



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

March 23, 2020

Ms. Jacqueline Nowicki, Director
Education, Workforce,
and Income Security Issues
Government Accountability Office
Washington, D.C. 20548

Dear Director Nowicki:

On behalf of the U.S. Department of Education (Department), I am pleased to know that the Government Accountability Office (GAO) recognizes the importance of the Office for Civil Rights' (OCR) Civil Rights Data Collection (CRDC). Your June 2019 report¹ on the data collection for the 2015-16 school year regarding restraint and seclusion data coincided with our ongoing reform efforts and provided helpful recommendations for improvement. The Department agrees with your February 2020 draft report's² (February Draft Report) recommendations on restraint and seclusion and will implement them as part of our broader efforts to strengthen civil rights data quality. In the past two years since I have been the Assistant Secretary for Civil Rights, OCR has already made significant improvements to the CRDC in general and specifically with respect to restraint and seclusion.

Your February Draft Report's analysis of CRDC data focuses exclusively on the 2015-16 restraint and seclusion (R&S) data in the CRDC, which preceded this administration's reform efforts. The CRDC covers broad categories pertaining to student enrollment and educational programs and services, most of which are disaggregated by race/ethnicity, sex, disability, and English Learner status – collected from more than 17,000 school districts on a biennial basis. This vast data collection requires each school district to provide more than 1,700 individual responses. The R&S section alone has about 100 required responses. With respect to the R&S data quality improvements, OCR has made consistent improvements since R&S data were first collected in the 2009-10 collection. More recently, for the 2017-18 collection, OCR, in partnership with the Institute of Education Sciences' National Center for Education Statistics (NCES), has implemented more rigorous data review methods to improve the data as well as enhance our outreach efforts, many of which occurred prior to the release of the June 2019 GAO Report. I will highlight some of these actions more specifically below. Further, we are already taking action to improve data quality for the 2019-20 collection.

¹ *K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data*, GAO-19-551R, June 2019, available at <https://www.gao.gov/assets/700/699847.pdf>; Department's December 2019 reply letter, available at <https://www2.ed.gov/about/offices/list/ocr/correspondence/federal-entities/20191219-gao-response.pdf>.

² *K-12 Education: Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data*.

Your February Draft Report contains useful data and analyses. At the same time, we find that some of the data are presented in a way that could be misleading and that some of the analyses are incomplete or flawed. We also note that some of the study addresses data and information that is beyond the scope of the CRDC. I will address these issues below, and I am also attaching to this letter a separate document detailing technical edits for GAO's consideration.

As you know, we have undertaken many important steps over the last few years in the course of continuing efforts to improve the quality of the R&S data submitted by school districts. For the 2017-18 CRDC, OCR has utilized new tools in working with school districts with perceived reporting errors to encourage corrections; 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 detailed written corrective action plans were put into place; and increased collaboration with NCES. While these actions appear in greater detail in my December 2019 reply letter, several others are new, and I would like to mention some of them below.

For example, OCR recently posted various R&S technical assistance presentations³ on-line to further assist state education agencies (SEA) and local education agencies (LEA) or school districts to better understand their reporting obligations, including the appropriate use of nulls and zeros. 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 both students with disabilities and school systems serving those students.⁴ For the first time, OCR will implement, as necessary, a reporting methodology to remove anomalous (or outlier) R&S data from the 2017-18 collection, in advance of its public release. This methodology is utilized by other Departmental data collections to ensure that questionable data are not reported to, or relied on, by researchers or other members of the public. Any removal of anomalous R&S data from the final 2017-18 file will be described in the CRDC Data Notes.⁵ These are simply a few examples of our recent efforts.

As noted above, OCR has already implemented several of GAO's June 2019 recommendations, but these actions are missing from the February Draft Report. I believe it is appropriate and important that you include this information in the final report. GAO's first recommendation requested that the Assistant Secretary for Civil Rights immediately remind and clarify for all school districts that they are only to report zero incidents of R&S when there are none and that they are to leave cells blank to indicate when data are not collected or completed. On August 14, 2019, I sent a letter to all school districts and communicated both of these important points.⁶ The second of GAO's recommendations, as part of the 2017-18 CRDC quality assurance process, was for OCR to follow up with school districts that submitted reports of zero incidents of R&S to obtain assurances that such reports of zero incidents were, in fact, accurate, or else ask

³ See <https://www2.ed.gov/about/offices/list/ocr/data.html>.

