February 11, 2022

Director of Strategic Collections and Clearance
Office of the Chief Data Officer
Office of Policy, Evaluation, and Policy Development
U.S. Department of Education
400 Maryland Avenue SW, LBJ
Room 6W201
Washington, DC 20202-8240

Submitted Via FederalRegister.gov

<u>RE: Comment Request, Mandatory Civil Rights Data Collection</u>

To Department of Education Leaders:

On behalf of the Advancement Project National Office, the Alliance for Educational Justice, and the National Campaign for Police Free Schools, we write in support of and to recommend much needed changes to the U.S. Department of Education's (ED) Civil Rights Data Collection in light of the notice published in the Federal Register on December 13, 2021. Our organizations are committed to ensuring that the civil rights of our nation's young people are protected in order to achieve the educational equity that all students deserve. Reliable, accurate, and thorough data is necessary to ensure that school districts are fulfilling their duties and providing the safe, healthy, and supportive learning environments in which our students can thrive.

The Advancement Project National Office is a 23-year-old racial justice organization based in Washington, D.C. that works with communities of color to ensure that all students receive a free, quality public education in which they can succeed and thrive. The Alliance for Educational Justice is a national network of 35 youth and intergenerational organizing groups of color across 12 states and 14 cities dismantling the school-to-prison pipeline. Our organizations have partnered with grassroots organizations across the country to fight for the schools we believe are possible for our communities. Together, we co-lead the National Campaign for Police Free Schools (policefreeschools.org).

In our work we frequently rely on the Civil Rights Data Collection (CRDC) to advocate for the young people of color that we support. As such, we applaud the proposed change in the next CRDC collection to include the non-binary designation. We will flag however that imposing this requirement, particularly for states and districts that are not currently collecting this information, will necessitate that staff are trained on how to appropriately collect this information without harm to students.

In light of the ongoing COVID-19 pandemic, as well as the continued increase in school policing in our nation's schools, there are several areas where the CRDC could be doing more to ensure that the civil rights of all our nation's children are protected. The following recommendations are a result of our deep connections with organizing groups working towards bettering their schools and engagement with past years of CRDC data.

COVID-19 and Remote Learning

The unprecedented COVID-19 pandemic has upended people's lives and has had devastating effects on our communities. Young people in particular have had to navigate this crisis without being able to attend school in-person. We are already seeing that the instability wrought by the pandemic has been negatively affecting students' opportunities to learn as well as their mental health.[1] The U.S. Department of Education has also recognized that the pandemic is exacerbating the impact of disparities that already existed in our nation's schools.[2] In order to fully grasp the extent of the harm caused by the pandemic, new items of data collection are necessary. As a note, all the recommended items in this letter should be able to be disaggregated by race, gender, disability status, and income status (as determined by Free and Reduced Lunch eligibility).

1. *Add % of students who requested or needed a technology device from their school for virtual instruction*
2. *Add % of students who received a technology device from their school for virtual instruction*
3. *Add % of students who requested or needed an internet provider/service from their school for virtual instruction*
4. *Add % of students who received an internet provider/service from their school for virtual instruction*

The addition of the aforementioned items to the CRDC would enable advocates to fully address the disparities that we have seen throughout the pandemic related to the provision of education virtually/remotely. Low-income families and Black and Latinx families were all less likely to have

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[1] Rhitu Chatterjee, *Kids are back in school – and struggling with mental health issues*, NPR (Jan. 7, 2022), https://www.npr.org/sections/health-shots/2022/01/07/1070969456/kids-are-back-in-school-and-struggling-with-mental-health-issues; Christine Vestal, *COVID Harmed Kids' Mental Health – And Schools Are Feeling It*, Pew Trusts (Nov. 9, 2021), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/11/08/covid-harmed-kids-mental-health-and-schools-are-feeling-it; Sarah Mervosh, *The Pandemic Hurt These Students the Most*, The New York Times (Sept. 7, 2021), https://www.nytimes.com/2021/07/28/us/covid-schools-at-home-learning-study.html.
[2] U.S. Department of Education Office for Civil Rights, *Education in a Pandemic: The Disparate Impacts of COVID-19 on America's Students* (Jun. 2021), https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf.

a working device and/or internet in order to be able to access public schooling.[3] This era has also made clear the importance of an internet connection at home – not only to access public schooling but as a requirement to access other public services, including COVID-19 testing and vaccinations.

