/resource/nwlc-comments-on-mandatory-civil-rights-data-collection/>.

Thank you for your consideration.

Regards,

National Women's Law Center

Advocates for Trans Equality

American Atheists

Center for LGBTQ Economic Advancement & Research

CenterLink: the Community of LGBTQ Centers

Equality California

interACT

Immigration Equality

Los Angeles LGBT Center

Movement Advancement Project

National Black Justice Collective

Transgender Law Center