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reply to:
99 Chauncy Street
Suite 700
Boston, MA 02111
617-451-0855

1875 Connecticut Ave., NW
Suite 510
Washington, D.C. 20009
202-986-3000

November 10, 2009

VIA E-MAIL

Angela C. Arrington, Director
Information Collection Clearance Division
Regulatory Information Management Services
Office of Management
400 Maryland Avenue, SW.,
Washington, D.C. 20202-4537

RE: Comments on Proposed Changes to Civil Rights Data Collection

Dear Ms. Arrington:

Attached are comments submitted by the Center for Law and Education on the proposed changes to the Civil Rights Data Collection, released for public comment on September 11, 2009 (74 Fed. Reg. 46750).

We appreciate this opportunity to comment. Thank you for your consideration.

Sincerely,

Joanne Karger, Staff Attorney
Kathleen B. Boundy, Co-Director
Paul Weckstein, Co-Director

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Comments on Proposed Changes to Civil Rights Data Collection: 74 Fed Reg. 46750 (Sept. 11, 2009)

The Center for Law and Education (“CLE”) is a national legal advocacy organization with offices in Boston and Washington, D.C., whose mission is to make every student’s right to a high-quality education a reality. As a voice for the rights of children and families to a high-quality education, we offer the following comments on the proposed changes concerning the Civil Rights Data Collection (“CRDC”):

(1) Expansion of Data Indicators/Need to Focus on Quality Education Elements. We support the U.S. Department of Education (the “Department”) in its proposed expansion of the data indicators to be collected through the CRDC, as well as the increased focus on disaggregation of the CRDC data by racial ethnic group, sex, disability status (including Individuals with Disabilities Education Act (“IDEA”) and Section 504), and limited English proficiency (“LEP”) status. The use of statistical data is helpful in proving disparate impact discrimination, particularly with respect to race-based and national origin claims brought under Title VI of the Civil Rights Act of 1964 (“Title VI”).¹ Moreover, in the aftermath of the Supreme Court’s decision in *Alexander v. Sandoval*, the use of statistical data to prove disparate impact has taken on even greater significance.² In *Sandoval*, the Court concluded that there was no private right of action to enforce Title VI disparate impact regulations.³ Consequently, claimants must be cognizant of the utility of incorporating statistical evidence to support their claims of disparate impact discrimination in the context of filing administrative complaints with the Department’s Office for Civil Rights (“OCR”). The Department’s proposed expansion of the data indicators through the CRDC has the potential to aid in this process.

Research has long cited the disproportionate impact of certain school- and district-based policies and practices, e.g., discipline policies/practices, on students of color⁴ and students with disabilities.⁵ It is important to continue to highlight and expose such disparities as they become evident in schools and school districts. At the same time, evidence of disparate impact, by itself, does not constitute discrimination; rather, such evidence merely triggers a shift in burden to the LEA to justify or change its policies/practices. Because the data collected through the CRDC process is not sufficient on its own to analyze these disparities in full, it is always necessary for the Department to collect additional information

¹ See 42 U.S.C. § 2000d-1 *et seq.*; 34 C.F.R. § 100.1 *et seq.*

² 532 U.S. 275 (2001).

³ *Id.*

⁴ See, e.g., CIVIL RIGHTS PROJECT, HARVARD UNIV., OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES 7 (2000). See also SCHOTT FOUND. FOR PUB. EDUC., GIVEN HALF A CHANCE: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES (NATIONAL SUMMARY, 2008) <<http://blackboysreport.org/node/15>> (last visited Nov. 9, 2009).

