

November 10, 2009

Via electronic mail.

Angela Arrington
Director, Information Collection Clearance Division
Regulatory Information Management Services
Office of Management
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Annual Mandatory Collection of Elementary and Secondary Education Data Through EdFacts, September 2009, Changes to Attachment B-4 and B5 Ed Facts Data for School Year 2009-10.

Dear Ms. Arrington,

Thank you for the opportunity to comment on the Department of Education Office of Civil Rights' plans to collect data. The Council of Parent Attorneys and Advocates (COPAA) applauds the Department of Education's proposed changes to the Civil Rights Data Collection (CDRC). We are particularly pleased about the proposed expansion of the data collected regarding students with disabilities in academic areas, school discipline and the data regarding the use of seclusion and restraint.

COPAA is a national nonprofit organization of over 1200 parents, attorneys, and advocates who work to protect the civil rights of children with disabilities and ensure that they receive appropriate educational services. Some members are in private practice; others work for public interest organizations that serve low-income parents and other nonprofit purposes. COPAA members see the successes and failures of education through thousands of eyes, every day of every week of every year. Accurate and complete data is critical for the advancement of our work and the protection of the educational and civil rights of students with disabilities.

Expansion of Eden Values collected for Students with Disability Status

We applaud the Department for expanding the Eden Values to include such values as AP Course Participation Table (359), College Preparatory Course Enrollment (712), and Algebra Course(710).

Research demonstrates that when schools and districts are held to the same expectations for students with disabilities and their peers with out disabilities; and, when schools and districts are accountable for the participation and performance of students with disabilities in the general education curriculum there is dramatic improvement in instruction and academic achievement.

Improvements in Disciplinary Data Collection

Nationally, the statistics for discipline are staggering. More than 100,000 students are expelled and more than 3,000,000 students are suspended at least once each school year. African-American students are nearly 3 times as likely to be suspended and 3.5 times as likely to be expelled; Latino students are 1.5 times as likely to be suspended and twice as likely to be expelled. Students with disabilities are roughly twice as likely as their peers without disabilities to be suspended or expelled.

COPAA does not question to need to keep schools safe; however, as the American Psychological Association found in its review of exclusionary and zero tolerance disciplinary policies, these policies are not effective. The review found that these policies not only do not improve school safety or student behavior but that they have negative effects on student academic performance. Research demonstrates that school suspension is a moderate-to-strong predictor of school dropout, and schools with high suspension rates score lower on state accountability tests, even when adjustments are made for demographic differences. Notably, however, schools that implement evidence-based approaches to discipline such as positive behavior supports have reduced disciplinary referrals, raised achievement levels, and improved safety and staff morale.

The proposed changes to the CRDC would dramatically improve the disciplinary information available to the Department, State Education Agencies, school districts and communities, and can facilitate improvements to disciplinary practices nationwide. While the large majority of the disciplinary data to be collected by the proposed CRDC are already required by federal law, the format of the proposed CRDC will allow for more informed disciplinary decision-making at the school and district levels. Below we commend specific provisions of the proposed CRDC and offer recommendations for additional data collection.

In each of these recommendations and proposed provisions, we support disaggregating the data by race, gender, special educational status (separated by IDEA and 504), and LEP status. We also suggest that

the survey be conducted not biennially but annually, and include all school districts and schools nationwide, including charter and privately-run schools that receive federal funding.

Unlike prior surveys, the proposed changes would track not only the number of students suspended at least once, but the number of students suspended multiple times – a key indicator of the effectiveness of a school or district’s approach to discipline. Similarly, the proposed changes would differentiate between disciplinary alternative schools and schools with non-traditional, alternative curricula – providing a clearer sense of the number of students referred to alternative schools for disciplinary incidents. We applaud these changes.

For a more complete understanding of a school or district’s disciplinary practices, we urge the Department to collect data on the use of in-school suspensions (which should include any instance where a student is removed for disciplinary reasons from the regular classroom environment for a half-day or more but remains in school). We also urge the Department to collect data on the number of students who re-enroll after expulsions in order to assess the extent to which that punishment pushes students toward dropping out.

Restraint and Seclusion

We applaud your effort to include data on the use of restraint and seclusion in schools and unequivocally feel that the danger, harm, and trauma suffered by children as a result of the use of restraint or seclusion make it *imperative that data collection proceed with all due haste*.