Discipline

As organizations that work to dismantle the school-to-prison pipeline, we rely heavily on the discipline data published in the CRDC. In doing that work we have been able to identify gaps in the discipline data, and places where vital information has been missing and hindered our advocacy efforts. The following additions to the CRDC would help bridge some of those gaps:

> 5. *Add a category to indicate whether a discipline action was received under in-person or virtual instruction*

During the past two years, school districts have alternated between in-person and remote instruction according to the severity of the pandemic in their localities. We need to know if a particular discipline action was imposed while students were remote to ensure that racial or other disparities are not occurring.

> 6. *Add a category for classroom removals that were not a result of discipline, but that are still loss of instruction time for students*

In the course of working with youth organizers and their communities, one issue that has come up both during and prior to the pandemic is the informal push out of students from school. We have seen a myriad of ways in which schools are seemingly getting around reporting higher discipline numbers by using other methods that still have the same effect of removing the student from the classroom. One such example is the undocumented suspensions that have occurred in the District of Columbia Public School System.[4] During the pandemic, we have heard accounts of students being locked out of their google classrooms during remote learning.

> 7. *Add a category to indicate whether or not sworn law enforcement, as defined by the CRDC was involved in that discipline/interaction*

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[3] Sarah Mervosh, *The Pandemic Hurt These Students the Most*, The New York Times (Sept. 7, 2021), https://www.nytimes.com/2021/07/28/us/covid-schools-at-home-learning-study.html; Emma Dorn et. al., *COVID-19 and education: The lingering effects of unfinished learning*, McKinsey & Company (Jul. 27, 2021), https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-the-lingering-effects-of-unfinished-learning.

[4] Emma Brown and Alejandra Matos, *Undocumented suspensions persisted in D.C. schools despite repeated alerts*, The Washington Post (Jul. 24, 2017), https://www.washingtonpost.com/local/education/undocumented-suspensions-persisted-in-dc-schools-despite-repeated-alerts/2017/07/24/4a88ebc2-707f-11e7-8839-ec48ec4cae25_story.html.

One serious gap in the current data is the lack of information about students' interactions with police. By adding this category to the discipline data that is already being collected, it would enable us to get a fuller picture of police involvement in school activities.[5] While it is clear that a Referral to Law Enforcement and an Arrest involve police, it is not clear whether the other discipline actions (suspensions, expulsions) also involved a police interaction.

Finally, in its current form, the "Offenses" category does not address civil rights issues and should be removed. Its inclusion is limited to more serious offenses without considering all 'offenses' that result in discipline; it does not include data on disciplinary outcomes or student race, gender, disability status, or incomes; and it is duplicative of other federal government data collections.

Policing

It is not possible to fully dismantle the school-to-prison pipeline without addressing the vast policing infrastructure that has increasingly permeated our nation's public schools over the past 30 years. We believe that police free schools are necessary to meaningfully provide the safe, nurturing, welcoming learning environments that we know our students deserve. School policing serves to criminalize students, and turns schools into places of fear instead of places where young people are cared for.[6] One of the biggest barriers to addressing policing in schools is the lack of data available to make the kinds of meaningful analyses that are necessary to tackle the complex issue. We are pleased to see that the proposed definition of 'mechanical restraint' under restraint and seclusion includes "the use of handcuffs or similar devices by sworn law enforcement or other school security to prevent a student from moving the student's arms." However, to best understand the harms of school police, this data must be disaggregated to include when sworn law enforcement or school security has used mechanical restraint against a student, as opposed to other school staff.

The following recommendations would also help provide more robust information about school policing:

8. *Additional changes to definitions of 'referral to law enforcement' and 'school based arrest' to improve accuracy of information reported*
   a. *'Referral to law enforcement' should include any referrals of students to sworn law enforcement, as defined by the CRDC, including informal referrals that are not part of an official report. Separately, the CRDC should also collect and report referrals to security staff.*

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[5] One example could be to follow New York State's lead in requiring that schools report police interactions by type, such as "Mitigated," "Child in Crisis," "Juvenile Report," or "Arrested." *See* Girls for Gender Equity, *40,000 Police Interventions: A Five-Year Look-Back on Policing in NYC Public Schools* (Aug. 2021), https://campaigns.ggenyc.org/wp-content/uploads/2021/08/2021-Student-Safety-Act-Data-5-Year-Look-Back.pdf.
[6] Advancement Project, *We Came to Learn: A Call to Action for Police Free Schools* (Sept. 2018), https://advancementproject.org/wecametolearn/.