⁵ See SRI INTERNATIONAL, NATIONAL LONGITUDINAL TRANSITION STUDY 2, FACTS FROM NLTS2: SCHOOL BEHAVIOR AND DISCIPLINARY EXPERIENCES OF YOUTH WITH DISABILITIES 3 (Mar. 2006) <http://www.nlts2.org/fact_sheets/nlts2_fact_sheet_2006_03.pdf> (last visited Nov. 9, 2009) (finding that one-third (33%) of students with disabilities had been suspended or expelled at some point during their school careers and that students identified as having an emotional disturbance were significantly more likely than students in all other disability categories to be suspended or expelled).

from the school district on a case-by-case basis. We recommend that the Department use the initial numerical data that is available through the CRDC in a strategic manner as a starting point from which to address the discriminatory effects of inappropriate policies/procedures by conducting more extensive investigations of, in particular, the elements of a high-quality education (e.g., curriculum aligned to high standards for all students; effective instruction from qualified teachers for all students). The Department has stated that “the primary purpose of the ... [CRDC] is to provide data to support OCR’s compliance and enforcement activities through use of the data from the surveyed LEAs.”⁶ We consequently urge the Department to be more proactive in utilizing the data as a trigger to move forward with potential signs of discrimination on the part of individual schools and school districts – e.g., the assignment of students with disabilities to low track regular education classes that offer only out-of-level instruction. We also welcome the opportunity to work with the Department to identify additional indicators that could potentially capture the quality education elements more concretely.⁷

(2) Data Collection Procedures. In addition, we support the Department’s proposed revisions to the procedures concerning data collection, including expansion of the sample of local educational agencies (“LEAs”) and schools to be surveyed as part of the CRDC process. For a number of years, the CRDC instrument has been administered to 6,000 LEAs. Through the proposed changes, the Department is estimating that the sample will be expanded to encompass approximately 7,000 LEAs and to include all of the schools within these LEAs.⁸ We believe that, ideally, the CRDC instrument should be administered to all LEAs and that the Department should gradually increase the sample size to reach this goal. Similarly, the Department has indicated that while the CRDC is currently operating on a biennial cycle, there is the possibility that the survey will begin to be administered on an annual basis.⁹ We encourage the Department to adopt an annual schedule for the CRDC so that the information can be used in a timely and constructive manner. The Department itself has acknowledged that the current available data (from the spring of 2005-06 and the fall of 2006-07) is out of date and that there is a need for more recent data to be made available in order for the Department to fulfill its statutory mandates.¹⁰

Moreover, we support the proposed inclusion of juvenile justice agencies that provide education services as part of the sample of LEAs to which the CRDC instrument will be sent.¹¹ It appears that the initial CRDC sample of LEAs drawn for 2008 was to include only a select group of juvenile justice education entities, chosen in collaboration with the Department of Justice.¹² We agree with the Department’s decision to expand the sample of juvenile justice agencies for the 2009-10 CRDC from this select group to *all* state-level juvenile justice agencies.¹³ Research has shown that the education provided in juvenile justice facilities is often low-level and inferior in nature.¹⁴ Including juvenile justice facilities in the CRDC process sends the message that the youth in these facilities are entitled to the same quality education as all other youth. A number of the CRDC data indicators will be particularly revealing with respect to the education provided in juvenile justice facilities – e.g., number of students, disaggregated by race, disability status, and LEP status; use of ability grouping classes in math or English/reading/language

⁶ *Annual Mandatory Collection of Elementary and Secondary Education Data through EDFacts, Part B*, at 3. See also *Annual Mandatory Collection of Elementary and Secondary Education Data through EDFacts, Part A*, at 3 (“The Department conducts the survey to provide the Office for Civil Rights (OCR) headquarters and regional offices with current data to use when targeting compliance review sites or to [sic] as source material when investigating complaints.”).

⁷ For a discussion of our specific comments with respect to the proposed changes concerning individual indicators, see *infra* Part (4).

⁸ *Changes to Attachment B-4*, at 1.

⁹ *Id.* at 2.

¹⁰ See *Annual Mandatory Collection of Elementary and Secondary Education Data through EDFacts, Part A*, at 4.

¹¹ See *Annual Mandatory Collection of Elementary and Secondary Education Data through EDFacts, Part B*, at 1.

