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February 28, 2016

Director of the Information Collection Clearance Division
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

RE: Comments on the 2017-2018 Civil Rights Data Collection Proposal, Docket ID ED-2016-ICCD-0147

Dear Director:

The Dignity in Schools Campaign (DSC) submits this letter in response to the U.S. Department of Education’s (“the Department”) request for comments on the proposal for the 2017-2018 Civil Rights Data Collection (CRDC). DSC is a coalition of over 100 grassroots and education advocacy organizations in 27 states. Since its inception in 2006, DSC members have worked to dismantle the school-to-prison pipeline by advocating for educational environments that keep students in school and learning. We have challenged the systemic use of exclusionary discipline practices that disproportionately impact students of color, students with disabilities, and students who identify as Lesbian, Gay, Bisexual, Transgender, and Queer, which the Department’s most recent civil rights data and other national research verifies.¹

We urge the Department to maintain the current level of data collection by preserving the existing questions and disaggregation of data by student subgroups, requiring all schools and districts to report the data, collecting the data at least biennially, and continuing to make the CRDC accessible to the public. DSC members throughout the country depend on the CRDC to provide critical data about school discipline and other key components of school quality to strengthen and support efforts to promote policy reforms that improve school conditions for student learning in

¹ U.S. Dep’t of Education, 2013-2014 Civil Rights Data Collection: A First Look (June 7, 2016), <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>. *See also*, Hilary Burdge, Adela C. Licona & Zemi T. Hyemingway, LGBTQ Youth of Color: Discipline Disparities, School Push-out, and the School-to-Prison Pipeline 2, https://gsanetwork.org/files/aboutus/LGBTQ_brief_FINAL-web.pdf (“Research shows that LGBTQ youth of color in particular face persistent and frequent harassment and bias-based bullying from peers and school staff as well as increased surveillance and policing, relatively greater incidents of harsh school discipline, and consistent blame for their own victimization.”).

individual schools and across districts. These data provide clear evidence of any overuse of exclusionary and punitive discipline practices, as well as discipline disparities by student subgroup. The CRDC also provides DSC members the information they need to work with schools and districts to address discriminatory school discipline practices and improve student outcomes. Community members and advocates also rely on the CRDC to file complaints of civil rights violations with the Department. In addition, Congress has recognized the value of the CRDC by requiring states and districts to annually report data from certain CRDC categories under the Every Student Succeeds Act (ESSA), which received bi-partisan support.²

The Department is proposing changes for the 2017-2018 CRDC that will reduce the reporting burden on school districts.³ While we understand the Department's desire to reduce any unnecessary burden on districts, the Department must ensure that the CRDC provides all the data needed to assess whether or not schools and districts are meeting their civil rights obligations, which is necessary to the proper functions of the Department. We also seek to ensure that communities have all the information they need to accurately assess the quality of their schools and districts and to support local efforts to advocate for improvements when needed. To this end, we respectfully submit the following recommendations:

I. Collect data on police use of force against students

Data from the 2013-2014 CRDC revealed that 51 percent of high schools with predominately Black and Latino populations have school police, and Black students are more than two times as likely to receive a referral to law enforcement or be subject to a school-related arrest as white students.⁴ The presence of police in schools has resulted in several highly-publicized incidents of excessive use of force against students, including in Baltimore, MD, McKinney, TX, and Richland County, SC.⁵ In January, a school police officer in North Carolina body slammed a high school student causing her

² Every Student Succeeds Act, Public Law No. 114.95, S. 1177, 114th Cong. §1111(h)(1)(c)(viii) (Dec. 10, 2015) (hereinafter, ESSA).

³ U.S. Dep't of Education, Mandatory Civil Rights Data Collection—Supporting Statement, Part A: Justification (December 2016) at 2.

⁴ U.S. Dep't of Education, *supra* note 1, at 4-5.

