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400 Maryland Ave. SW  
LBJ, Room 6W208B  
Washington, DC 20202–8240

RE: Comment Request; Mandatory Civil Rights Data Collection (Docket No. ED-2021-SCC-0158-0041)

Dear Ms. Valentine:

The undersigned organizations welcome the opportunity to respond to the U.S. Department of Education's (ED's) request for comments regarding the Civil Rights Data Collection (CRDC). We submit these recommendations, including responses to your Directed Questions in Attachment 1, as a collaboration of national and state organizations seeking to advance shared education equity priorities through federal, state, and local policy and advocacy.

We commend the administration's continued efforts to advance policies focused on equity and improving outcomes for historically underserved students, especially students from low-income backgrounds, students with disabilities, students learning English, students experiencing homelessness, students in the foster care system, students who are incarcerated, undocumented students, Black and Brown students, Native students, Asian students, and students who identify as LGBTQ+. We know these students are also those whose communities have been most impacted by the COVID-19 pandemic. Therefore, we appreciate ED's efforts to collect and disseminate information on the multiple needs and educational experiences of these students and shine a light on issues affecting equitable educational resources and outcomes.

The CRDC is an essential tool to measure and identify inequities in education for our nation's most historically underserved students—and a cornerstone of the Office for Civil Rights' (OCR) work to identify violations of civil rights' protections for groups protected by law from discrimination on the basis of race, color, national origin, gender, or disability. With the ongoing COVID-19 pandemic profoundly impacting students' academic, social, and emotional well-being, this information is more critical than ever. Students living in poverty, students with disabilities, English learners, students experiencing homelessness, students in the foster care system, students who are incarcerated, students who are undocumented, Black and Brown students, Native students, and students who identify as LGBTQ+ have all faced—and continue to experience—disproportionate challenges that impede their learning. Worse, when the CRDC was administered last school year, the previous administration eliminated several critical data elements, including items about novice teachers, early childhood education, and advanced coursework. These were some of the data points most frequently used by families and civil rights advocates to monitor and make the case for more equitable educational access.

Therefore, **we are especially pleased ED is proposing to administer the CRDC for a second consecutive year** during the 2021-22 school year, giving ED the opportunity to restore these

essential data elements and update the survey to ensure it is collecting new data that is responsive to the challenges students are facing at this unique time. Given the importance of the data and since districts have already developed the capacity to report these data, **we also recommend that ED make it mandatory for districts to report data for all restored data elements for the 2021-22 school year.** Any burden associated with a second consecutive year of data collection is far outweighed by the benefits of collecting this information, which will enable policymakers, educators, families, and advocates to gain critical insights and proactively address educational inequities students of color, students from low-income backgrounds, English learners, students with disabilities, LGBTQ+ students, and other groups of students may be experiencing.

Furthermore, **we recommend ED collect data via the CRDC annually rather than biennially.** Such a change would provide policymakers, educators, families, and advocates with more timely information about students' experiences so that data could be used to identify gaps in opportunities and remedy them. **The shift to an annual collection must also include additional resources to support LEA, SEA, and OCR staff to collect, review, and report the data to meet high accuracy and timeliness standards.**

In addition to our enthusiastic support for ED's commitment to conducting the CRDC during the 2021-22 school year, we were especially pleased to see the following proposed changes:

- **Data responsive to COVID-19.** We strongly support new CRDC questions to probe the amount of virtual instruction students receive per day and the percentage of students who receive virtual instruction. Emerging [research](#) shows a relationship between students' progress and the mode of instruction offered during the pandemic, with students in districts offering full-time, in-person instruction seeing less significant declines in achievement. Unfortunately, the researchers also find that districts serving more Black students and lower-achieving students were less likely to offer in-person learning and that the decline in reading achievement associated with virtual schooling was larger in areas serving a majority of non-white students. Collecting data on districts' reliance on virtual instruction will help confirm these gaps in access to in-person learning and strengthen the case for additional support and resources, where necessary, for students of color to make up for lost instructional time.