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ See, e.g., Peter Leone *et al.*, *Appropriate Education, Juvenile Corrections, and No Child Left Behind*, 29 BEHAVIORAL DISORDERS 260, 262 (2004).

arts; presence of harassment or bullying; and implementation of restraint or seclusion. Moreover, we urge the Department to promote greater accountability on the part of LEAs and to enhance the level of coordination between LEAs and juvenile justice facilities by requesting that each LEA provide data concerning the number and percentage of students who have entered the juvenile justice system and, of those students who have exited a juvenile justice facility, the number and percentage who have: (a) returned to their home school; (b) entered an alternative program/school (see discussion below under Part (4)); or (c) entered a school other than their home school or an alternative program/school.

(3) Data Posting. We further recommend that the Department make significant changes to the manner in which the CRDC data is posted on the public website in order to facilitate retrieval of this information and to make the website more user-friendly. The Department has indicated that one of the purposes of the CRDC process is to promote the availability of this information for the public. Similarly, the Department has acknowledged that an additional purpose is to provide access to the data for social scientists who are conducting relevant research as well as civil rights advocacy groups focused on monitoring discriminatory practices.¹⁵ As an education advocacy organization dedicated to enforcing the civil rights of low-income students and families, we have used the CRDC data in multiple aspects of our work in order to target discriminatory policies and practices on the part of individual schools and school districts. For example, we have found the discipline data, disaggregated by race and disability status, to be useful in our school site-based work as well as in our work assisting other lawyers and advocates in representing students in school “push-out” cases. Although we have accessed the data from the website, we have found the data tables to be difficult to navigate. We urge the Department to put as much attention into making the public website user-friendly as is currently being placed on making the data collection procedures user-friendly for schools and school districts. The Department has indicated that it is in the final stages of developing a “Flexible Tables software product that will display CRDC data in a more user-friendly form...”¹⁶ We hope that as the Department moves forward with this process, families and advocacy organizations will have an opportunity to provide feedback on the revised website format. Similarly, we encourage the Department to post informational materials and tutorials for the public regarding use of the new website.

(4) Changes to Specific Data Indicators. In this section, we provide our comments with respect to individual data indicators:

(a) Promotion Testing, Graduation Testing and Retesting (pp. B-4-26, -27, -28 and B-5-17, -32). We strongly oppose the deletion of data on elementary and middle school promotion testing, graduation testing, and graduation re-testing. These are momentous events in the lives of children, with major impact on their education and later outcomes. These indicators clearly have civil rights implications and are properly subject to disparate impact analysis by race, gender, and disability. To the extent that the decision to delete this data in any way reflects a belief that school reform in this area is best done without the strong presence of a civil rights lens, we believe that view, aside from being legally unacceptable, is dead wrong on the issue of reform and will actually set reform backwards. The imperatives of civil rights law, and the joint professional standards for educational testing to which they relate, are, in fact, a major tool for real reform. They require, in the presence of disparate impact, that the assumptions and inferences that underlie a particular use of a test be identified and then the evidence that supports or questions those inferences be carefully amassed and analyzed. In this context, these issues translate into ensuring that: (a) the assessments we use for these purposes accurately and adequately measure the skills and knowledge that we expect students to learn, and (b) the educational programs actually and adequately teach those students those skills and knowledge (as well as ensuring that the response to the results actually provides the benefits we are seeking). From that perspective, rigorous application of the civil rights standards here are not a drag on reform but, rather, are its biggest friend and stimulant – in terms of

¹⁵ See *Annual Mandatory Collection of Elementary and Secondary Education Data through EDFacts, Part A*, at 3.

¹⁶ *Id.* at 9.

making sure that reforms of instruction and assessment are real. Walking away from this arena or abandoning the data necessary to act within it would be a major abandonment not only of legal responsibility but of key tools for reform. *We urge* the Department, in the strongest terms, not to do so.