⁴ See <https://sites.ed.gov/idea/education-department-releases-webinar-use-restraint-seclusion/>, and <https://www.youtube.com/watch?v=EZ9Yx0LC8TI&feature=youtu.be>.

⁵ Data notes provide the general public with an overview of each collection. For instance, data notes most typically include information covering such categories 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). See <https://ocrdata.ed.gov/DataNotes>.

⁶ See *Supra* at 1.

the districts to submit corrected data. This recommendation was met, when on August 1, 2019, as part of the 2017-18 CRDC data quality review outreach period, an electronic message was sent to all LEAs that had reported zero incidents of R&S in the 2017-18 CRDC and to SEAs that closely collaborated with their LEAs for the 2017-18 CRDC reporting.

The third recommendation from GAO requested that OCR monitor compliance with OCR's action plan requirements and ensure that such plans address all missing data elements. 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 that has an 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 LEA that has an action plan before the start of each new collection and re-confirm that the LEA will take the needed steps to collect and report the data.

GAO's fourth and final recommendation asked 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.⁷

By not including this information, the February Draft Report paints an incomplete and misleading portrayal of this issue. Indeed, it could be read to suggest, quite erroneously, that OCR is indifferent to the ways a data collection can be improved. Before I address the specifics of GAO's six recommendations, it is necessary to respond to significant problems in the February Draft Report and recommend changes so that it properly and fairly portrays the CRDC and OCR's handling of the R&S data.

The Draft February Report Omits R&S Data Quality Improvements Made for the 2017-18 Collection.

GAO's February Draft Report does not mention the methodological improvements OCR made to address the quality of R&S data for the 2017-18 collection. In this way, GAO's February Draft Report overstates the current relevance of the data issues from the 2015-16 collection, because OCR has already taken steps with school districts to correct the problems both OCR and GAO discovered. As I shared in my December 18, 2019, letter to GAO, OCR has already implemented data quality improvement measures with respect to the 2017-18 CRDC. I set forth a summary of those improvements below, which were shared with your office on December 19, 2019.

For the 2017-18 CRDC⁸, OCR's contractor performed a three-phase data quality check before, during, and after data were submitted by school districts. There were two types of analyses conducted: general and specific. General analyses focused on outliers detected for individual data elements (univariate), for entire modules (systematic), and for significant changes in data elements between the 2015-16 and 2017-18 data collections (year-to-year). Specific analyses were ad hoc data quality checks focused mostly on issues of internal consistency and data reasonableness (e.g., duplicate data, summation to totals, comparisons with other data sources).

⁷ See *Supra* at 5.

⁸ This is a high level summary and not a comprehensive accounting of all 2017-18 data quality efforts.

There were nine specific quality issues that were analyzed as part of the data quality review for the 2017-18 collection, all of which were new for 2017-18. Of the nine specific quality issues, four evaluated the data for duplicative entries; two checked the data for internal inconsistencies; and three evaluated the reasonableness of the data entered given the size of the school.

Importantly, each of the nine specific quality issues for the R&S module addressed one of four overarching quality issues:

- duplicative counts across mechanical restraint, physical restraint, and seclusion for non-IDEA and IDEA students⁹;
- reports of identical data entries for each of the following data items: mechanical restraint, physical restraint, and seclusion for non-IDEA and IDEA students (*e.g.*, if each entry were “25”);
- instances where overall enrollment by sex and race/ethnicity is smaller than students subjected to mechanical restraint, physical restraint, and seclusion by sex and race/ethnicity for non-IDEA and IDEA students; and
- LEAs with zero instances of mechanical restraint, physical restraint, or seclusion with enrollment that is greater than or equal to 25,000 students.

In addition to the foregoing specific data quality checks, general data quality checks were conducted on all R&S data elements. These post-collection data quality checks focused on detecting (a) outliers for individual data elements, (b) significant value changes in individual data elements between the 2015-16 and 2017-18 data collections, and (c) outliers within the entire R&S module. All general checks used the data-driven thresholds for identifying outliers and were included in subsequent outreach to the school districts.