⁵ See, Monique L. Dixon, *Use of Force in City Schools Merits Scrutiny*, The Baltimore Sun, Nov. 3, 2015, <http://www.baltimoresun.com/news/opinion/readersrespond/bs-ed-video-letter-20151103-story.html>; Janel George, *S. Carolina Case Lesson: Police Shouldn't be Doing Discipline*, CNN, Oct. 28, 2015, <http://www.cnn.com/2015/10/28/opinions/george-school-discipline-police-south-carolina>; and Carol Cole-Frowe and Richard Fausset, *Jarring Image of Police's Use of Force at Texas Pool Party*, The New York Times, June 8, 2015, https://www.nytimes.com/2015/06/09/us/mckinney-tex-pool-party-dispute-leads-to-police-officer-suspension.html?_r=0.

to suffer from a concussion.⁶ We urge the Department to collect data, disaggregated by race, sex, disability, and Limited English Proficiency (LEP), on police use of force against students including: number of students subjected to pepper spray, Tasers, physical attack (e.g. tackling, body slamming, etc.), and number of students injured or killed by a firearm. DSC has developed a set of policy recommendations for schools, districts, states and federal policy-makers to end the regular presence of law enforcement in schools.⁷ Data on police use of force against students would provide education officials and community members additional information on the impact of school police on students' well-being and school safety, as well as provide additional evidence to support local efforts to end the regular presence of police in schools.

II. Disaggregate discipline data by reason for the disciplinary action

Students of color and other marginalized student populations are often disproportionately disciplined for minor, subjective offenses such as disobedience and disruptive behavior, which are left up to the discretion of school staff, administrators, and school police who may be more likely to negatively interpret the behavior of certain student subgroups based on their own conscious or unconscious bias.⁸ We recommend that all data on exclusionary discipline practices (e.g. in- and out-of-school suspensions, expulsions, referrals to law enforcement and school-related arrests) be disaggregated by reason for the disciplinary action. This will provide valuable information regarding how many and which students are disciplined for non-violent, subjective offenses. Such data would reveal the need for trainings on explicit and implicit bias, structural racism, and other interventions in schools and districts where disproportionality is evident. Some states and districts already collect data disaggregated in this manner. For example, the Ohio Department of Education's annual School Report Cards include discipline data disaggregated by type (e.g. suspensions, expulsions, etc.) and reason, including: disobedient/disruptive behavior, fighting/violence, theft, and possession of a weapon or illegal substance.⁹ New York City's Student Safety Act also requires

⁶ Holly Yan, *Video Shows North Carolina School Officer Slamming Girl, 15, to the Floor*, CNN, Jan. 4, 2017, <http://www.cnn.com/2017/01/04/us/north-carolina-officer-body-slams-student/>.

⁷ The Dignity in Schools Campaign, *Counselor's Not Cops: Ending the Regular Presence of Police Law Enforcement in Schools*, http://www.dignityinschools.org/sites/default/files/DSC_Counselors_Not_Cops_Recommendations.pdf.

⁸ Russell J. Skiba, Robert S. Michael & Abra Carroll Nardo, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, The Indiana Education Policy Center (June 2000), <http://www.indiana.edu/~equity/docs/ColorOfDiscipline.pdf> (Stating that data showing that Black students are disproportionately disciplined for minor and subjective reasons "is evidence of a pervasive and systematic bias that may well be inherent in the use of exclusionary discipline.").

⁹ The Ohio Department of Education, *Ohio School Report Cards—Advanced Reports*, <http://bireports.education.ohio.gov/PublicDW/asp/Main.aspx>.

discipline data to be disaggregated in this way.¹⁰

III. Revise the definition for referrals to law enforcement to clarify this data element

We recommend revising the definition for referrals to law enforcement. The Department's definition for school-related arrests states that all school-related arrests are considered referrals to law enforcement.¹¹ However, this has led to inaccuracies with many districts reporting zero referrals to law enforcement but some arrests. This may be due to confusion regarding the Department's definitions and if a referral depends on whether or not the police involved are based in the school. The Department should revise the definition to state that a referral to law enforcement is: an action by which a student is reported to any law enforcement agency or official (*including those assigned to the school and called to the school from the outside*), for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken. *Such actions that result in [c]itations, tickets, court referrals, and school-related arrests, are also considered referrals to law enforcement.*

IV. Collect the same data elements related to discipline and restraint and seclusion currently collected by the CRDC for private and other non-public schools that educate students placed by a public school district

We welcome the opportunity to provide feedback on what data the Department should collect regarding the experiences of students placed in private and other non-public schools by public school districts when required under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. Due to reports the Department has received that students placed in such settings are subject to restraint and seclusion,¹² we recommend that the Department require these districts to report the same data regarding discipline (e.g. in- and out-of-school suspensions, expulsions, school-based arrests, referrals to law enforcement, and corporal punishment) and restraint and seclusion for these students that the Department currently collects in order to assess compliance with federal civil rights laws.