Further, we support ED's proposal to collect the number of students who needed Wi-Fi enabled devices for virtual learning; the number of students who received Wi-Fi enabled devices; the number of students who needed a Wi-Fi hotspot for virtual learning; and the number of students who received a Wi-Fi hotspot. High-speed home internet and a connected device are essential tools for learning in today's world, even when districts provide in-person instruction. However, Black, Latino, and American Indian/Alaska Native households are more likely to [lack high-speed home internet](#) and Wi-Fi enabled devices necessary for virtual learning. Gathering this information in the CRDC will equip families, policymakers, and advocates to assess how well districts are addressing the homework gap and identify communities where the digital divide is most acute. We also recommend that OCR expand the respondents to this question to include all LEAs, even those that are not currently relying on virtual instruction, to obtain more accurate information regarding how all districts are helping to close the digital divide. Given that ED has proposed collecting similar data through other collections (e.g., ESSER I/ESSER II/ARP ESSER Fund

Recipient Data Collection), we encourage ED to review the proposed data elements across these data collections to avoid duplication and ensure alignment.

- **Data on nonbinary students.** The addition of a nonbinary sex category is a critical step toward providing federal officials and advocates greater information on the educational opportunities and experiences of nonbinary students, as well as allowing stakeholders to identify potential sources of discrimination on the basis of an expanded definition of gender. Schools should be welcoming, affirming, and safe environments for all students. We agree with ED that including data from LEAs already collecting this information will help shine a light on the experiences of nonbinary students and support OCR's mission to enforce Title IX's prohibition on discrimination on the basis of sex, including discrimination based on sexual orientation and gender identity.

We also strongly support the addition of items related to (1) the reported number of allegations of harassment or bullying of K-12 students on the basis of gender identity and (2) local educational agencies' (LEAs) written policies on bullying/harassment on the basis of sexual orientation, gender identity, or religion. As noted in Supporting Statement, Part A, students who identify as LGBTQ+ are disproportionately victims of bullying and harassment. Therefore, having a clear picture of where district policies are in place is key to furthering the protection of these students. Additionally, having a centralized database of links to district policies prohibiting bullying and harassment on the basis of sexual orientation, gender identity, or religion can aid advocates in identifying and sharing best practices for adoption in other LEAs across the country, and ensuring these policies are non-discriminatory.

- **School discipline.** We appreciate efforts to collect important, accurate, and timely data on school discipline, particularly the restoration of data related to out-of-school suspensions in preschool. The school-to-prison pipeline, which disproportionately impacts children of color and children with disabilities, starts in preschool. For example, an OCR [report](#) based on CRDC data from the 2011-12 school year found that Black children represented 18 percent of public preschool enrollment, but 42 percent of preschool students suspended once and 48 percent of students receiving multiple out-of-school suspensions. Likewise, using CRDC [data](#) from 2017-2018 (when frequency of suspensions was not specified), Black preschool students accounted for 18.2 percent of total preschool enrollment, but 43.3 percent of students who received one or more out of school suspensions. Multiracial preschool students similarly accounted for 4.1 percent of total preschool enrollment, but 6.5 percent of students with one or more out of school suspensions, and American Indian or Alaska Native preschool students accounted for 1.1 percent of total preschool enrollment and 1.7 percent of students who received one or more out of school suspensions. Preschool students who were served under IDEA accounted for 22.7% of total preschool enrollment, but accounted for 56.9% of preschool students who were expelled.

Collecting data on exclusionary discipline such as in-school suspensions, out-of-school suspensions, expulsions, and corporal punishment in preschool by students' race, gender, English learner status, and disability status—including students with disabilities who receive services under Section 504 only—and differentiating data collection by frequency (i.e., restoring data on the number of preschoolers who receive one out-of-school

suspension versus multiple) will give families, communities, and advocates the tools needed to address the disproportionate harm of exclusionary discipline on oppressed students.

- **Restraint and seclusion.** We also support OCR’s updated definitions for mechanical restraint, physical restraint, and seclusion, as these definitions provide greater clarity around qualifying incidences and will help improve the quality of LEA reporting. The changed definitions remove vague language which previously implied acceptable cases of restraint and seclusion and, instead, add formal ramifications for what should and should not be considered a reportable action. Importantly, the new definition for seclusion incorporates student perceptions of whether or not they are permitted to leave a space, acknowledging the psychological toll of seclusion on students. These updated definitions will ultimately broaden our understanding of restraint and seclusion events and will, therefore, lead to better data reporting to identify inequities. This will be especially useful for monitoring the treatment of students with disabilities, who historically are subject to disciplinary action, including restraint and seclusion, at a higher rate.
- **Early childhood education and preschool.** We appreciate the restoration of data elements on early childhood education, including whether districts offered early childhood programs for non-IDEA children from birth to age 2; whether district preschool programs enroll all students, those receiving services under IDEA, students in Title I schools, or students from low-income families; and whether districts’ offer full- or part-day preschool and kindergarten programs, and any associated tuition costs for families. We also support OCR’s proposed changes to enhance and improve data collected on early childhood, including new data on preschool enrollment for students with disabilities receiving services under IDEA or under Section 504 (both disaggregated by race, sex, and English learner status). The new data will illustrate gaps in access to early learning, a vital component to making our education system more equitable. This is especially important given the provisions in the *Build Back Better Act* that provide for universal pre-K and expanded access to early care. As the federal government aims to partner with states and invest billions in early care and education, it is essential to ensure these investments improve access for families and children who have the most significant barriers to high-quality early learning.
- **English learners.** We strongly support the added spotlight in the 2021-22 CRDC on English Learners (ELs), who are one of the [fastest-growing](#) student populations and who may soon account for one in four students in the nation. The Every Student Succeeds Act (ESSA) renewed focus on this historically marginalized group, but additional attention to their needs has long been required. The pandemic has only served to widen gaps between students learning English and their peers; the existing digital divide, social isolation, and instructional models that did not include English as a second language instruction have, at best, slowed language acquisition for many. For other ELs, these challenges have prevented them from accessing any learning at all.

