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U.S. Department of Education  
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*Submitted via [www.regulations.gov](http://www.regulations.gov)*

**Re: Agency Collection Activities; Comment Request; Mandatory Civil Rights Data Collection  
(Docket No. ED-2021-SCC-0158; Doc. No. 2021-26873)**

Dear Ms. Valentine:

The undersigned organizations representing religious and nonreligious communities, interfaith organizations, and civil rights organizations write to comment on the proposed Department of Education (“Department”) data collection entitled, “Agency Collection Activities; Comment Request; Mandatory Civil Rights Data Collection.”<sup>1</sup> These comments are limited to the three proposed data elements for the 2021-2 Civil Rights Data Collection (CRDC) relating to religion: 1) the number of reported allegations of harassment or bullying of K-12 students on the basis of perceived religion;<sup>2</sup> 2) whether a Local Education Agency (LEA) has a written policy prohibiting harassment or bullying on the basis of religion; and 3) web link to the policy prohibiting harassment or bullying of students on the basis of religion.<sup>3</sup>

Although the undersigned groups agree that data showing the extent of bullying and harassment against various religious and nonreligious communities in public schools would be valuable, we have significant concerns about the ability of schools to successfully gather such data accurately, whether such data would be kept confidential, and whether such data collection may result in further discrimination against religious minority and nonreligious students. Therefore, we recommend that, for the 2021-2 CRDC, the Department proceed with the optional collection of religious harassment policies and take additional steps prior to making the collection of disaggregated religious harassment data mandatory.

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<sup>1</sup> Office for Civil Rights, Department of Education; Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection; 86 Fed. Reg. 70831; Doc. No. 2021-26873; Dkt. No. ED-2021-SCC-0158. [Hereinafter, “proposed collection.”] Available at <https://www.federalregister.gov/documents/2021/12/13/2021-26873/agency-information-collection-activities-comment-request-mandatory-civil-rights-data-collection>.

<sup>2</sup> This data element was optional for the 2020-1 CRDC, and it is proposed as mandatory for the 2021-2 CRDC. [Hereinafter, “disaggregated religious harassment data.”]

<sup>3</sup> These two data elements are proposed as optional for the 2021-2022 CRDC. [Hereinafter, “religious harassment policy collection.”]

## Background

Despite laudable efforts to address bullying and harassment in American public schools, it is an unfortunate fact that bullying and harassment on the basis of actual or perceived religion continues to be far too prevalent.<sup>4</sup> Such bullying and harassment has a significant detrimental impact on students, their families, peers, and the school environment, as well as broader communities that share their religious or nonreligious beliefs. Moreover, bullying and harassment on the basis of religion is not evenly distributed. Religious minority and nonreligious students are far more likely to be targeted because of their beliefs, particularly in areas that are religiously homogenous and for students whose religious tradition is visibly identifiable.<sup>5</sup>

In order to assess the prevalence of bullying and harassment on the basis of actual or perceived religion, the Department began collecting the number of allegations of such bullying and harassment as an optional data element for the 2013-4 CRDC and made collection mandatory for the 2015-6 CRDC. During the 2017-8 CRDC, LEAs reported about 6,000 allegations of bullying or harassment on the basis of religion.<sup>6</sup> For the 2019-20 CRDC, the Department proposed to optionally collect disaggregated religious harassment data, based on the 14 categories<sup>7</sup> used to collect disaggregated data regarding hate crimes motivated on the basis of religion.<sup>8</sup> However, because of the COVID-19 pandemic, the majority of American public schools closed and the 2019-20 CRDC was delayed. The Department later proposed to add this optional data element for the 2020-1 CRDC and this collection is currently underway.<sup>9</sup>

Although the CRDC generally takes place biennially, as a result of the pandemic, the proposed 2021-2 CRDC is following directly after the conclusion of the 2020-1 CRDC. This is especially unusual because the current open comment period on the proposed 2021-2 CRDC is occurring (and will close) prior to the deadline for LEAs and SEAs to submit their data (February 28, 2022) and far in advance of the scheduled data quality review of the data submitted during the 2020-1 CRDC (spring/summer 2022).<sup>10</sup> Generally,

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<sup>4</sup> According to one survey, 18% of surveyed students experienced verbal harassment on the basis of religion within the past year. Greytak, E.A., Kosciw, J.G., Villenas, C. & Giga, N.M. (2016). *From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary School Students and Teachers*. New York: GLSEN. Available at [https://www.glsen.org/sites/default/files/2019-12/From Teasing to Tormet Revised 2016.pdf](https://www.glsen.org/sites/default/files/2019-12/From_Teasing_to_Tormet_Revised_2016.pdf).

