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December 16, 2024

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**Dr. Jason Okonofua**

University of California, Berkeley

**Re: Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection: [Docket No.: ED-2024-SCC-0128]**

**Sophie Fanelli**

The Stuart Foundation

**Laura K. Lin**

Simpson Thacher & Bartlett LLP

Dear Manager of the Strategic Collections and Clearance Governance and Strategy Division,

**Peter B. Edelman**

Georgetown University Law Center

The National Center for Youth Law (NCYL) and the following members of the [Education Civil Rights Alliance](#) (ECRA) hereby submit these comments regarding the proposed Civil Rights Data Collection (CRDC) issued in the Federal Register on October 17, 2024. The CRDC has consistently collected important data pertinent to protecting the civil rights of public school students since 1968.

**Lori A. Schechter**

McKesson Corporation

**Sandeep Solanki**

**June Dipchand**

McKesson Skadden, Arps, Slate,

Meagher & Flom LLP

Our introductory comments constitute our response to the first set of questions in the NPRM:

**Frank Figgers**

One Voice

Collectively, NCYL and the organizations that make up the ECRA have deep knowledge of the great value of the CRDC. The data collected through the CRDC provide critically important information on school resources, climate, course offerings, student support staffing, and incidents of misconduct and violence that help increase the awareness of parents, policymakers, community members, and educators. The broad use of the CRDC's data gained even wider use when in 2014 Congress explicitly stated that some of the key CRDC data indicators relevant to school climate must be

**Preetha Chakrabarti**

Crowell and Moring LLP

Executive Director

**Shakti Belway**

included in the annual state and local report cards that are required by the Every Student Succeeds Act (ESSA).

NCYL and members of the ECRA (which is convened by NCYL) have frequently used this vital data resource to highlight progress and track areas of concern in schools. For example, in NCYL's recent report [Green \(Still\) Follows White](#), the CRDC data was needed to document the problem of within-district resource inequity. Specifically, the data from CRDC made it possible to highlight patterns of regressive spending at the school level by race/ethnicity and disability status. Among the findings were that many districts currently under desegregation orders (as of 2018) were still expending lower amounts in schools with higher percentages of Black students enrolled.

This is just one small sample of the many ways in which the CRDC provides valuable information to parents, as well as policymakers, and civil rights advocates. NCYL and the ECRA's members fully endorse the data collections for 2025-26 and 2027-28 that the latest notice indicates are being set. These data will ensure that there is a degree of transparency regarding how schools are resourced and how school and district policies and practices may be helping or harming protected classes of students.

### **Will this information be processed and used in a timely manner?**

We believe that the Office for Civil Rights (OCR) could and should do more to increase the speed of processing the CRDC and to make it available to the public in a timelier manner. To that end, we offer the following three recommendations:

- 1. We urge OCR to make the public use data from the 2021-22 academic year available to the public in January 2025, as soon as it is cleaned and can be viewed by the public.** While we appreciate the additional work that OCR does to create user-friendly interfaces on their website, the downloadable data file (with the protections against disclosure of personally identifiable data included) should be offered to the public as soon as possible.
- 2. Shorten the turnaround time for publicly reporting the data OCR receives that are also required for ESSA reporting.** In general, we believe that the data should be made available as soon as the district certifies it as accurate. We encourage, for example, that the school climate and other CRDC data reported pursuant to the ESSA, and data that are being collected between December 2024 and April 2025 and sent to OCR by school district officials (who certify it as accurate), also be sent to the states for inclusion in the most recent state and local report cards.
- 3. Rescind the guidance suggesting that districts should wait to get their data back from OCR before including it in the ESSA state and district report cards.**<sup>1</sup> This would ensure

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<sup>1</sup> The CRDC is not reported in a timely fashion and, therefore, currently impacts the release of ESSA report card data. The school discipline data, including the data currently being collected for the academic year ending 2024, could be made available much sooner, as states must report these data in the annual state and local report cards required by the Every Students Succeeds Act. Unfortunately, U.S. Department of Education (ED) guidance, issued by the Trump administration in September 2019, encouraged

that the data due to be reported to OCR by the spring for the 2023-24 school year will populate the ESSA report cards in a timely manner.