Unfortunately, previous iterations of the CRDC did not examine ELs in early childhood. The administration’s proposal to include questions on enrollment of students learning English in preschool programs is critical and overdue. Early childhood education plays an essential role in the future academic success of young multilingual learners. By capturing

data on their experiences in preschool, advocates will have a clearer picture of young learners, and educators will be better positioned to offer early interventions.

Moreover, we support the proposed new data elements that will focus on the number of EL students enrolled in EL programs, in both preschool and K-12 education. This will help ensure that ELs across the country are receiving the services needed for success in instruction in English. Most importantly, the disaggregation of enrollment data, in both groups, by race, sex and disability, will shine a light on inequities, ensure that ELs are receiving the services needed for their academic success—regardless of their other characteristics—and help the field better understand the intersectionality in the EL student population.

- **Educators.** We also strongly support OCR’s plans to restore and enhance critical elements related to teachers. Even prior to COVID-19, Black and Latinx students were far more likely to be in classrooms led by novice teachers and uncertified teachers—disparities families and advocates learned about through the CRDC. Resuming the collection of data on teachers’ years of experience and whether teachers at the school were employed during both the current and previous school year is especially important now, given anecdotal evidence from across the country of increased teacher turnover as a result of the pandemic. Similarly, proposed items on FTE counts of teachers certified in traditional shortage areas, including STEM, special education, and English as a second language, could help further illuminate trends within teacher shortages and equitable access to certified teachers in these fields. This is important as research shows that teacher qualifications matter for teaching quality and student success. Together these data will help inform targeted policy responses to address issues within the teacher pipeline.

More importantly, the data collected from these items will help identify inequities in access to teachers who are experienced, consistently present, subject-area experts, and reflective of students’ racial identities. [A synthesis of 30 studies](#) analyzing the effect of teaching experience on student outcomes found that teaching experience is positively associated with student achievement gains throughout a teacher’s career. [Multiple studies](#) show that novice teachers with fewer than three years of experience are associated with lower student achievement, and that these teachers are concentrated in high-poverty schools. The Education Trust recently released two reports highlighting inequities in access to experienced teachers for [Black](#) and [Latinx](#) students using the 2017-18 CRDC. In 2020, the Learning Policy Institute, using data from the 2015-2016 CRDC [found that](#) in schools with high enrollment of students of color, nearly one in every six teachers is just beginning their career compared with one in every ten teachers in schools with low enrollment of students of color. Restoring these items in the 2021-22 CRDC will support researchers in continuing this work and advocates in their efforts to address inequities in access to excellent educators.

We also support the addition of data on educators, preschool to grade 12, disaggregated by race and by gender. This will allow stakeholders to identify inequities in school staffing through the lens of race and sex, which is critically important given the academic and social-emotional impacts of students having a teacher who [matches their own identity](#) and the nationwide shortage of teachers of color, and male teachers of color, in particular.