We are alarmed by the rising anecdotal reports of dangerous, traumatic, and inappropriate use of restraints and seclusion by adults who are entrusted to educate and supervise children in school. Restraints or seclusion should be techniques used as a last resort, and then only after intense training, under rigorous supervision, and after specified preconditions have been met. But data on the numbers of students in the U.S. being restrained or secluded are not available. In addition, school districts with high rates of restraint and seclusion remain unidentified. Data collection and analysis will assist state and local education agencies to focus on which schools need assistance in reducing the use of restraint and seclusion and whether particular groups of students are being restrained and secluded more than others.

It is critical for data to be reported at the local, state, and federal levels, and available to the public on a website maintained by the U.S. Department of Education as a matter of public record. Current research about change in public practice indicates that assuring that data is a matter of public record serves as a catalyst to change the practice being measured.

Furthermore, we believe the anecdotal information collected and reported in recent media articles and documents released by COPAA,¹ the National Disability Rights Network², the GAO³ and the American Civil Liberties Union⁴ shows that children with cognitive disabilities, communication or social issues, and children with disabilities who are also of color are disproportionately subjected to these dangerous practices. Data regarding the different rates of restraint and seclusion may show that such children are being discriminated against on the basis of their disability and/or race, thus requiring corrective action to eliminate such discrimination.

We recommend that the Department separate data collection for restraint and seclusion, and add age as value to enhance the quality, utility, and clarity of the information to be collected as follows:

- Students subjected to restraints, disaggregated by race, ethnicity, IDEA disability category, age and gender
- Students subjected to seclusion, disaggregated by the same categories
- The number of times restraints were applied
- The number of times seclusion was applied

We applaud OCRs plans to measure the number of times restraint or seclusion is used, and urge OCR to require that schools and districts document each incident or occurrence; making clear the parameters of an incident or occurrence. It is critical that schools and educational facilities gather and report data on the number of incidents, not just the number of children on whom these techniques are used. Senior administrators need to analyze trends within the school and among schools; to identify situations where the techniques are disproportionately used, or where one child or group of children are targeted and

¹ Unsafe in the Schoolhouse: Abuse of Children with Disabilities, May 2009 www.copaa.org

² National Disability Rights Network, *School is Not Supposed to Hurt*, 2009, www.ndrn.org.

³ Government Accountability Office, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, 2009, <http://www.gao.gov/new.items/d09719t.pdf>.

⁴ American Civil Liberties Union and Human Rights Watch, *Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools*, 2009, www.aclu.org/intlhumanrights/childrensrights/40643pub20090811.html.

repeatedly restrained or secluded.

It is our strong recommendation that this collection plan be modified to ensure that data about mechanical restraint and physical restraint are collected separately (each disaggregated by race, ethnicity, gender, age, IDEA, IEP, and 504).

COPAA signed onto the letter from the Alliance to Prevent Restraint, Aversive Interventions and Seclusion (APRAIS) and we again urge clarity and revision in the definitions as outlined below to ensure that the data collection will be meaningful and consistent, and to ensure that the Department utilizes best practice in addressing these issues.

- **Mechanical Restraint** – includes the use of devices as a means of restricting a student’s freedom of movement. Such term does not include devices implemented by trained personnel for the specific therapeutic purposes for which they were prescribed or designed or utilized by the student for the specific and approved safety purposes for which they were designed (e.g., seat belts in vehicles or protective sporting equipment).
- **Physical Restraint** – a restriction that immobilizes or reduces the ability of a student to move his or her arms, legs, torso or head freely. Such term does not include physical prompt.
- **Seclusion** - the involuntary confinement of a student in a room, box, structure, or space where the area is locked or the student is physically prevented from leaving. Such term does not include time-out.
- **Time-out** - the monitored separation of a student from the group for the purposes of calming, interrupting behavior that impedes the student's learning or the learning of others, or removing behavioral reinforcements. Time out does not include placing a child in seclusion as defined above.

We would like to emphasize that the definition of “seclusion” should not include the word “alone.” A student may be effectively secluded by placing a person in the doorway of the room with the student to prevent the student from leaving.

The data that OCR has announced it will collect on the use of restraint and seclusion in Eden Data groups 713, 714, and 715 are a positive first step. We believe that it is important for OCR to expand the permitted values for these groups (similar to the proposed expanded values for Discipline in Data Groups 174 and 194). Additional protection against differential treatment for students could be realized through the addition of the following data groups: 1) the duration of restraint or seclusion; 2) any injury to the student or to staff during the use of restraint or seclusion; 3) whether parents were notified of the use of restraint or seclusion, and 4) the educational setting in which restraint or seclusion was used.

We appreciate your attention to these important issues and thank you for the opportunity to provide comments. Please feel free to contact me at denise@copaa.org if you have any questions or need any further information about our comments.

Sincerely,

Denise Marshall
Executive Director