**How might the U.S. Department of Education enhance the quality, utility, and clarity of the information to be collected?**

The public needs regular access to the information about the schools their children are attending. Regular access to data-based information is even more critical in our current “information age,” and especially so given the heightened concerns about the rampant spread of misinformation, including blatantly racist commentary through social media and in our political discourse. In this context, the CRDC should become an annual undertaking with adequate accountability when districts fail to provide accurate and complete data despite certifying their submissions as accurate.

Turning the CRDC into an annually collected and reported data set would help improve the quality and utility of the data. As education advocates, ECRA members frequently use the CRDC data to assess the health of school equity, climate, and student exposure to harmful practices and treatment, such as bullying. Such climate assessments allow ECRA members to work with state and local communities as well as policymakers to advocate for reforms that better serve all students and protect their civil rights. Given their importance to these stakeholders, the data needed for these assessments should be collected annually and made available to the public, ideally within four months of the end of the academic year.

Some ECRA members who have provided technical data analysis assistance to large school districts have witnessed how the annual data reports to the state and to the public are given higher priority than the CRDC’s biennial reports. Further, given the timing of the collection, data corrections and cleaning/perturbing, and creation of files for public reporting, the discipline data often do not make it into the state and local report cards until after two full academic years have passed. This delay makes it less likely that the data from the CRDC will be given the high level of attention these data outcomes deserve. This delay also makes it significantly more difficult to remedy harms caused by policies and practices that are at least two years old and to identify policies and practices that may be actively harming students in the current school year.

The following are additional recommendations for enhancing the quality, utility, and clarity of the information to be collected.

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states to delay the inclusion of discipline data in ESSA’s required annual state and district report cards by suggesting that states wait until OCR publishes the data. This can delay access to the information for another year or more. See U.S. DEP’T OF EDUC., OPPORTUNITIES AND RESPONSIBILITIES FOR STATE AND LOCAL REPORT CARDS UNDER THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED BY THE EVERY STUDENT SUCCEEDS ACT (2019), <https://www.ed.gov/sites/ed/files/policy/elsec/leg/essa/report-card-guidance-final.pdf> (referring to the series of Q and As in Section F on “Reporting Data From the Civil Rights data Collection” and subsection 10, which answers the question, “Which school year of data must SEAs and LEAs include on the report cards...?” on pages 35-36). The Trump administration guidance on ESSA report cards all but guarantees a huge lag time between the end of the relevant academic year and its reporting to the public. ED can rescind that guidance immediately and let districts know that the discipline data they must report to OCR between now and March 2025 should also be reported to the state at the same time, in order to fulfill their ESSA reporting duty in a timely fashion.

**The CRDC release by OCR should include published rates of suspension aligned with each suspension type:** In the past, OCR has created tools to help the public better understand the discipline data. The most useful tools for comparing states, schools, and districts are derived by dividing the item counted by the corresponding enrollment and translating it into a percentage or equivalent rate per 100 students. Data users should be able to see rates for each group of students (by protected category) as well as cross-sectionally by two or more such categories such as by race, sex, and disability status.

While we also greatly appreciate the collection of the counts of suspensions as well as the counts of days of instruction lost due to out-of-school suspensions, these data do not appear as published rates. Users only see the raw counts. Simply taking the counts, dividing by enrollment and multiplying by 100 would enable users to make fair comparisons of student experiences by subgroup between schools and districts and, therefore, would increase the utility of these two data points. There are also fewer risks of disclosing personally identifiable data when publishing counts of actions and days lost, which makes them more accessible and useful when enrollment numbers for certain groups are small.