Additionally, on the issue of collecting data with respect to re-testing, there are further reasons why this measure is significant. At the same time that it is important to give students multiple opportunities to pass, and it is a significant achievement when they ultimately do, the difference between passing initially and passing only with remedial help, summer school, etc. (after not learning sufficiently in the core regular classes) has significance. Large differences in the proportions of students who achieve the requisite proficiencies only after remedial help and retesting is a critical measure of the strength of the core academic program, in contrast to schools where large portions of students emerge from that core program without those proficiencies and in need of remedial help.

(b) Ability Grouping and Student Assignment (p. B-4-10). Earlier data collections provided for data on individual classrooms, broken down by student group, not just a yes/no response to whether the school uses ability grouping. This should be restored because it provides a critical measure of within-school segregation. There is, however, one addition that would make this data much more useful and useable than it previously was – namely, the addition of a box along the lines of “The achievement level of most students in this class, in comparison with the overall school, is (a) high, (b) medium, (c) low, (d) not predominantly at any one level.” Without that information it is very difficult to distinguish patterns from random variations between individual classes. With such information, it then becomes possible to aggregate the classrooms by level and see whether or not there are any patterns.¹⁷

(c) Alternative School Focus (p. B-4-14). “Alternative education” is a broad term that is used to describe a wide variety of options outside the traditional K-12 school system, including programs that are targeted at students who have been unsuccessful in their prior school experiences.¹⁸ State laws vary in terms of the parameters for alternative education.¹⁹ In recent years, an increasing number of alternative education schools have been created for students who have been deemed disruptive due to problematic behavior and have subsequently been removed from their usual learning environment because of purported disciplinary violations. These schools often provide an academic program that is low level and watered down, focusing on instruction in the “basics.”²⁰ In some states, there is no obligation for school districts to provide continuing educational services to students who have been removed from their public education for disciplinary reasons.²¹ The one exception is students with disabilities who are receiving special education services under IDEA and are removed from their current educational placement for more than 10 school days.²² Even for these students with disabilities, however, because they are disproportionately

¹⁷ In addition, unlike prior collections, two artificial limitations should not be included. First, this should be done for all levels of school. Placement decisions are made at *all* levels -- elementary, middle and secondary -- that impact on a student's opportunity to participate in and succeed in college prerequisite courses and advanced-level courses. Second, this should not be restricted to schools with minority populations between 21% and 79%. That masks issues with which OCR must be concerned -- for example, this language by arbitrarily excluding schools that may have a minority percentage of 17% or 85% but who are concentrated in low-track classes, as well as students with disabilities or limited English proficiency. The addition of the box on classroom level, suggested above, would make meaningful and possible the collection of data on patterns in such schools.

¹⁸ See LAUDAN Y. ARON, THE URBAN INST., AN OVERVIEW OF ALTERNATIVE EDUCATION 3 (Jan. 2006)

<http://www.urban.org/UploadedPDF/411283_alternative_education.pdf> (last visited Nov. 9, 2009).

¹⁹ See, e.g., CAL. EDUC. CODE §§ 48915(d), (f), 48916.1; MICH. COMP. LAWS. ANN. §§ 380.1280a, 380.1311; OHIO. REV. CODE ANN. § 3313.533; TENN. CODE ANN. §49-6-3402(i)(1).

²⁰ See CAMILLA A. LEHR ET AL., ALTERNATIVE SCHOOLS: FINDINGS FROM A NATIONAL SURVEY OF STATES 15 (2004) <http://ici.umn.edu/alternativeschools/publications/alt_schools_report2.pdf> (last visited Nov. 9, 2009).

²¹ See, e.g., *Board of Education v. School Committee of Quincy*, 415 Mass. 240 (1993) (holding that the MA compulsory education law does not require school districts to provide educational services to students who have been excluded from school for disciplinary reasons).

