

# The Civil Rights Project



*Proyecto Derechos Civiles*

March 8, 2012

The Honorable Arne Duncan  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202  
by email to: [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov)

**RE: Response to the release of the 2009-10 Civil Rights Data**

Dear Secretary Duncan:

The Civil Rights Project commends the U.S. Department of Education for recent changes to the Civil Rights Data Collection (CRDC) and for this week's public release of the 2009-10 school year data. In particular, CRP applauds the expansion of the data collected on school discipline to include referrals to law enforcement and school-based arrests, and state-operated juvenile detention facilities in the CRDC survey. The particular attention to disparities in school discipline, given by both Secretary Duncan and Assistant Secretary Ali in their public statements, illustrates large inequities in educational opportunities and points toward a great deal of work that needs to be accomplished by school districts and by the Education Department's Office for Civil Rights.

The Civil Rights Project has been deeply involved in research on the nation's dropout crisis and on college access issues for many years. Since grade retention is a leading predictor of dropping out, the new systematic data collection and public reporting on that issue is invaluable. Data on teacher experience and college prep coursework by schools is very important in explaining the highly unequal preparation for college. Both are strongly related to educational harms caused by school segregation, another of our basic interests. Data in these three areas are essential for explaining the profound inequalities in the basic structure of educational opportunity and for monitoring progress or regression in the nation's schools.

Further, the 2009-10 data collection corrected many of the data concerns raised in the past by the CRP. Most notably, the same data are now collected for students both with and without disabilities. This data reveals that in most districts, students with

disabilities are suspended out-of-school more often than their non-disabled peers. Moreover, black males with disabilities experience the highest frequency of suspension (compared to any other group). Future analysis at the district level will reveal that Latinos, American Indian and English learners also tend to be suspended and expelled at unusually high rates. The Department should ensure that the information on students with disabilities, disaggregated by race and gender continue to be reported to the public annually at the school and district level as federal law already requires states to collect it every year.

The Civil Rights Project has called for making the entire Civil Rights Data Collection (CRDC) universal and annual. While that has not yet become a legal requirement, several states, including Texas, Florida and Wisconsin do currently collect and report these discipline data and more. CRP is encouraged that ED has required all schools and districts in the nation respond to the CRDC this current academic year 2011-2012, and hope that more states follow the example of Maryland's Board of Education to collect, report, and use the data to greatly reduce racial disparities.

It has never been more important to monitor the use of exclusionary practices in schools. Our nation's schools expel over 100,000 students and suspend over 3,000,000 students at least once during each school year. In an average school year, that amounts to over 17,000 students per day. Many of these suspensions lack adequate justification. Current disciplinary rates are the highest in the nation's history, and have more than doubled over the past three decades. When disciplinary exclusion from educational opportunities is anything other than a response of last resort to extreme or dangerous behavior, these disciplinary practices are of particular concern because of the disparate harm suffered by students of color and students with disabilities.

A great deal can be accomplished through earlier interventions, support and training for teachers and leaders, and system-wide approaches that are proven effective at promoting positive behavior. Toward these ends, the disciplinary data collected in the CRDC is invaluable to parents, educators, and policymakers who seek to improve both student behavior and achievement using methods that help to keep struggling students in school.

Because of the great value of the CRDC, it is imperative that concerns be raised about the shortcomings of the collection. The CRDC's current structure still leaves too many stakeholders in the dark on the disciplinary practices of their schools and districts. For example, reporting on two new areas of "school based arrests" and "referral to law enforcement" was seriously under-reported. While that is not surprising for the first time survey questions, a clear message must be sent and received by districts so that when it comes to answering these survey questions this year, schools and districts know that OCR will attach consequences to claims the data are "not available" and other clear instances of non-compliance with the survey instrument.

Another concern is that the data release is occurring nearly two years after the administration of the survey. Two years is far too long to wait for a civil-rights enforcement data set. Ideally civil rights groups can use this data to identify schools and districts of concern, and the numerous and large disparities suggest that there are many schools and districts where complaints are warranted.