<sup>5</sup> While these comments will not focus on the bullying and harassment faced by various religious minority and nonreligious student populations, some organizations joining these comments will submit separate comments discussing the prevalence of bullying and harassment affecting their communities.

<sup>6</sup> Department of Education; Paperwork Reduction Act Submission: Mandatory Civil Rights Data Collection Dec. 2021: Supporting Statement, Part A: Justification, 23 (Dec. 13, 2021). [Hereinafter, "Supporting Statement, Part A."]

<sup>7</sup> There 14 categories are: atheism/agnosticism; Buddhist; Catholic; Eastern Orthodox; Hindu; Islamic (Muslim); Jehovah's Witness; Jewish; Mormon; multiple religions, group; other Christian; other religion; Protestant; Sikh.

<sup>8</sup> Office for Civil Rights, Department of Education; Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection, 84 Fed. Reg. 49,277 (Sept. 19, 2019) (Docket No. ED-2019-ICCD-0119; Doc. No. 2019-20292).

<sup>9</sup> Office for Civil Rights, Department of Education; Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection, 85 Fed. Reg. 130, 40628 (July 7, 2020) (Docket No. ED-2019-SCC-0119; Doc. No. 2020-14486).

<sup>10</sup> Civil Rights Data Collection Resource Center; CRDC Phases. Available at <https://crdc.grads360.org/#program>.

new CRDC data elements are made optional for one CRDC cycle and then made mandatory during the following cycle. However, this pattern anticipates a biennial CRDC, where the Department has opportunity to assess the data quality of the new optional data element and school districts and student advocates have opportunity to assess the accuracy and utility of the data gathered, as well as any resulting problems or concerns. Because of the timing involved, these usual steps and safeguards are not possible for any optional data element added to the 2020-1 CRDC before they are finalized for the 2021-2 CRDC.

### **Proposed Mandatory Data Element Regarding Disaggregated Religious Harassment Allegations**

The Department proposes to make the disaggregated religious harassment data element mandatory for the 2021-2 CRDC. When this data element was first proposed as optional, numerous concerns were raised by stakeholders regarding the accuracy of the data collected, student privacy and confidentiality, and whether the collection of such data may put religious minority and nonreligious students at increased risk. The Department addressed these concerns by pointing out that the “harassment and bullying questions are not intended or expected to elicit private information about students.” Instead, these data elements are “intended to record, for any reported harassment, the schools’ understanding of the harasser’s perceived motivation.” Moreover, “LEAs will not be required to include religious affiliation... of students as part of their administrative record.”<sup>11</sup>

With regard to the concerns raised regarding privacy and confidentiality, the Department reported that, in preparation for the 2013-4 CRDC and the 2015-6 CRDC, it met with 10 SEAs between that collect data about bullying and harassment on the basis of sexual orientation and religion to determine whether the collection of this information through the CRDC might raise any issues. Those SEAs had received no complaints from students or parents, nor were there any known incidents of teachers invading student privacy in order to fill out the data reporting forms. The Department also reported that it contacted an unknown number of individual schools to determine if there had been any invasions of privacy when collecting harassment data, although this assessment appears to have focused on sexual orientation. Finally, the Department has not received any complaints from LEAs regarding the aggregated collection of bullying and harassment data on the basis of religion.<sup>12</sup>

Although we appreciate that the Department has made some efforts to assess whether the proposed collection of this data element may risk students’ privacy, these steps are insufficient. First, the Department’s assurances that it has received no complaints are inapposite because this is the first CRDC in which it is proposing to make collection of this data element mandatory. It had only collected such data optionally before, and, to date, this data collection has not even been fully collected, let alone analyzed. Further, collection of data disaggregated by religion is not comparable to collecting aggregate data on harassment on the basis of religion.

Second, while the intent of the Department is for schools to assess allegations by motivation rather than by identity of the targeted student, it is not clear whether school staff will follow this direction,

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<sup>11</sup> Supporting Statement, Part A, 24.

<sup>12</sup> *Id.*

particularly when they are asked to make the sort of fine distinctions required to select between 14 different religious categories. While the Department has stated that LEAs are not *required* to include religious affiliation of students as part of their administrative record, there isn't anything to prevent them from doing so either. It is entirely possible that probing motivation against a particular religion may become a justification for questioning students' religious beliefs and for keeping such information on record. In order to address these concerns, the Department will need to work with stakeholders to provide training and guidance about how motivation should be determined, how this information should be maintained, and how to protect student privacy.

