



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

March 4, 2020

The Honorable Charles E. Grassley  
United States Senate  
Washington, D.C. 20510

Dear Senator Grassley:

Thank you for your letter dated June 24, 2019, regarding the Government Accountability Office's (GAO) report, *K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data*.<sup>1</sup> I appreciate the important role you have played in highlighting the need to improve restraint and seclusion (R&S) data quality. The Department of Education (Department) has spent considerable time and resources to make improvements in this area.

In your letter, you express concern, which we share, regarding Civil Rights Data Collection (CRDC) R&S data. You urge the Department's Office for Civil Rights (OCR) to implement GAO's recommendations and take additional steps to ensure that school districts report accurate R&S data. You also commend the Department's initiative to address the inappropriate use of R&S, which was announced by Secretary DeVos on January 17, 2019. Finally, you reference the important inquiry that you had previously sent to the Department's Office of Inspector General (OIG), requesting that the Department review allegations of Iowa school districts misreporting R&S data to the CRDC.<sup>2</sup>

We are doing, and plan to continue to do, what you have recommended. As you may be aware, we have undertaken many important steps to improve CRDC R&S data over the last few years. Many of these steps were developed even before the GAO announced its review. Improving the accuracy of CRDC data is important to the Department. For the 2017-18 CRDC, OCR has conducted greater outreach to school districts with potentially anomalous R&S data submissions; allocated additional technical support resources; clarified proper understandings of reporting requirements, where needed; worked with school districts to ensure that detailed written corrective action plans (as described below) were put into place; and increased its collaboration with the Department's National Center for Education Statistics (NCES). More specifically:

- OCR increased technical assistance to school districts to improve data collection timeliness and accuracy. For example, in the 2017-18 data collection cycle, OCR allocated an additional \$671,549 to provide year-round technical assistance support to all school districts. This significantly expanded OCR's ability to assist school

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<sup>1</sup> GAO, *K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data*, GAO-19-551R. (Washington, DC: June 18, 2019).

<sup>2</sup> The school districts were Cedar Rapids Community School District, Council Bluffs Community School District, and West Des Moines Community School District.

districts in meeting reporting obligations and will no doubt improve timeliness and accuracy.

- Additionally, on August 14, 2019, OCR sent a letter to all school districts requesting that they promptly address any errors in reporting restraint or seclusion incidents for the 2017-18 CRDC and requesting that they report zero incidents of restraint or seclusion only when no such incidents have occurred. The letter additionally reminded school districts that OCR's contractor, the Partner Support Center, could be reached for technical assistance. In response to this letter, OCR received 500<sup>3</sup> responses from school districts.

As noted above, OCR has significantly increased its collaboration<sup>4</sup> with the Institute of Education Science's (IES) NCES. OCR and IES/NCES entered into a Memorandum of Understanding (MOU) on June 18, 2019, greatly expanding the role of IES/NCES and better utilizing their expertise. The two offices hold bi-weekly meetings to improve the planning, administration, review, and release of the 2017-18 CRDC. OCR and NCES worked closely on contract review<sup>5</sup> affecting the 2019-20 and 2021-22 collections. OCR and NCES worked together to build on processes to assist state educational agencies (SEAs) and school districts seeking to make data corrections for the 2017-18 CRDC after the regular data submission period.

I would also like to update you on the Department's initiative to address the inappropriate use of R&S. As you may be aware, with Secretary DeVos' January 17, 2019, launch of the Department's initiative to address the inappropriate use of R&S, OCR made R&S the focus of compliance efforts for fiscal year 2019.<sup>6</sup> In this regard, for the first time in the agency's history, OCR opened R&S-focused compliance reviews—across all 12 regional enforcement offices—to ensure that school districts are complying with federal civil rights disability laws.

In addition to the compliance reviews, beginning on March 22, 2019, OCR engaged in an effort to improve R&S CRDC data quality by contacting 50 school districts with 2015-16 CRDC R&S data anomalies.<sup>7</sup> As part of this effort, OCR has determined that 40 school districts should amend their original 2015-16 CRDC data submissions. Due in large part to the success of this effort, OCR also is evaluating whether and how to most efficiently expand this type of outreach for the 2017-18 CRDC.

Another component of the Department's initiative involves the provision of R&S technical assistance to SEAs and school districts, to ensure they are collecting and reporting accurate data

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<sup>3</sup> Of the 500 total responses received, 362 were related to the restraint or seclusion data elements. 304 school districts identified corrections, and 58 school districts stated no change was needed.

<sup>4</sup> See U.S. Department of Education Continues Work to Improve Civil Rights Data Quality, August 23, 2019, available at <https://www.ed.gov/news/press-releases/us-department-education-continues-work-improve-civil-rights-data-quality>.

<sup>5</sup> "Contract review" describes the process by which the Department reviews a proposal(s) and asks clarifying questions, before a contract is awarded.

<sup>6</sup> The initiative is overseen by OCR, in partnership with the Office of Special Education and Rehabilitative Services. See <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>.