The post-collection outreach to school districts was also conducted via email and, in some cases, phone calls. The main goal of outreach was to identify a subset of data quality issues across the data elements collected by the CRDC that were apparent errors and, if confirmed as errors by the school district, would be easily correctable, so that the outreach activities conducted by the Partner Support Center (PSC)¹⁰ would have the greatest likelihood of improving the data. R&S outreach messaging focused on the use of nulls and zeros, in addition to targeted outreach about the general and specific checks described above. In total, the CRDC’s PSC conducted outreach to 15,526 LEAs, a marked increase from 4,386 LEAs contacted for the 2015-16 outreach period. As a result of OCR’s proactive outreach efforts, 952 LEAs amended their original 2017-18 R&S data submissions from June 2019 to August 2019. During the extended data corrections, which ran from September to December 2019, another 196 LEAs corrected their 2017-18 R&S data submissions. GAO should include or reference the foregoing in its final report in order to present an accurate picture regarding the CRDC’s overall data quality improvement efforts.

⁹ See definitions appearing on the 2017-18 CRDC School Form, page 11, available at <https://www2.ed.gov/about/offices/list/ocr/docs/2017-18-crdc-school-form.pdf>.

¹⁰ The CRDC’s Partner Support Center provides technical assistance to LEAs that submit data through the CRDC submission system. The Partner Support Center is run by OCR’s contractor. See <https://crdc.grads360.org/#program>.

The February Draft Report Relies on a Limited Number of Interviews to Make Sweeping R&S Data Generalizations.

Another area of concern is the weight GAO places on the feedback provided by a very limited number of LEAs and school officials. GAO recognizes this contradiction, when it writes: “Information we collected from our 11 selected schools and nine districts cannot be generalized to all districts and schools nationwide.”¹¹ Further, the final report should emphasize that OCR has repeatedly informed SEAs and LEAs that they can reach out to OCR for technical assistance on the CRDC. This was made clear, for example, in my letter to all LEAs, sent on August 14, 2019.

The Report Should Emphasize the CRDC is Comprised of Self-Reported Certified Data.

It is critical to emphasize that the CRDC is an aggregate of self-collected and self-reported data. Almost all reporting entities are school districts, and the district superintendent or an authorized designee certifies that the data they submit are “true and correct.” As each certifies, they agree to the following information:

Your LEA’s certification of its CRDC data includes verifying the accuracy of the data that your LEA submitted to the state education agency. I certify that the information provided is true and correct to the best of knowledge and belief. A willfully false statement is punishable by law. (18 U.S.C. § 1001).

For more than 40 years, the certification statement has included the last two sentences presented in the certification statement above. Therefore, school districts are fully aware and acknowledge they are required to submit accurate data to the CRDC. This is an important part of assuring data quality.

The February Draft Report Misleadingly Describes Certain Data.

Page 22¹² of the February Draft Report contains a section commencing with “All Nine School Districts.” That section discusses how the nine school districts GAO visited use R&S data. While we acknowledge that the discussion in this section is interesting for the field, the data introduced and discussed in this section are not data the Department collects in the CRDC. This section references the benefits certain unidentified school districts have received from their usage of certain data which do not come from the CRDC. The February Draft Report references that the *unidentified* school districts used (i) information about one or more observation(s) by teacher(s) of specific student behavior triggering the use of R&S; (ii) data on *the day of the week* on which incidents of R&S occurred; (iii) information on incidents involving autistic children specifically; (iv) the benefits of post-incident teacher debriefing; (v) the benefits of coaching teachers; (vi) incidents with respect to a specific student; and (vii) one district’s monthly internal reporting of R&S data. None of the data and analyses that the various school districts collected, performed, and used is part of the CRDC, and none of it could be feasibly collected by the CRDC.

¹¹ GAO’s February Draft Report, Page 32.

¹² See February Draft Report, section titled: “All Nine School Districts We Visited Used Data to Reduce Incidence of Restraint and Seclusion and Developed Strategies for Improved Reporting,” at p. 22.