- **College and career pathways.** We appreciate the Department’s commitment to creating opportunities for postsecondary success with the addition of questions regarding access and enrollment in data sciences courses and the reinstatement of questions regarding credit recovery programs and Advanced Placement (AP) courses beyond math, science, and computer science. Advanced courses in the humanities, such as English literature, economics, and world language and culture, are equally valuable in preparing students for postsecondary learning. Moreover, ensuring that schools serving Black and Latinx students are offering a wide variety of advanced coursework is essential to eliminating opportunity gaps, and the CRDC can shine a light on whether students in high schools serving high concentrations of historically marginalized students have equitable access to early postsecondary opportunities.
- **School finance.** School funding positively [influences](#) student achievement; yet, research shows school funding systems often [shortchange](#) districts serving high concentrations of students of color and students from low-income families. This is why we were alarmed when the previous administration retired all data elements related to school spending, especially since the CRDC had been the only data source for school-level expenditures across the country. These elements, under ED’s proposal, will continue to be excluded from the 2021-22 CRDC.

Fortunately, ED is proposing to gather this information through the School-Level Finance Survey (SLFS), a voluntary survey administered to state educational agencies (SEAs) by the National Center for Education Statistics (NCES). We support making the SLFS a mandatory data collection for the 2022-23 school year—with one caveat. For this proposal to not result in a loss of transparent data on school funding equity, ED and NCES should also commit to publicly reporting the data collected through the SLFS, which has not yet occurred with any SLFS data to date.

If the SLFS is required for all SEAs to complete and the data are made publicly available, ED’s proposal has some advantages over collecting school expenditure data via the CRDC; notably, SEAs would submit the data on behalf of districts, making it more likely for the data to be reported comparably from district to district and consistently with how SEAs are reporting this data under the ESSA. Further the SLFS may be able to gather more detailed data on funding equity, given that the survey exclusively focuses on school finance, while CRDC focuses on multiple dimensions of equity. We look forward to working with the Department to ensure the required SLFS data collection can meet these intended goals.

Thank you for your ongoing efforts in pursuit of educational equity and excellence. We offer our partnership and support in this endeavor and look forward to working with you on behalf of all of America’s students, particularly those who have been underserved.

With appreciation,

All4Ed  
Austin Area Urban League  
CHILDREN AT RISK  
Education Reform Now  
The Education Trust

The Education Trust Louisiana  
The Education Trust in Tennessee  
The Education Trust in Texas  
The Education Trust in Washington  
The Education Trust--West  
Every Texan  
MEASURE  
National Center for Learning Disabilities  
National Urban League  
Teach Plus  
Texas Center for Justice and Equity  
UnidosUS

## Attachment 1:

### Response to Directed Questions

#### **Directed Question 1: Preschool Section 504 Only Student Enrollment**

*For the 2021–22 CRDC, OCR proposes to start collecting preschool enrollment data for preschool students with disabilities who are served only under Section 504 of the Rehabilitation Act of 1973. The data would be collected by sex and race/ethnicity, and sex and English learner (EL).*

*To inform OCR's decision, please respond to the following:*

*Have local educational agencies (LEA) enrolled preschool students served only under Section 504 in preschool programs?*

#### **Response:**

We support the collection of enrollment data for preschool students with disabilities who are served only under Section 504 of the Rehabilitation Act of 1973. Preschool students are entitled to the civil rights protections offered under Section 504 and should therefore be counted appropriately. Further, students served under Section 504 often have different experiences than students served under IDEA, making the distinction of the two important as an accountability mechanism. With this disaggregated data, we will be better able to understand how preschools are upholding the distinct rights afforded under Section 504 and IDEA and to identify trends and potential disparities in the enrollment of preschool students with disabilities served only under Section 504.

#### **Direction Question 2: Preschool Student Enrollment in Gifted and Talented Programs**

*The CRDC currently collects counts of students enrolled in preschool and grades K-12 (or the ungraded equivalent) who were enrolled in gifted and talented programs. Specifically, LEAs currently provide counts by sex and race/ethnicity, sex and EL, and sex and student served under the Individuals with Disabilities Education Act (IDEA). For the 2021–22 CRDC, OCR is exploring the possibility of removing preschool students from the gifted and talented programs data element.*

*Gifted and talented programs are programs during regular school hours that provide special educational opportunities including accelerated promotion through grades and classes and an enriched curriculum for students who are endowed with a high degree of mental ability or who demonstrate unusual physical coordination, creativity, interest, or talent.*

*To inform OCR's decision, please respond to the following question:*

- *Have LEAs enrolled preschool students in gifted and talented programs?*

#### **Response:**

While the undersigned groups are not aware of the extent to which LEAs have enrolled preschool students in gifted and talented programs, we urge OCR to continue to collect data on gifted and talented enrollment for preschool, given the historical inequities in enrollment in such programs among students of color, student from low-income families, and English Learners and the increased difficulty to enroll in these programs as students increase in age. Additionally, given the



proposed investments in preschool by the administration via its Build Back Better agenda, it will be important to continue to collect preschool data as we could see a large uptick in preschool enrollment—with related changes to preschool gifted and talented programs—as a result.