b. *'School-related arrest' should include arrests resulting from a school's electronic surveillance of students and their resulting referrals to law enforcement. The CRDC should also collect all other outcomes of referrals to law enforcement besides arrest, including ticketing.*

c. *The U.S. Department of Education should also vigorously monitor data reporting, including reviewing for data inconsistencies and apparent errors in the data, and hold districts accountable for accurate reporting.*

9. *Add other categories, in addition to mechanical restraint, of any use of force by sworn law enforcement officers or school security, including use of tasers and batons, and chemical restrains including pepper spray.*

10. *Add instances of involuntary commitment of students to psychiatric institutions that are initiated by sworn law enforcement officers or school security.*

11. *Add instances of referral to threat assessment of students that are initiated by sworn law enforcement officers or school security*

12. *Add category of all calls to police. Information should include whether an internal (within the school district) or external (to an outside agency) call was made; who initiated the call; reason for the call; and outcome of the call.*

There is no uniform database tracking the calls to police from schools. Through our work, we have seen that Black students are more likely to be referred to police or arrested at school than their white peers.[7] In our fight for the removal of police from schools, we have found that not only is it vital to remove the physical presence of police from the school grounds, but that it is equally as important to address why police are being called to schools in the first place. By tracking those calls and why they are being made, we would be able to address the root causes of the issues. For example, having this data could help identify that there is a particular teacher who often relies on calls to the police – perhaps that teacher could be identified for professional development on classroom management to prevent them from resorting to calling police.

13. *Add category of where the sworn law enforcement/police/security staff are from (internal police department to the school district; local police department; local sheriff's office; state police agency; private security, etc.)*

14. *In counting the number of police in schools, add a category to indicate whether they are stationed at one school, stationed at multiple schools, roaming the district, or stationed at a central office.*

School policing infrastructure varies greatly across school districts. There is no uniform data set tracking what kinds of police are in our nation's schools.

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[7] Evie Blad and Alex Harwin, *Black Students More Likely to Be Arrested at School*, Education Week (Jan. 24, 2017), https://www.edweek.org/leadership/black-students-more-likely-to-be-arrested-at-school/2017/01.

15. *Add category on whether the school district has a complaint process for police*
16. *Add data on how many complaints are filed regarding school police, and how many the district resolves. Provide disaggregated information about complaints to include complaints of sexual harassment and assault.*
17. *Add category on % of district and school budget spent on policing and security*

These items would shed light on the infrastructure supporting school police. Whether the school district has a complaint mechanism to address any potential harms the police in the school may cause would be vital information to have for communities. On our #AssaultAt map, our team has tracked over 175 instances of police assaults of young people at school, including physical and sexual assaults.[8] Similarly, communities should be able to see how much of their school's money is going towards policing and security instead of towards the education of their children. There is currently no centralized database for this information, although anecdotally we have heard that school districts with more students of color are more likely to spend higher amounts on policing.[9]

18. *Add category on surveillance infrastructure where schools and districts identify whether they have metal detectors, video cameras, facial recognition technology, social media monitoring, ShotSpotter, and any other surveillance technological devices or software.*

Over the last few years we have seen a rapid rise in surveillance technology sold to and used by school districts.[10] These technologies are not backed by any evidence-based research on their usefulness or outcomes, but are instead sold unvetted by for-profit companies looking to capitalize on school districts' legitimate fears.[11] We already know that Black students are more likely to attend a school with police but no counselors.[12] Data about the prevalence of these structures would help us and other civil rights advocates determine whether Black children are also disproportionately surveilled and criminalized in their schools as well.

Implementing these recommendations into the next reporting of CRDC data would provide the much needed support to continue the fight against the criminalization of students of color. We would love to discuss these recommendations further, and are also happy to answer any questions you may have about any of the issues we have raised. Please do not hesitate to reach out to Jessica Alcantara, Advancement Project Staff Attorney at jalcantara@advancementproject.org.

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[8] Policefreeschools.org/map

[9] Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 Emory L. J. 765 (2017), https://ssrn.com/abstract=2830885.

[10] Mona Wang and Gennie Gebhart, *Schools are Pushing the Boundaries of Surveillance Technologies*, Electronic Frontier Foundation (Feb. 27, 2020), https://www.eff.org/deeplinks/2020/02/schools-are-pushing-boundaries-surveillance-technologies.

[11] *Id.*

[12] *See* Advancement Project, *supra* note 6.

Sincerely,

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