¹⁰ New York City Department of Education, Suspension Reports, <http://schools.nyc.gov/community/city/publicaffairs/Reports.htm>.

¹¹ U.S. Dep't of Education, 2015-16 CRDC School Form, 51, <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2015-16-all-schools-form.pdf>.

¹² U.S. Dep't of Education, Mandatory Civil Rights Data Collection—Attachment A-5, Directed Questions (December 2016) at A5-4.

V. Collect data on the use of alternative discipline practices

Schools and districts should indicate whether or not they are implementing school or district-wide restorative practices or School-Wide Positive Behavioral Interventions and Supports. This additional data element will allow valuable comparisons of exclusionary discipline rates and disparities among student subgroups between schools and districts implementing these alternative approaches and those that are not, which would provide community members the evidence they need to advocate for these practices in their own communities. The Department should also provide a definition for these approaches to indicate and encourage alignment with key components of program fidelity and best practices. Such a definition should specify that these approaches: address the root causes of student misbehavior and underlying needs of students, rather than focusing on exclusion and punishment; are developed and implemented in collaboration with parents, youth, and community organizations; provide ongoing training and professional development for staff; and include regular review of quantitative and qualitative data to continuously assess and improve outcomes.

VI. Collect data from public schools in the Commonwealth of Puerto Rico and outlying areas

DSC supports the Department's proposal to extend the 2017-2018 CRDC to public schools in the Commonwealth of Puerto Rico and the outlying areas.¹³ As mentioned above, parents, community members, and advocates use the CRDC to inform the Department and local policy makers about discriminatory disparities regarding access to educational opportunities, including in discipline and in resource equity. Extending the data collection to Puerto Rico and the outlying areas, which are required to comply with federal laws, will support civil rights enforcement and school improvement efforts in these regions. Schools in Puerto Rico and the outlying areas should be required to respond to the complete list of requested data elements for the 2017-2018 CRDC.

VII. Ensure that all discipline data is disaggregated by race, sex, disability, and LEP and is reported on an annual basis

Discipline data collected through the CRDC is a crucial resource for DSC members. However, not all discipline data elements are disaggregated by race, sex, and LEP, which excludes important information regarding outcomes for several student subgroups. The following data elements are disaggregated only by students with and without disabilities: 1) Number of days missed by students who receive out-of-school suspensions; 2) Number of students expelled due to zero tolerance policies; 3) Number of instances of corporal punishment; and 4) Number of instances of restraint and

¹³ *Id.* at A5-3.

seclusion students received.¹⁴ We recommend that each of these data elements be fully disaggregated to ensure that outcomes for all student subgroups are tracked.

We also recommend that the CRDC be collected annually, with less delay between the collecting and reporting of data. Current data is needed to identify and address disparities as soon as possible to limit the negative impact on students. Ensuring that community members and advocates have access to the most recent data would also prevent school and district officials from claiming that issues from previous school years have been resolved when older data is used to advocate for improvements. In addition, ESSA requires states and districts to include data from certain CRDC categories related to school quality, climate and safety on annual report cards.¹⁵

VIII. Continue to collect data related to student performance on high school equivalency exams and Advanced Placement exams

Finally, the Department is proposing to no longer collect the following data items: 1) Number of students who received a high school equivalency credential after participating in a high school equivalency program; 2) Number of students who received a qualifying score (3 or higher) on AP exams; and 3) Number of students who did not receive a qualifying score on any AP exams.¹⁶ We urge the Department to continue to collect this data. The purpose of the CRDC is to ensure that schools and districts provide equal educational opportunity to all students. The Department states that it can rely on data on participation in high school equivalency exam preparation programs and data on students who enrolled in AP courses and took AP exams. However, this data does not provide the information needed to assess the quality of educational services students receive.

Thank you for your consideration of these comments. If you have any questions or concerns, please do not hesitate to contact Natalie Chap at natalie@dignityinschools.org.

Sincerely,
The Dignity in Schools Campaign
(www.dignityinschools.org)

¹⁴ U.S. Dep't of Education, *supra* note 3 at 22-23.

¹⁵ ESSA, *supra* note 2

¹⁶ U.S. Dep't of Education, *supra* note 3 at 5.