**The CRDC should provide additional disaggregation of 504 discipline data by race wherever feasible:** We applaud, for example, the effort to make the data on referral and arrest rates disaggregated by race and disability status, and we encourage including race with 504 status for all disciplinary analysis. Prior analysis, such as in the [GAO report](#) referenced by OCR as well as the report, [Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies](#), indicates that students served under Section 504-only are more likely to be referred to law enforcement or arrested than their non-disabled peers. This same cross-sectional reporting should be applied to the reported counts of lost instruction due to out-of-school suspension as well as for referrals and arrests, counts of suspensions, and all other reporting where it is feasible to do so. We absolutely endorse perturbing the low counts when necessary to protect against disclosing personally identifiable information. The [1.6 million students](#) who make up the 504-only subset of students with disabilities exceeded 3.2% of all students, nationally, but make up a greater share of students disciplined.<sup>2</sup>

**In general, the CRDC data that are collected and reported should always include the data on the student protected classes and further provide cross-sectional data whenever feasible:** Therefore, we also endorse the collection and reporting of data that are disaggregated by student protected categories for the new data collections proposed by OCR.

**The two new proposed data collections are useful and needed additions:** As set forth below, NCYL and the ECRA signatories endorse the proposed new data collections.

**Threat Assessments Teams:** Specifically, NCYL and many members of ECRA have voiced concerns that some states and many school districts have embraced the idea of using “threat assessment teams.” Our comments on this topic are intended to improve the quality and quantity of information, and they are informed by our experiences as parents as well as civil rights advocates and youth researchers. Further, we urge that the data indicating whether a

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<sup>2</sup> The National Center for Youth Law has analyzed the CRDC data from the 2020-21 schoolyear and found that over 3% of all enrolled students were identified as students with disabilities pursuant to Section 504-only.

school has a threat assessment team be mandatory for the first proposed year. As proposed, this question is a very simple one that would not likely pose any administrative burden nor have a high risk for errors or misinterpretation. Local community members and policymakers need to see accurate data as soon as possible. There is no clear rationale for making the question about the presence of a threat assessment team optional. When data are optional, they are not reliable and are of questionable utility until they are mandatory.

In large part, the signatories to this letter oppose the use of threat assessment teams because research suggests that there are more effective ways to help protect students from violence. Moreover, when The Center for Civil Rights Remedies (an initiative of the UCLA Civil Rights Project) analyzed the data from Virginia in 2021, its review suggested there was a relationship between the addition of the threat assessment training and a surge in school-based referrals to law enforcement, especially among elementary students with disabilities and youth of color in Virginia.<sup>3</sup> ECRA members are deeply concerned that threat assessments increase opportunities for profiling students and discriminatory referrals to the threat assessment process, often targeting both disabled and nondisabled students of color.

Unfortunately, even in states that currently mandate that every district has a “threat assessment team,” or receives training in a “threat assessment protocol,” there is no routinely collected and publicly reported data indicating whether a school has such a team. Equally important, the CRDC should collect and publicly report the disaggregated data regarding two important aspects: 1) which students are referred to such threat assessment teams; and 2) what are the outcomes from the reviews conducted.

In our responses to the directed questions that follow, we provide further suggestions, as we see a need to more clearly define a “threat assessment” team, as it should be distinct from an “IEP or “504” team.

**Informal Removals:** The signatories to this letter also support the addition of data on “informal” student removals, such as when an educator may tell a student or parent that the child should take a break from coming to school, requires a parent to pick up their child before the end of the school day, or possibly when a student is transferred to an alternative school, instead of being issued suspension. Parents have a right to know when and why their child is being excluded from the opportunity to learn and to challenge unjust and illegal disciplinary removals.

We believe that additional guidance should accompany the new collection item, as it is important to let districts know that most “informal removals” circumvent legal protections and are, therefore, illegal. A guidance letter could inform districts that all partial absences and the reasons must be reported in the student’s record.

Some ECRA members have described stories of school districts under scrutiny for unjustified discipline hiding behind alternative descriptors for their actions, including “parental leave” and “early dismissal.” These removals from school are invariably coerced, even though some school

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<sup>3</sup> The Center for Civil Rights Remedies’ letter contains a large amount of research analysis and provides specific examples that indicate serious concerns that “threat assessment teams” are, in some cases, violating the civil rights of students. The Center for Civil Rights Remedies, Comment Letter on Mandatory Civil Rights Data Collection: OMB 1870-0504, ICR 202111-1870-001 (October 31, 2022), [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202111-1870-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202111-1870-001).

districts may insist that these are voluntary removals. These removals exclude students from necessary educational opportunity and put intense economic stress on many families, who often miss work opportunities to care for their children.