Finally, we have significant concerns about the ability of school administrators to distinguish between bullying and harassment motivated against different religious groups. Failure to do so accurately will result in underreporting and misreporting of harassment against certain religious groups and incorrect assessment of prevalence. The Department derived the 14 religious categories from the Federal Bureau of Investigation's Uniform Crime Reporting Program, used to track the prevalence of hate crimes. However, even seasoned investigators can have difficulty determining when crimes are motivated against specific religious groups, resulting in inconsistent data and significant gaps.<sup>13</sup> School administrators are not primarily investigators, and yet they are being called upon to make similar distinctions when investigating analogous bullying and harassment.

Particularly in communities that are predominantly of one religion, the very places where religious discrimination and harassment is most likely to occur, educators and administrators may have difficulty due to lack of familiarity with various religious and nonreligious beliefs or communities. This is why it is crucial that the Department work with stakeholder religious and nonreligious groups to develop appropriate guidance and training materials to help school officials to discern when bullying and harassment is directed toward particular religious or nonreligious identities or beliefs. We do not believe it is appropriate to ask schools to collect this data prior to the development of such guidance and materials.

It may be that schools will meet these challenges and report disaggregated data on religious harassment that is accurate and confidential. However, neither the Department nor school districts are in a place to assess the success of the collection of this data or the risks involved at least until after the optional data is collected through the 2020-1 CRDC. Given the risks involved and the lack of assessment, it is simply premature to make collection of this data element mandatory.

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<sup>13</sup> Thompson, A.C., Naik, R., and Schwenke, K. (2017). "Hate Crime Training for Police Is Often Inadequate, Sometimes Nonexistent." *ProPublica*, Nov. 29, 2017. Available at <https://www.propublica.org/article/hate-crime-training-for-police-is-often-inadequate-sometimes-nonexistent>; Davis, R.L. and O'Neill, P. (2016). "The Hate Crimes Reporting Gap: Low Numbers Keep Tensions High." *The Police Chief*, 83, May 2016: web-only article. Available at <https://www.policechiefmagazine.org/the-hate-crimes/>; Movement Advancement Project. (2021). *Policy Spotlight: Hate Crime Laws*. Available at [www.lgbtmap.org/2021-report-hate-crimes](http://www.lgbtmap.org/2021-report-hate-crimes).

## Recommendations

We make the following recommendations to the Department concerning the 2021-2 CRDC:

1. **Allow the reporting of disaggregated data on bullying and harassment on the basis of religion to remain optional for at least one additional CRDC cycle (2021-2 CRDC).** This will provide the Department, school districts, and advocates time to assess the results of the 2020-1 CRDC, to determine the feasibility and utility of disaggregation, and to design appropriate guidance materials for school districts and administrators.
2. **Investigate the data integrity of any disaggregated religious bullying and harassment data provided during the optional period and examine any issues that may arise as a result of collection of this data.** As part of these efforts, we encourage the Department to meet with various schools that reported the optional data and those that did not in order to determine: 1) how relevant data is collected, maintained, and kept confidential; 2) what steps are taken to assess the motivation for alleged bullying and harassment and to determine whether it is targeted towards a particular religion; and 3) what resources, training, and guidance are needed to assist administrators to collect this data in an accurate and confidential manner.
3. **Work with religious minority and nonreligious organizations to develop clear guidance for school administrators about how to implement collection of disaggregated religious harassment data in a manner that is accurate, respectful, and confidential.** The undersigned organizations invite the Department to consult on these issues to collaboratively create appropriate guidance.
4. **Consider any risks to student confidentiality and privacy that may arise from the collection of disaggregated religious harassment data and develop a plan to minimize these risks.** The Department is best positioned to have a clear view of the entire data collection and reporting process, to consult with institutional stakeholders, and to identify where problems with privacy and confidentiality may arise.
5. **Consider whether there may be any methods to acquire data on the frequency of bullying and harassment on the basis of religion that protect student anonymity and provide greater accuracy.** For example, the Department might work with other federal agencies to propose appropriate survey items for the Youth Risk Behavior Survey (YRBS) or another relevant survey of school-age youth.
6. **Move forward with the proposed optional religious harassment policy collection for the 2021-2 CRDC and make this data element mandatory for the next CRDC cycle.** This data element will be helpful to determine which schools have policies that specifically address bullying and harassment based on religion, and there are no concerns about inaccuracy or student privacy.

## Conclusion

We thank the Department for its dedication to protecting all students from bullying and harassment, including those who are targeted because of their beliefs or religious or nonreligious identities. We appreciate that the Department seeks appropriate data in order to address discrimination and harassment based on religion, and we agree that such data would be helpful if it can be accurately and safely collected. However, the Department's proposal to make the collection of disaggregated religious bullying and harassment data mandatory for 2021-2 CRDC is premature. We urge the Department to allow this data element to remain optional for this CRDC cycle and to use this time to work with stakeholder groups in order to ensure that collection of this data is accurate, respectful, and confidential.

## Organization

## Primary Point of Contact

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