²² 34 C.F.R. § 300.530(d).

represented in alternative education schools, they are not accessing the general education curriculum aligned to high state standards, being educated in the least restrictive environment, and being taught by highly qualified teachers as required under federal and state law. Thus, alternative schools can create a separate system of education that is segregated and stigmatizing. In a 2009 study of alternative education schools in Mississippi, for example, the American Civil Liberties Union found that these schools did not provide opportunities for students to engage in meaningful and challenging work and did not provide appropriate instruction to meet the individualized learning needs of the students.²³

The Department's proposed categorical values for the "Alternative School Focus" indicator that are part of the CRDC process do not fully capture the full range of educational programs included under the broad term of "alternative education." Nor do these categories address the problems associated with alternative education models that are discussed above. The proposed values are identified as: "Alternative School for Students with Academic Difficulties, Alternative School for Students with Discipline Problems, Alternative School for Students with both Disability and Academic Problems, Not an Alternative School."²⁴ These categories, however, do not provide for the large number of alternative education programs that function as separate educational "programs" within the regular school building, and not as separate "schools."²⁵ Such "programs" would not be classified as schools unless recognized as such by the State. Similarly, the various positive programs comprising the concept of "multiple pathways to graduation" are often considered to be additional forms of "alternative education," as are alternative opportunities for career and technical education experiences.²⁶

We recommend that the Department clarify and perhaps expand the values assigned to alternative education for the purposes of the CRDC instrument. In addition, to the extent that alternative education programs are included in this category, the Department should make sure that such programs provide information concerning the number of students placed in the program, disaggregated by race, sex, disability status (IDEA and Section 504), and LEP status. The Department should also apply some of the other CRDC variables, such as ability grouping, availability of AP courses, and use of restraint or seclusion, to alternative education programs. Moreover, the Department should ask about the number of students who have been placed in all alternative programs/schools as a result of discipline incidents. Finally, in light of the concerns raised above with respect to the quality of some of the alternative education models, we would like to reiterate our earlier statement concerning the need for the Department to follow up on any potential violations indicated by the data through an in-depth, qualitative compliance investigation, including with respect to the elements of a high-quality education.

(d) Discipline Incidents (pp. B-4-21, -22). Under the current administration of the CRDC, the data categories for discipline incidents include: corporal punishment, out of school suspensions, total expulsions, and expulsions – total cessation of educational services. According to the proposed changes to the CRDC, the Department has identified additional permitted values for the "discipline method" categories. The new permitted values include: "Corporal Punishment, Single Out-of-School Suspension Without Educational Services, More Than One Out-of-School Suspension Without Educational Services, Expulsion with Education Services, Expulsion without Education Services, Expulsion under Zero-

²³ AMERICAN CIVIL LIBERTIES UNION AND THE ACLU OF MISSISSIPPI, MISSING THE MARK: ALTERNATIVE SCHOOLS IN THE STATE OF MISSISSIPPI 19 (Feb. 2009) <http://www.aclu.org/pdfs/racialjustice/missingthemark_report.pdf> (last visited Nov. 9, 2009).

²⁴ *Changes to Attachment B-4*, at 14.

²⁵ See John H. Tyler & Magnus Lofstrom, *Finishing High School: Alternative Pathways and Dropout Recovery*, 19 FUTURE OF CHILDREN: AMERICA'S HIGH SCHOOLS 77, 91 (2009).

²⁶ See, e.g., PATRICK M. CALLAN & JONI E. FINNEY, THE NATIONAL CENTER FOR PUBLIC POLICY AND HIGHER EDUCATION, MULTIPLE PATHWAYS AND STATE POLICY: TOWARD EDUCATION AND TRAINING BEYOND HIGH SCHOOL (June 2003) (Commissioned by Jobs for the Future for the project, Redesigning High Schools: The Unfinished Agenda in State Education Reform) <<http://www.highereducation.org/reports/multipath/multipath.shtml>> (last visited Nov. 9, 2009).

Tolerance Policies, Referral to Law Enforcement, School-Related Arrest.”²⁷

The new categories for discipline incidents represent improvements over the current classification system, including the distinction between a student who has received a single out-of-school suspension and one who has received more than one out-of-school suspension. In addition, we support the proposed inclusion of the categories of “referral to law enforcement” and “school-based arrest.” In recent years, the increased presence of law enforcement officials and school resource officers on school grounds has led to a greater number of referral to law enforcement and students being charged and arraigned for minor infractions and has raised constitutional concerns regarding the questioning of students and the searching of students’ personal items.²⁸ Moreover, schools too often criminalize the behavior of students with disabilities by making inappropriate referrals to law enforcement authorities rather than addressing the behavior as an educational issue. Such referrals may implicate the student’s rights under Section 504.²⁹ The inclusion of referrals to law enforcement and school-based arrests is a positive step in the right direction; however, we urge the Department to clarify in its explanation to schools and school districts that such referrals must be appropriate and cannot be based on a student’s disability.

We have some additional concerns with the proposed data changes with respect to discipline. First, we urge the Department to emphasize to schools and school districts that its definition of “out-of-school suspension” covers *any* period of exclusion from school, including one school day. In the context of the current educational climate, even one day of exclusion from school during which a student misses out on important instructional time can have a significant impact on his/her future learning experiences. Research has shown that exclusion from school is associated with a number of negative outcomes for students, including poor academic achievement,³⁰ the development of low self-esteem,³¹ and the eventual dropping out of school.³² Using exclusion as a form of punishment has been found to be ineffective in helping students change problematic behavior or in making schools safer.³³

We further recommend that the Department include an additional data category to capture the implementation of in-school suspensions, which should be defined as any removal from the child’s usual classroom instruction for more than two class periods, during which the child remains in school. We also oppose the elimination of data on children without disabilities who were not offered educational services after expulsion.³⁴ Moreover, we recommend that the Department collect data on students who re-enroll after an expulsion. Finally, we have concerns with the use of the term “Zero-Tolerance Policies.” This

²⁷ *Changes to Attachment B-5*, at 13.

²⁸ N.Y. CIVIL LIBERTIES UNION, *CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS* 16-18 (2007) <http://www.aclu.org/pdfs/racialjustice/overpolicingschools_20070318.pdf> (last visited Apr. 9, 2009). See also Letter from Arthur Eisenberg, Legal Dir., N.Y. Civil Liberties Union and Catherine Kim, Attorney, Am. Civil Liberties Union, to Raymond Kelly, Comm’r, N.Y.C. Police Department (Oct. 7, 2008) <http://www.nyclu.org/files/16_Kelly_letter_10.07.08.pdf> (last visited Nov. 9, 2009) (reporting that between 2005 and 2007, approximately 300 students under the age of 16 in the New York City Public Schools were arrested on school grounds for minor, non-criminal violations such as trespassing or loitering).

²⁹ 29 U.S.C. § 794.

³⁰ See Linda M. Raffaele Mendez, *Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation*, in *DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE* 26 (Johanna Wald & Daniel J. Losen, eds. 2003) (internal citations omitted). See also Lawrence M. DeRidder, *How Suspension and Expulsion Contribute to Dropping Out*, 56 *EDUC. DIGEST* 44-47 (Feb. 1991).

³¹ See COMMISSION FOR CHANGE IN THE OAKLAND PUB. SCHS., *CHILDREN IN SCHOOL: SOUNDING THE ALARM OF SUSPENSIONS* 11 (Aug. 1992), available in ERIC, ED No. 350680.

³² Russell Skiba & Reece Peterson, *The Dark Side of Zero Tolerance: Can Punishment Lead to Safe Schools?*, 80 *PHI DELTA KAPPAN* 372, 376 (1999).

³³ Russell J. Skiba & M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, in *HANDBOOK OF CLASSROOM MANAGEMENT: RESEARCH, PRACTICE, AND CONTEMPORARY ISSUES* 1063, 1071-72 (Carolyn M. Evertson & Carol S. Weinstein, eds., 2006).

³⁴ *Changes to Attachment B-4*, at 18.

term is often applied liberally to situations in which, from a legal standpoint, school personnel have discretion not to suspend or expel a student, but choose to do so anyway. Note that the Gun Free Schools Act, which is often erroneously referred to as a zero tolerance statute, was amended to authorize the “chief administering officer” to exercise professional judgment and the discretion to modify on a case-by-case basis the period of expulsion of not less than one school year for bringing a firearm to school.³⁵ Our concerns are also based on the fact that the term “zero tolerance” is overly-broad and covers different issues in different school districts – e.g., some districts use this term for minor offenses, whereas in other locations, it is reserved for the most serious. Instead we recommend that schools and school districts be asked to categorize the discipline data according to the type of alleged incident – e.g., weapons, drugs, physical assault, etc.

(e) Harassment or Bullying (pp. B-4-28, -29, -30, 31). We support the inclusion of data reporting on harassment/bullying. We know that gay, lesbian, bisexual, and transgendered youth are particularly susceptible to being the target of such behavior³⁶ as are children with autism and Asperger’s Syndrome,³⁷ who are not always able to read social cues and judge social interactions. The four categories of proposed data collection for harassment/bullying cover the following areas: (1) harassment/bullying incidents table; (2) harassment/bullying policy table; (3) harassment/bullying students disciplined table; and (4) harassment/bullying students subjected table.³⁸ Requesting that schools and school districts report on such data will further highlight to school and district personnel the need to pay attention to these issues.

(f) Restraint or Seclusion (p. B-5-6). Finally, we support the inclusion of data categories concerning the use of restraint or seclusion. A number of national reports have documented the problems associated with the use of restraint or seclusion.³⁹ In addition, the U.S. Congress held a hearing on the topic, at which parents and advocates had the opportunity to testify. All of this activity led the U.S. Secretary of Education to issue a policy letter in which he urged states to revise their policies concerning restraint/seclusion. We hope that the incorporation of the data indicators concerning restraint/seclusion into the CRDC instrument will further propel states to revise their laws and policies with respect to the use of restraint/seclusion. We urge OCR to monitor the reporting of restraint/seclusion closely in order to focus subsequent compliance reviews on schools and districts that present evidence of high levels of these practices.

³⁵ 20 U.S.C. § 7151.

³⁶ See generally Thomas A. Mayes, *Confronting Same-Sex, Student-to-Student Sexual Harassment: Recommendations for Educators and Policymakers*, 29 FORDHAM URB. L.J. 641-82 (2001).

³⁷ See generally Tony Attwood, *Teasing and Bullying*, in COMPLETE GUIDE TO ASPERGER’S SYNDROME 85-111 (2007).

³⁸ See *Changes to Attachment B-4*, at 28-31.

³⁹ See COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (updated May 27, 2009) <http://www.copaa.org/pdf/UnsafeCOPAAMay_27_2009.pdf> (last visited Nov. 9, 2009); NAT’L DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT: INVESTIGATIVE REPORT ON ABUSIVE RESTRAINT AND SECLUSION IN SCHOOL (Jan. 2009) <<http://www.napas.org/sr/SR-Report.pdf>> (last visited Nov. 9, 2009); U.S. GOV. ACCOUNTABILITY OFFICE, TESTIMONY BEFORE THE COMM. ON EDUC. AND LABOR, HOUSE OF REPRESENTATIVES, SECLUSIONS AND RESTRAINTS: SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS (statement of Gregory D. Kutz, Managing Director, Forensic Audits and Special Investigations) (May 19, 2009) <<http://www.gao.gov/new.items/d09719t.pdf>> (last visited Nov. 9, 2009).