<sup>7</sup> Relying on the 2015-16 CRDC, letters were sent to school districts that did not have action plans and either reported no instances of restraint and/or seclusion or submitted identical data values.



relating to the use of R&S. In this regard, OCR and others in the Department already have led presentations on the topic, including the following:

- 2019 Office of Special Education Programs Leadership Conference, *Civil Rights Data Collection: Technical Assistance for Reporting Quality Restraint and Seclusion Data*, July 21, 2019.
- 2019 Office of Special Education Programs Leadership Conference, *Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools*, Joint OCR/OSEP presentation, July 23, 2019.
- Institute of Education Sciences, National Center for Education Statistics, STATS-DC Data Conference, *Civil Rights Data Collection: Technical Assistance for Reporting Quality Restraint and Seclusion Data*, July 25, 2019.<sup>8</sup>
- Institute of Education Sciences, National Center for Education Statistics, STATS-DC Data Conference, *When Zeros Are Really Zeros: Ensuring High Quality Data in the 2017-18 Civil Rights Data Collection*, July 25, 2019.
- Attendance/Child Accounting Professional Association (A/CAPA) Annual Conference, *Civil Rights Data Collection: Overview and TA for Data Quality*, November 15, 2019.

In addition, on January 9, 2020, OCR and the Office of Special Education and Rehabilitative Services posted a webinar on-line, *Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools*, as technical assistance to support children with disabilities and their families and the needs of the individuals in school systems who serve those students.<sup>9</sup>

With respect to the GAO report and recommendations on R&S data quality, OCR is indeed implementing GAO recommendations. OCR sent its formal response on December 18, 2019.<sup>10</sup> As I wrote in that response, in addition to concurring with each recommendation made by GAO in its report, OCR has implemented numerous innovative actions to improve data quality and reliability for the 2017-18 CRDC generally, as well as the data regarding R&S. Below is some information about the concrete steps OCR will take or has already taken to implement GAO's recommendations.

The first part of GAO's first recommendation is for the Assistant Secretary for Civil Rights to immediately remind and clarify for all school districts that they are to report zero incidents of R&S only when there are none and that they are to leave cells blank to indicate when data are not collected or incomplete. As noted above, on August 14, 2019, I sent a letter to all school districts communicating both of these important points, among others.

The second GAO recommendation is, as part of the 2017-18 CRDC quality assurance process, to follow up with school districts that have already submitted reports of zero incidents of R&S to obtain assurances that such reports of zero incidents are, in fact, accurate or else ask the districts to submit corrected data. This recommendation was met on August 1, 2019, as part of the 2017-

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<sup>8</sup> Please note the published agenda reads: *Changes Planned for the 2019-20 Civil Rights Data Collection*, but the panelists also covered restraint and seclusion data quality.

<sup>9</sup> See <https://www.youtube.com/watch?v=EZ9Yx0LC8TI&feature=youtu.be>.

<sup>10</sup> Letter to the Honorable Gene Dodaro, Comptroller General, Government Accountability Office, December 18, 2019, accessible at <https://www2.ed.gov/about/offices/list/ocr/correspondence/federal-entities/20191219-gao-response.pdf>.

18 CRDC data quality review outreach period, when OCR sent an electronic message to all school districts that had reported zero incidents of R&S in the 2017-18 CRDC and to SEAs that closely collaborated with their school districts for the 2017-18 CRDC reporting.<sup>11</sup>

The third GAO recommendation is for OCR to monitor compliance with OCR's action plan requirements and ensure those plans address all missing data elements.<sup>12</sup> Even prior to the release of GAO's report, OCR had taken steps to bolster the process by which it reviews and accepts action plans. For instance, OCR communicates with each school district with an approved action plan to seek confirmation that it will take the needed steps to collect and report the data for the upcoming collection. Going forward, OCR will also contact each school district with an approved action plan before the start of each new collection and re-confirm that the school district will take the needed steps to collect and report the data.

GAO's fourth and final recommendation asks OCR to "prominently disclose for past collections the potential problems with using R&S data given the known misreporting issues." OCR informed GAO that it will implement this recommendation by updating the 2015-16 data notes. As you may be aware, data notes<sup>13</sup> provide the general public with an overview of each collection. OCR will prominently display the data notes, clearly delineating the data flaws on OCR's website.

Finally, I would like to take a moment to describe OCR's work in response to an inquiry you sent to OIG in December 2017, requesting that the Department look into allegations of certain Iowa school districts misreporting R&S data. After reviewing the data the Iowa school districts submitted and reported to OCR—that no students were subjected to mechanical restraint, physical restraint, or seclusion during the 2013-14 school year—while separately reporting to their SEA or the media a substantially higher number of such incidents, OCR's then-Acting Assistant Secretary Candice Jackson sent letters to the identified school districts in May 2018. The letters informed those school districts that the Department would place them on high-risk status for grant award purposes and would place specific conditions on grants that the school districts received from the Department, unless the school districts explained the apparent errors in the 2013-14 CRDC. In follow-up communications with those school districts, they confirmed that their 2013-14 CRDC data submissions contained errors, and each sent amended data to OCR. In December 2018, we confirmed in writing with each school district that the information each provided was sufficient to avoid being placed on high-risk status.

From these activities, I hope that I have conveyed to you how committed OCR remains to working with all public schools, SEAs, and school districts to ensure accurate reporting of all CRDC data, including data on R&S, and to improving the quality of the information for all users of CRDC data. I look forward to sharing with you the additional steps OCR will take to fully

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<sup>11</sup> The electronic message was sent by the CRDC's Partner Support Center.

<sup>12</sup> Action plans are created to provide reporting entities with an organized means of identifying and addressing missing or incomplete data, as well as the necessary tools to ensure that the data they collect and submit for future collections are true and correct.

<sup>13</sup> Data notes most typically include information such as response rate, privacy protection, data anomalies, data errors corrected, and data errors that are not corrected (e.g., the request is incomplete or is made past the corrections deadline).

implement GAO's recommendations and more broadly to continue to improve CRDC data quality.

If you have additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Marcus', with a long horizontal flourish extending to the right.

Kenneth L. Marcus  
Assistant Secretary for Civil Rights