The February Draft Report's attempt to generalize these comments seems inconsistent with the Governmental Accounting Standards Board (GASB) statistical principles which govern the February Draft Report. See GASB Section 8.100.¹³

OCR Will Implement GAO's Recommendations.

For background to OCR's formal response to the February Draft Report's recommendations, as I shared as part of my December 18, 2019, letter to GAO, the CRDC is a biennial survey of public schools and school districts in the United States. The CRDC measures student access to courses, programs, staff, and resources that relate to OCR's jurisdiction. The CRDC also is a resource for other federal agencies, policymakers, researchers, educators, school officials, parents/guardians, students, other stakeholders, and members of the public. OCR is committed to continuous data improvement measures, including working to better enable SEAs and LEAs to accurately and completely report data. Accordingly, OCR will implement all of GAO's recommendations, within an appropriate timeframe, and OCR's formal responses to GAO's draft recommendations appear below.

GAO's First Recommendation:

The Assistant Secretary for the Office for Civil Rights should revise its CRDC business rule to require that every district reporting zeros, regardless of district size or numbers of students with disabilities, affirm the zeros are correct during the CRDC data submission process.

OCR will determine the best means to implement this recommendation and expects to do so in connection with the 2019-20 collection.

GAO's Second Recommendation:

The Assistant Secretary for the Office for Civil Rights should develop and implement a CRDC business rule that targets schools and districts that report very low numbers of incidents and set data-driven thresholds to detect such incidents.

OCR will determine the best means to implement this recommendation and expects to do so in connection with the 2019-20 collection.

GAO's Third Recommendation:

The Assistant Secretary for the Office for Civil Rights should develop and implement a CRDC business rule that targets schools and districts that report very high number of incidents and set data-driven thresholds to detect such incidents.

OCR will determine the best means to implement this recommendation and expects to do so in connection with the 2019-20 collection.

¹³ "When appropriate, auditors may use statistical methods to analyze and interpret evidence to assess its sufficiency." GASB 8.100.

GAO’s Fourth Recommendation:

The Assistant Secretary for the Office for Civil Rights should apply the CRDC business rule targeting logical inconsistencies at the school level to all schools regardless of the number of incidents reported.

The CRDC currently uses this business rule in a limited fashion. For the 2015-16 and 2017-18 collections, it was triggered whenever an LEA had 100 incidents of restraints or seclusions. However, for the 2019-20 collection, OCR expects to apply it to all such logical inconsistencies referenced in the February Draft Report.

GAO’s Fifth Recommendation:

The Assistant Secretary for the Office for Civil Rights should identify the factors underlying underreporting and misreporting of restraint and seclusion and take steps to help school districts overcome these issues.

OCR has already begun this effort. Over the past year as OCR has reached out to 50 LEAs which were reporting anomalous R&S data,¹⁴ it asked the LEAs to explain the cause of the reporting errors.¹⁵ An example of one of OCR’s inquiries is “please include a description of the steps that you intend to take to improve quality of the data for the 2017-18 CRDC and all other future collections.” OCR has received answers from multiple LEAs which will help in gathering correct data. OCR is also working on other legally permissible ways to identify these factors, such as using the aforementioned PSC to contact LEAs.

GAO’s Sixth Recommendation:

The Assistant Secretary for the Office for Civil Rights should further refine and clarify federal restraint and seclusion definitions and take steps to ensure that this information is conveyed to school districts. This could include providing common classroom scenarios that highlight the differences between a restraint and an escort, and a time out and a seclusion.

OCR agrees with this recommendation. The Assistant Secretary will refine and clarify the restraint and seclusion definitions. In doing so, OCR will consult with counsel on appropriate ways of doing so consistent with applicable legal authorities.

OCR is fully committed to work with public schools, SEAs, and LEAs to help ensure accurate reporting of all CRDC data, including data on R&S, and to improve the quality of the information for use by all users of CRDC data. I hope that GAO will take into account the concerns expressed in this letter, as well as the Department’s technical edits, as it further refines its draft report. I appreciate GAO’s work on this area and its recommendations, which will help improve future collections.

¹⁴ As part of Initiative to Address the Inappropriate Use of Restraint and Seclusion, DQR letters.

¹⁵ Reflective of a request GAO made in December of 2019.

Sincerely,

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

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure