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August 20, 2013

The Honorable Arne Duncan  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202  
On-line submission

Dear Secretary Duncan:

The Center for Civil Rights Remedies of The Civil Rights Project at UCLA strongly endorses the efforts of the U.S. Department of Education (ED) to expand the collection of this vital information from schools and districts across the nation. We cannot stress enough the importance of this Civil Rights Data Collection (CRDC) and public reporting as it is essential to the public’s understanding of the condition of education in the U.S.

The following list provides our responses to the proposed data collection in brief. For our comprehensive response along with detailed suggestions please see the attached letter.

We wholeheartedly endorse the following changes and additions to the data collection:

- Making the data a universal collection in the next two survey years
- Chronic Absenteeism
- Preschool discipline data collection
- Education in juvenile facilities (Data Groups 940 through 943)
- The number of days missed due to suspension (Data Group 966)
- The number and type of security staff (Data Group 975) and support services staff (Data Group 982) assigned to a school
- Instances of corporal punishment (Data Group 917)
- The proposed definition for “expulsion” (Data Groups 922 & 923)

Further we raise a number of issues and encourage the following changes and additions to the CRDC

1. **Make the collection and reporting of the CRDC annual:** In its statement of support Part A, OCR states: “The transformed 2009-10 CRDC has been heralded as a first-of-its-kind opportunity gap data tool that is allowing citizens and schools nationwide to identify educational

equity-related problems and their solutions.” We agree. The following are specific reasons why the CRDC needs to be conducted annually:

- a. We believe that many states and districts are failing to adequately address the needs of at-risk youth in high minority districts where millions of students are often isolated in the poorest school districts. As we have repeatedly asserted, collecting data on a biennial basis is simply not adequate for detecting violations of civil rights law. Moreover, because public reporting of the CRDC often does reveal civil rights problems, annual reporting will encourage greater compliance with civil rights law well before OCR initiates an investigation.
- b. Parents and children who may be experiencing injustice and are potential complainants have a right to know whether or not it is a systemic issue they are confronted with. Without annual data reported in a timely fashion, complainants may confront additional obstacles in their struggle against systemic injustice. Where advocates suspect an unlawful disparate impact of a policy or practice, often there is no recourse without recent data to establish such a claim. There is already a serious problem with having public reports made available a year or more after the academic year has concluded. But this problem is exacerbated if an issue or concern arises in a year for which no data were even collected.
- c. Similarly, the CRDC data are critical for identifying those schools and districts that have been successful in addressing civil rights concerns and to the evaluation of a remedy, especially with monitoring on an annual basis.
- d. With federal law requiring that all schools and districts report annual data in most areas, including test results, graduation rates, equal priority should be given to the collection and reporting of the CRDC data.
- e. Further, regarding discipline data, the Individuals with Disabilities Education Act (IDEA) already require states to annually collect and publicly report a wide range of data, including a great deal of discipline data on suspensions and expulsions disaggregated by race/ethnicity, gender, and EL status. (20 U.S.C. Sec. 1418(a)). If an annual collection and reporting began with school discipline, the CRDC would ensure that discipline data reporting on students not eligible under IDEA was aligned with these IDEA’s annual federal collection and public reporting requirements.
- f. Annual collection will encourage more frequent and effective uses of the data. OCR has noted that CRDC data have also been used by other Department offices for monitoring compliance with federal professional development funding, monitoring states under ESEA flexibility waivers, defining program requirements on discipline disparities in the Race to the Top district competition, and evaluating the Office of English Language Acquisition’s (OELA) programs and activities. These potential uses of the data can be hamstrung in years for which no data are collected. Ultimately, annual collection is more efficient because it increases data usage and therefore increases its value.

2. **Report the data in a more timely fashion:** We applaud OCR's excellent work reporting the data on their website which included graphs, tables, and definitions and enabled the public to more easily pull the data they wanted to look at. However, while this presentation is a great benefit, it may be contributing to the delay in the release of information. Rather than pit clarity against timeliness, we encourage OCR to release the data to the public in a CD rom or other simplified version on-line, and then continue to develop useful on-line presentations.
3. **Report the discipline data in a more understandable fashion:** We applaud the data on out of school suspensions being broken down into two categories, students who were suspended just once, and separately, students suspended two or more times. However, it is essential to add these two exclusive categories together so the public knows how many students were suspended out of school at least once. In working with the media and concerned community groups, we have found this to be a frequent area of confusion. Further, combining these categories in federal reporting is something that OCR can do for the entities reporting while adding nothing to their reporting burden and making the findings more comparable to the discipline reports prior to 2009-10. In addition, it was very helpful where OCR reported enrollment data alongside the corresponding discipline data. However, OCR should correct an error where it consistently uses the total enrollment (including both students with and without disabilities) in the denominator of their equation to report the percentage of enrolled students without disabilities who were suspended out of school. This inaccuracy deflates the true risk for suspension for these subgroups.
4. **Report on school and district level compliance with each data category:** We know that some schools and districts fail to respond without adequate justification. For example, responses during the first year of the collection of data on school based arrests and referrals to law enforcement many large districts including LAUSD either reported zero, or said the data were not available. Other districts actually did not have any students falling into either category. OCR, however, reported non-responses as zeroes, too, making them indistinguishable from true zeroes. As we enter the third collection for these data, OCR should take stronger steps to ensure these data are reported as required. Whenever a district fails to report in any data category without a satisfactory justification, rather than publish the data with an N/A, which might suggest this is an acceptable response, OCR should notify the public that the entity was non-compliant with the data request as a first step to ensuring future compliance. Further, OCR should provide incentives such as making complete CRDC responses a qualifying requirement for all federal competitive grant programs.
5. **Collect out-of-school suspension data in a uniform manner so that all suspensions of a half a day or more are counted for all children.** The current CRDC defines an out-of-school suspension as "an instance in which a child is temporarily removed from his or her regular school for at least *half* a day" for students with disabilities and "at least a day" for students without disabilities. OCR should make the definition of "out-of-school suspension" uniform and collect data on out-of-school suspensions of at least half a day for *all* students. While this change will make it more difficult to compare future suspension data to that reported in prior CRDCs, applying a standard definition of out-of-school suspension to students with disabilities and students without disabilities will 1) better capture the harm of out-of-school suspension (the amount of time out of school), 2) enable a more accurate comparison of disciplinary actions

between students with and without disabilities, and 3) ease the collection burden by not making schools count suspensions in different ways for different groups of students.

6. **Collect and report data on the number of out-of-school suspensions:** Often those who use the OCR data assume that they are counts of suspensions rather than the unduplicated numbers of students suspended. The unduplicated counts are extremely valuable. However, they do not fully capture the overuse of suspensions, and the degree of racial disparity. While the data on students suspended two or more times is very helpful, the total count of out-of-school suspensions can sometimes reveal problems and may suggest an extraordinary overreliance on this form of punishment, and it's possible use to target certain subgroups, which is not as evident when only the unduplicated student numbers are provided.
7. **Report discipline data by grade span:** In our recent report, "Out of School and Off Track," we used OCR data that described schools by their grade spans to analyze secondary schools separate from elementary schools. We found extraordinarily higher frequency and greater race, gender and disability disparities at the secondary level. These were typically two to three times higher than rates of suspension in elementary schools. This means that the elementary data, if combined with secondary school data, will hide some of the largest and most troubling data elements. Therefore, for reporting the 2013-14 data we would encourage OCR to issue reports on the suspension rates broken down by school type (elementary, middle and high).
8. **Keep offense data not clearly connected to discipline actions separate from school discipline data:** We understand that many in the public want information about school safety and so adding in elements of the NCES survey on Crime and Safety will help provide a clearer picture. However, the NCES reporting of criminal offenses committed on school property includes all crimes, whether committed by adults or children, and including all incidents on school property, including those committed after hours and those unrelated to school activities. These data are not school discipline data and should be reported in a distinct and separate area. While adding this data might help the public see that serious crimes and school discipline are not equivalent, our concern is that it will encourage (heuristically) an association between suspension and criminal behavior, and encourage readers to associate the misbehaving students with criminal misconduct. Finally, this data group fails to capture the more minor acts for which students are arrested or referred to law enforcement. Data from Florida suggests that these more minor acts account for over two-thirds of court referrals from school. We recommend establishing a data group on offenses resulting in referral to law enforcement, school-based arrest, or other law enforcement action. This data group should include separate categories for misdemeanor offenses such as "disorderly conduct" and "disrupting public school" versus more serious offenses. Such a data group would certainly capture the serious offenses in the proposed "offenses" category and should be easier to collect as data on referral to law enforcement and school-based arrest has been included in the CRDC since the 2009 collection. Finally, the offenses data does not disaggregate by race, LEP status, or disability status for victim or offender, making it much harder for the reader to draw an equity impact from the data. If this category is added it should include the subgroup breakdown and reported separately from the school discipline data.
9. **Graduation rates:** Longitudinal studies in two states, Texas (Fabelo 2011) and Florida (Balfanz 2013) each indicated a high correlation between being suspended from school and failing to

graduate. Currently, the CRDC collects data on the number of diploma recipients. These diploma numbers fail to capture the multitude of students who dropout before they enter their senior year of high school. Graduation rates better capture the condition of education and it would help researchers look at correlations with low graduation rates more closely in every school district if the graduation rate data were collected and reported as part of the CRDC. High schools across America are already required under Title I, to annually report the 4-year “on time” cohort graduation rate to the public.