Related to our concern about threat assessments, ECRA members have described situations where a student is removed during the pendency of the threat assessment team's process. Often, no official suspension results, yet the student has been required to miss instructional time in response to a concern about their behavior. In another case handled by OCR's Region I, the Renaissance Charter School in Boston opened without any special educators on staff and admitted a kindergarten student with disabilities to full-day kindergarten. Unable to provide a free appropriate public education (FAPE) to the student, the school authorities arranged for the student to be picked up by his parent at midday because they had insufficient staff to address his behavioral needs which were well-documented in his individualized education program (IEP). The parent was not given any choice in the matter. This illegal shortening of the school day for a student with an IEP occurred because the school lacked the staff needed to address his disability-related behavior. A settlement was reached after the school acknowledged that their actions violated Section 504 of the Rehabilitation Act.<sup>4</sup>

Moreover, as discussed in the 2022 report by the National Disability Rights Network (NDRN) entitled [\*Out from the Shadows: Informal Removal of Children with Disabilities from Public Schools\*](#), there are numerous forms of "informal removals." Based on NDRN's survey of practitioners, among the most common types of removal was repeated or long-term use of a shortened school day because of behaviors related to the child's disability.<sup>5</sup>

Further, in the report [\*Out of School & Off Track: The Overuse of Suspensions in American Middle and High Schools\*](#), The Center for Civil Rights Remedies investigated the unusually low suspension rates at middle and high schools in New York City and declined to report suspension rates for New York City after direct interviews with unnamed NYC administrators indicated that principals in the district often suspended students without reporting the suspensions.<sup>6</sup>

Informal removals are not reported, and disciplinary actions are. However, informal removals often cause the same harmful loss of vital instructional time. The fact that they are not reported or tracked may give parents a false understanding of their rights to challenge what are tantamount to unjustified disciplinary exclusions. Informal removals may also deceive parents into forfeiting rights and procedural protections they would have been entitled to if the discipline had been administered through more formal channels.

This raises the problem of using the term "informal." The data collection should not lend legitimacy to the informal and unrecorded removal of a student when that removal is a

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<sup>4</sup> See Lynn Schnaiberg, *Disability Provisions Cited at Boston Charter School*, EDUCATION WEEK (Sept. 24, 1997), <https://www.edweek.org/teaching-learning/disability-provisions-cited-at-boston-charter-school/1997/09>.

<sup>5</sup> National Disability Rights Network, *Out from the Shadows: Informal Removal of Children with Disabilities from Public Schools* 9 (2022), <https://www.ndrn.org/resource/out-from-the-shadows-informal-removal-of-children-with-disabilities-from-public-schools/>.

<sup>6</sup> The Center for Civil Rights Remedies, *Out of School and Off Track: The Overuse of Suspensions in American Middle and High Schools* 6, n.6 (2013), [https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack\\_UCLA\\_4-8.pdf](https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack_UCLA_4-8.pdf).

response to behavior. We suggest that OCR instead use the term “dismissals,” or use a combination of terms that captures the full scope of the problematic behavior-based removals, and then count and report the total number of these removals from school including, but not limited to, those not otherwise recorded and reported as an official disciplinary removal.

*It is important that the data collected on these removals be accurate and verifiable, and we make additional suggestions below to achieve this. NCYL and the signed ECRA members would welcome the opportunity to contribute to the discussion and eventual resolution of any remaining questions.*