In several cases, school districts have refused to provide data or sought high fees to those requesting this information. Simply put, the Department of Education has expressed serious concerns about inappropriate, excessive and discriminatory use of discipline, and, at minimum, the Department should exercise their administrative authority and call for annual collection and timely reporting. Further, we believe it is essential that this data be annually collected from *all* public schools - including charters and disciplinary alternative schools - rather than from a sample.

**Additional Data Collection and Public Reporting:** Additional recommendations for new data collection areas are offered below. For each recommendation, disaggregating the data by the aforementioned subgroups would be required.

**A. Data on the Causes of School-Based Arrests and Referrals to Law Enforcement, and Information on the Educational Outcomes of Students Returning from the Juvenile and Criminal Justice Systems:** Collecting these data is of extreme importance, as involvement with the juvenile or criminal justice system has been shown to be a strong predictor of school dropout, and many juvenile courts have reported recent increases in school-related cases, often for minor school disciplinary incidents. ED should collect data on the types of events leading to arrest or referral (e.g., weapons offenses, offenses involving physical harm or threat thereof, property offenses, and civil offenses such as disorderly conduct or disturbing the peace). Moreover, ED should track the number of students who disenroll from schools upon arrest or adjudication/conviction in addition to the number of students who re-enroll upon completion of detention, incarceration, and/or other form of stay in a juvenile residential facility.

**B. Comprehensive Data on Incarcerated Youth:** ED collected data from state-operated juvenile justice facilities in the 2009 CRDC and will continue to do so this year. This important improvement must be extended through 2013. Further, while the collection of data on state-operated juvenile justice facilities is essential, this effort needs of significant expansion. States often sub-contract the care of youth held in detention, so limiting the data collection to “state-operated” facilities means that the educational outcomes of literally thousands of incarcerated youth are lost. The CRDC should survey both state- and privately-operated juvenile justice facilities that are recipients of federal funds, including those that contract privately with states.

**C. The quality of education of youth in adult prisons should also be surveyed in the CRDC:** During the recent U.S. House of Representatives Committee on Education and Labor’s hearing on the reauthorization of the Juvenile Justice Delinquency and Prevention Act, Chairman George Miller recently noted that 200,000 youth are tried as adults and approximately 10,000 are incarcerated or

held in adult facilities. The outcomes of incarcerating youth as adults are horrendous, with high levels of suicide, child abuse, rape, and, according to the Centers for Disease Control and Prevention, no benefit to anyone in terms of safety. A much more comprehensive survey is needed of the provision of education in the full complement of juvenile justice and adult facilities to evaluate the efficacy of policies, practices and procedures and to detect discrimination or injustice.

Finally, it is critically important that the Office For Civil Rights enforces antidiscrimination protection law as its core obligation. Releasing data should be the first stage of any enforcement initiative. Notably absent from the ED's release, is the suggestion of stepped-up enforcement actions by the Office for Civil Rights to respond to the stark disparities in discipline, not to mention the many other indicators of injustice and inequity. For example, the number of "disparate impact" interventions has been disappointing, considering the research consensus that suspending students out-of-school for minor code infractions is a counter-productive policy and practice. OCR should actively investigate the pronounced disparities revealed by the data. Where unjustifiable policies are to blame, OCR should use its enforcement authority as well as technical assistance resources to spur schools and districts to replace the ineffective policies with less discriminatory ones. These policies would best be informed by partnerships with community groups, researchers and others to ensure the replacement of unwarranted policies and practices with less discriminatory alternatives.

The release of this data will greatly increase the capacity of CRP's Center for Civil Rights Remedies to conduct research on systemic problems such as large racial disparities in school discipline, special education and inequitable access to important school resources. This year, the Center will digest the data and provide national and state level reports on the use of suspension, and look forward to sharing our analysis and additional recommendations with you.

Thank you for considering these comments and recommendations.

Sincerely,



Gary Orfield  
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Civil Rights Project/Proyecto Derechos Civiles



Daniel Losen  
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Center for Civil Rights Remedies at CRP

CC: Russlyn Ali