- 10. Teacher quality:** OCR should not stop collecting data on the certification status of teachers. While most schools and districts report high percentages of certified teachers, the purpose of the collection is to flag those that do not. We also recommend collecting data on out of field teachers. Finally, we urge the department to maintain the data on the number of teachers with one or two years of experience.
- 11. Special education:** OCR should require that schools and districts report the racial subgroup data for students identified under Section 504 only.
- 12. Law Enforcement Questions:** We strongly support the inclusion of more information on school police presence and activity and offer the following recommendations:
  - a. *Change the title for, or definition of, “school resource officer” (Data Group 975):*  
We strongly support including data on the types of security staff placed in schools and appreciate OCR’s effort to distinguish between sworn law enforcement officers and non-sworn security personnel. We warn that OCR’s proposed definition of “school resource officer” does not align with the federal statutory definition of “school resource officer” (SRO) or with the term’s common use. In most states, the term “SRO” refers to a sworn law enforcement officer who is assigned to a school or district through contractual arrangement whether or not the officer receives the “specialized SRO training” included in the OCR definition. To avoid confusion, we suggest OCR either remove the “specialized SRO training” requirement from the proposed SRO definition and/or create a separate category of officer who has received “specialized SRO training.”
  - b. *Include data on whether security staff is armed (Data Group 975):* Given the call for armed school security in the wake of the Newtown tragedy, it is important to track whether school personnel are armed and, if so, how (e.g., with a firearm, with a taser, with both).
  - c. *Add juvenile probation officers and truancy officers to the types of security staff included in the CRDC (Data Group 975).*
  - d. *Expand the collection of law enforcement-related disciplinary methods (Data Groups 922 & 923).* We strongly support the continued collection of data on school-related arrests and referrals to law enforcement. We note that this data fails to capture two key aspects of student/police interaction. First, the CRDC should include data on “formal law enforcement interaction short of arrest.” In many jurisdictions, it is far more common for students to receive citations, court referrals, or tickets from school police than it is to be arrested, yet these punishments are practically as severe and can result in missed school time, court fees

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and fines, and a criminal record. Moreover, state and local data suggest that such punishments disproportionately impact students of color, often for more minor forms of misbehavior. Second, the CRDC should include data on use of force by security staff against students. Such data could be included as a subset of the data on seclusion and restraint and is no less important.

- 13. Response to concerns about data burdens:** Naturally, over time, some data collection categories become unnecessary or fall out of alignment with current school practices and policies. Likewise, changing circumstances often warrant new collection categories. Given the critically important role that these data play in supporting the mission of the Department of Education's Office of Civil Rights, of ensuring compliance with anti-discrimination laws, the way to relieve the burden of information collection and reporting should be by providing more technical assistance and support for these activities.<sup>1</sup> In no case should the data reporting challenges faced by some districts drive reductions in collection and reporting that would shortchange the public of this vital information.

### **Conclusion:**

The Center for Civil Rights Remedies of the Civil Rights Project at UCLA strongly supports the efforts of the U.S. Department of Education to expand the information collected through the Civil Rights Data Collection and encourages the Department to consider additional changes described above. An expanded and improved CRDC is essential to ensuring the enforcement of federal law and the protection of students' civil rights.

Thank you for considering these comments.

Sincerely,



Daniel J. Losen

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<sup>1</sup> As stated by OCR in its Part A Supporting statement: Since 1968, the CRDC (and its predecessor surveys) have served as the cornerstone for federal enforcement of children's civil rights in public schools. OCR relies on CRDC data as it investigates complaints alleging discrimination, determines whether the federal civil rights laws it enforces have been violated, initiates proactive compliance reviews to focus on particularly acute or nationwide civil rights compliance problems, and provides policy guidance and technical assistance to educational institutions, parents, students, and others.

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<sup>i</sup> CRP at UCLA is a research center that produces and commissions studies on civil rights that has been utilized in improving the design and implementation of education policy at many levels of government.

## References

Balfanz, R., Byrnes, V., & Fox, J. (2013, January). *Sent home and put off-track: The antecedents, disproportionalities, and consequences of being suspended in the ninth grade*. Paper presented at the Closing the School Discipline Gap: Research to Practice conference, Washington, DC.