### **Responses to Directed Questions Found in Supporting Statement A, Attachments A1-A5 and Attachment B**

- 1. We agree that OCR data should collect and report the data on students who are reported to be educated in a school outside of the district, by instructional type, and without reference to the COVID-19 pandemic.** The data should be disaggregated just as enrollment data are in the current CRDC collection. We believe these data continue to be important.
- 2. The CRDC should collect the number of “informal removals” experienced by students and not just the unduplicated counts of students experiencing at least one informal removal.** Again, the disaggregated data are vital. We certainly endorse reporting these data in a timely manner. However, using the suggested collection method is not optimal to address our concerns about civil rights violations. Considering the NDRN report and prior OCR investigations that uncovered problems with *repeated removals* of students with disabilities, the proposed method risks muting the extent of that particularly pronounced problem. Specifically, a student who is repeatedly removed for the last hour of every day and winds up missing nearly 182 hours of school would be represented as “1” in the unduplicated data and would be **reflected** in the reported data as if they had the identical experience as a student who was informally removed just once for one hour. The harm to the first student was 182 times greater than the harm to the second. The use of unduplicated counts of “students experiencing at least one removal” cannot capture the higher degree of harm and possible discriminatory treatment experienced by students whom **educators** remove repeatedly.

The ideal method of collection should help observers understand the differences in harm. Moreover, if a large district routinely and repeatedly targets a protected group of students, such as students with disabilities, and only occasionally others, the full disparate impact of the district’s repeated actions will be seriously masked by the method that only collects the unduplicated counts of students removed at least once.<sup>7</sup>

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<sup>7</sup> This observation is based on decades of analysis by one of the contributing authors to this letter and a data expert who has published reports that included both rates of lost instruction per 100 students based on the total days lost from all out-of-school suspensions and the “risk for suspension” based on the unduplicated count of students suspended out of school at least once. Similarly, research on the repeated use of suspensions, using OCR data reporting on students experiencing just one and those experiencing more than one suspension has shown that the groups that had the highest risk for suspension also were more likely to be suspended repeatedly. This means that the unduplicated count does not yield rates that fully capture the disparate harm that

One solution could be to keep the unduplicated count but also add a column to collect and report the total number of informal removals, the same way OCR counts the days of lost instruction. The other benefit to counting removals is that it greatly reduces the risk of disclosing personally identifiable data.

3. **The suggested definition of “informal removal” should be broadened.** We believe it is important to ask school districts to collect and report the data that does not otherwise appear anywhere in the student’s record. In those cases, “unofficial removals” may be the best term to use. However, we suggest that in many cases there may be an indicator in the student record, or possibly in the student’s IEP, that the student is to be picked up early each day or is to be given an excused absence every Friday. There may be many such removals that are “off the books” in terms of what is reported under disciplinary removals but are neither “informal” nor “unofficial” because they are reported in the student’s record under a new category, referenced in a Behavior Intervention Plan, or as an excused or even unexcused absence. We are concerned that by only including those instances (or counts of students) where a student is not officially reported doing so will provide a loophole to districts that create a new euphemistic category to cover the absence. In other words, the new collection should try to capture removals based on behavior that may be “on the books” and, therefore, are not regarded as “informal” because they are formally reported in some other category, just not as a disciplinary removal.
4. **We urge OCR to begin collecting data on students with Behavior Intervention Plans.** We have many concerns that students with disabilities are too often unjustly removed, formally and informally, from classrooms and from school campuses. The data showing large discipline disparities for students with IEPs and/or 504 plans raise questions about whether these students are provided with the required procedural protections in the law intended to prevent unjust removals that may be responses to a systemic failure to provide FAPE and/or failing to respond appropriately to the student’s disability-related behavioral needs. Many such students should have a Behavior Intervention Plan (BIP), but we know that, often, students with disabilities experiencing frequent removals either do not have a BIP or have a plan that is either not implemented consistently or poorly designed and ineffective. Additional guidance is needed to ensure that districts provide the required behavioral supports and **services** and can reduce or eliminate the need for removals.
5. **We support the other proposed data elements, including students who are enrolled in pre-school or K-12 but not attending a local educational agency facility.** We endorse the collection of these data for numerous reasons. One reason is that NCYL and many ECRA members have previously raised concerns about the rise of virtual schools, especially those that have very poor academic track records. The virtual schools are among the wide range of alternative schools that escape state and local accountability

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students of color and those with disabilities experience. See The Center for Civil Rights Remedies, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School* 14-15 (2012), <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-crr-research/losen-gillespie-opportunity-suspended-2012.pdf>.



because they are regarded as alternative school districts or because students are dually enrolled. We further suggest that the CRDC indicate in the downloadable public files whether a school is primarily and/or partially a virtual school whereby students do not attend school in-person, daily. In some cases, the use of transfers to large out-of-district virtual schools can confound the analysis of the school discipline data. The student may have been placed in a virtual school for behavioral reasons, yet because these students are **not in a** brick-and-mortar school building with their peers and are attending from an “out-of-school” location, the need for an “out-of-school suspension” might not exist. Such schools often report zero out-of-school suspensions.

6. **We applaud the collection of disaggregated data on restraints and seclusion.** We endorse this collection as of vital importance and agree with the comments submitted by the NDRN on the need for the data.
7. **The “Threat Assessment Team” definition needs to be strengthened.** As mentioned, we support collecting data on the existence of threat assessment teams (“TA Teams”) but urge OCR to consider collecting more in-depth and disaggregated information that would provide the public with information about who is referred, the frequency of referrals, and the outcomes of those referrals.

Many ECRA members have raised concerns about the use of threat assessments and suspected civil rights violations resulting from their use, including even when threat assessment protocols are followed as the training suggests. One of the chief legal concerns is that for students with IEPs, the IDEA already requires specific approaches to take when students with disabilities pose a threat of serious violence to themselves or others. Adding a TA Team that includes a police officer but may or may not include a member of the student’s IEP team circumvents the IDEA’s requirement and is more likely to lead to inappropriate actions that fail to fully consider the student’s needs.

OCR’s suggested definition, which would include any team that can help address threatening behavior, risks merging the required function of the IEP team with that of the TA Team because both conceivably meet this definition as currently written. We suggest that OCR further qualify the definition so that a respondent could not count the IEP team (or 504 team) as the TA Team. In fact, we’ve argued that for students with disabilities who are eligible pursuant to the IDEA, other than incidents involving a serious felony, only the IEP team should be reviewing the behaviors of students with IEPs in accordance with the provisions of the IDEA. The same should apply to students with 504 plans.<sup>8</sup>

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<sup>8</sup> OCR should and could clarify that it is requesting data about TA Teams to assess threats that are not IEP or 504 teams. Many advocates have raised concerns that under disability law, the IEP or 504 is best situated to determine, once a student is deemed eligible, whether a student poses a serious threat of injury to self or others. The IDEA already includes very specific procedural requirements, and the IEP team should be the team making such determinations. Although further comments on this topic are beyond the scope of this response, we feel that data should be collected to indicate whether a school has a TA Team. Because assessing threats is among the roles of the IEP and 504 teams, and because these teams should exist in every school that has eligible students with disabilities pursuant to the IDEA or Section 504, the definition should specify that the question is asking about school and/or distinct TA Teams, but that respondents should not count IEP teams or 504 teams when answering this new question.

- 8. Additional information on Threat Assessment Team referrals, outcomes, and law enforcement presence is needed:** One critical piece of information that was left out of the proposed collection was whether a member of law enforcement is a member of the TA Team. As pointed out in the comments from the Center for Civil Rights Remedies in 2022, law enforcement officers should not be participants in the review of student behaviors.

We know by review of state law that the number of schools with TA Teams have grown dramatically and that there is strong evidence that there are significant racial and disability disparities, in terms of whose behavior is referred to threat assessment teams. Unfortunately, the public is left in the dark about where these teams are and how they operate. We do know for certain that, in many instances, without parental knowledge—not to mention permission—students as young as five are sent to hospitals against their will to have their mental health evaluated due to the requirements of a threat assessment.

Every TA model currently in wide use includes a member of law enforcement on the TA Team. Two of the models that OCR references have law enforcement listed as core members,<sup>9</sup> and according to WestEd, school security personnel and a member of law enforcement are recommended in the model currently used across Texas.<sup>10</sup> In every model in use, the TA Teams have the power to refer children to law enforcement. Therefore, we urge OCR to not only collect and publicly report on the existence of TA Teams, the demographics of the students referred, and the outcomes of referred students by race/ethnicity, sex, disability status, and English Learner status, but also indicate whether a law enforcement officer was present for each outcome.<sup>11</sup>

### **Responses to other directed questions in Attachment A-5**

Informal removals should cover, at minimum, removals from a school campus of “any period” of time. Informal removals for the purpose of this data collection should start with at least the removals from school. Even regularly dismissing a student 5 minutes early can be detrimental. Additional removals from the classroom can often be detrimental, discriminatory, and unlawful.

<sup>9</sup> For example, the Cascade model requires that a core member of the level 1 school-based TA Team be a school resource officer or “other law enforcement representative.” The National Counterterrorism Innovation, Technology, and Education (NCITE) Center, *A directory of threat assessment models* 29, [https://www.unomaha.edu/ncite/\\_files/threat-assessment-directory.pdf](https://www.unomaha.edu/ncite/_files/threat-assessment-directory.pdf).

<sup>10</sup> The OCR statement of support references a “Texas Model” from before behavioral threat assessments (BTAs) were mandated by Texas law in 2023. According to the WestEd Report on BTA in Texas, the state adopted the model recommended by the National Center for Threat Assessment. That WestEd report describes the members of the BTA team, which include both law enforcement and school security personnel. WestEd, *Learning from the Experiences of Texas Schools Implementing Behavioral Threat Assessment Programs* 4, n.2 (2023), [https://wested2024.s3.us-west-1.amazonaws.com/wp-content/uploads/2024/07/11173915/JPRC-Behavioral-Threat-Assessment-and-Implementation-Experiences-of-Texas-Schools\\_FINAL\\_ADA.pdf](https://wested2024.s3.us-west-1.amazonaws.com/wp-content/uploads/2024/07/11173915/JPRC-Behavioral-Threat-Assessment-and-Implementation-Experiences-of-Texas-Schools_FINAL_ADA.pdf).

<sup>11</sup> This is an extraordinary intrusion that can often leave children traumatized. Further, we know from research published by Dewey Cornell that students with disabilities are disproportionately sent to have their conduct reviewed by TA Teams. Although there have been instances of elementary students harming themselves or others, these are extremely rare. On the other hand, according to Cornell’s research, approximately half of all referrals to TA Teams were elementary school students. This suggests an additional reason that these data should be collected. Parents should not only know whether their child’s school has a TA Team, they should also know the breakdown of the referrals and the outcomes of referrals. Where there are increasing numbers of schools that are K-8 and K-12, parents should know whether the threatening behavior of elementary students is frequently being reviewed by a TA Team that could involuntarily commit their child to a hospital evaluation without parental knowledge or permission.



Guidance for how best to include removals from classrooms should be developed after additional consultation with stakeholders, including those representing students most often harmed by removals.

We also endorse the collection of the data on the additional racial/ethnic groups following the revised Statistical Policy Directive 15 that requires the collection of detailed data on race and ethnicity beyond the minimum categories.

For these reasons, **we believe that the changes OCR has committed to making are important improvements.** We applaud the changes OCR has chosen to pursue and hope to have an opportunity to provide additional feedback before the collection is finalized.

Signed,

The National Center for Youth Law  
Advancement Project  
Bazelon Center for Mental Health Law  
Brown's Promise  
Civitas ChildLaw Center at Loyola University Chicago School of Law  
Communities for Just Schools Fund (CJSF)  
Council of Parent Attorneys and Advocates  
Disability Rights Maine  
Disability Rights Maryland  
Disability Rights Washington  
Education Law and Policy Institute, Loyola University Chicago School of Law  
Education Law Center  
Education Law Center-PA  
IDRA  
Lives in the Balance  
National Disability Rights Network (NDRN)  
Native American Disability Law Center  
Public Advocacy for Kids (PAK)  
Public Advocates, Inc.  
Public Justice Center  
TeamChild  
Texas Appleseed  
The Advocacy Institute  
The Arc of the United States  
Tom Rademacher, Leading Educator Ambassadors for Equity, 2014 Minnesota Teacher of the Year  
Washington Lawyers' Committee for Civil Rights & Urban Affairs  
Youth Justice Education Clinic at Loyola Law School