### **Directed Question 3: Nonbinary Students**

*For the 2021–22 CRDC, OCR is proposing to expand the sex category (currently male and female) to include nonbinary. OCR is also proposing to define nonbinary as follows:*

*Nonbinary refers to a student who does not identify exclusively as male or female. Nonbinary does not refer to a transgender student who identifies exclusively as either male or female.*

*LEAs that indicate they collect this information from students will be required to report student enrollment data for nonbinary students. Elsewhere in the survey, the inclusion of data on nonbinary students in data elements disaggregated by sex will be optional for LEAs for the 2021–22 CRDC, but will be required for future CRDCs.*

*The inclusion of a nonbinary sex category will allow OCR to capture data that will provide a greater understanding of the experiences of nonbinary students, and will help to further OCR’s mission to enforce Title IX’s prohibition on discrimination on the basis of sex, which includes discrimination based on sexual orientation and gender identity. According to OCR’s research, there are 11 SEAs that already allow for the reporting of three categories for student sex.*

*To inform OCR’s decision, please respond to the following questions:*

- *Have LEAs collected data using a third nonbinary sex category?*
- *What, if any obstacles have LEAs faced in collecting such data?*
- *What, if any, changes should OCR make to the proposed definition for nonbinary?*

### **Response:**

As noted above, we support the expansion of the sex category to include nonbinary students and believe the benefits of including the new category substantially outweighs any obstacles LEAs may face in collecting and reporting these data. We also support making this additional sex category optional for respondents in the 2021-22 collection (except for questions pertaining to student enrollment) and moving to require data collection on nonbinary students in additional areas beyond school enrollment in subsequent surveys. However, we believe OCR should clarify whether this planned expansion will only apply to schools and LEAs that already collect data on nonbinary students, or to all respondents, to ensure all entities will be prepared to report on these students’ experiences in subsequent collections.

Additionally, we believe that OCR’s proposed definition of nonbinary is sufficiently clear for LEAs. The current definition distinguishes nonbinary from the existing male and female categories, while also clarifying that the definition does not include students who identify as transgender.

### **Directed Question 4: Chemical or Irritant Restraint**

*OCR is exploring the possibility of collecting new student restraint data involving the use of chemicals or irritants in public schools, for future CRDCs (after the 2021–22 CRDC). To inform OCR’s decision, please respond to the following questions:*

- *Have LEAs and schools collected data on the use of chemical or irritant restraints in schools, including the use of medication outside of a prescribed use and for the purpose of sedating a student, and the use of pepper spray, tear gas, or other chemical or irritant restraints on students?*
- *Should data collection include use of chemical or irritant restraints by a sworn law enforcement officer assigned to a school?*
- *What, if any obstacles may LEAs face in collecting such data?*

**Response:**

We urge OCR to collect data on the use of chemical restraint by both a sworn law enforcement officer and/or school staff assigned to/employed by a school, beginning with the 2021-2022 CRDC. The following new elements and definitions are recommended:

- Students (K-12) subjected to chemical restraint:
  - Number of non-IDEA students subjected to chemical restraint (disaggregated by race, sex, nonbinary, disability-Section 504 only, EL); (Optional for 2021-22 CRDC) (Nonbinary expansion optional for 2021-22 CRDC)
  - Number of students with disabilities (IDEA) subjected to chemical restraint (disaggregated by race, sex, nonbinary, EL). (Optional for 2021-22 CRDC) (Nonbinary expansion optional for 2021-22 CRDC)

Proposed definition: The term “chemical restraint” means a drug or medication used on a student to control behavior and restrict freedom of movement that is not–

- a) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional’s authority under State law, for the standard treatment of a student’s medical or psychiatric condition; and
- b) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority under State law.

Source: H.R. 3474/S.1858 - [Keeping All Students Safe Act](#) (117th Congress)

In addition, any data collection on chemical restraint should be sufficiently broad to include a wide range of individuals. For example, OCR could use the definition for “law enforcement” in the [Keeping All Students Safe Act](#), but not limit the data collected to only law enforcement. By adding “school staff assigned to/employed by a school,” OCR could also capture information on the wide range of school personnel (teachers, counselors, security guards, etc.) who may be employing these chemical or irritant restraints. Any adult in a school employing these measures should be included in the data, and it should be disaggregated to identify any disparities or biases in the use of these measures.