



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

October 16, 2020

Honorable Gene Dodaro
Comptroller General
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

On behalf of the U.S. Department of Education (Department), I am pleased that the Government Accountability Office (GAO) continues to recognize the importance of the Office for Civil Rights' (OCR) Civil Rights Data Collection (CRDC). While the April 2020 report¹ (final report) is limited to the collection of data for restraint and seclusion, the CRDC encompasses far more. The CRDC covers a broad array of topics and requires school districts and their schools to collect and input as many as 1,700 data points. This is a vast data collection from more than 17,000 school districts and nearly 100,000 schools. Those that collect and report the data have been conscientious and worked hard to fulfill their reporting responsibilities accurately and correctly. OCR has traditionally achieved very high overall response rates for the CRDC. Indeed, the response rate for the 2015-16 collection was 99.80%, and for the 2017-18 collection, the response rate was 99.81%. Against this backdrop, GAO has focused on one area of the CRDC, which OCR has been actively improving.

Your June 2019 report² on the data collection for the 2015-16 school year regarding restraint and seclusion (R&S) data coincided with our ongoing data quality improvement efforts and provided helpful recommendations. Moreover, GAO's April 2020 final report provided useful insights as well. Unfortunately, GAO's April 2020 final report did not include many of the important and significant strides OCR has made to improve the CRDC's data quality over the last two years, particularly with respect to restraint and seclusion data. OCR provided much information to GAO as part of the March 23, 2020, response to the draft report, which GAO did not include in its final report.³ This letter emphasizes some of that information and also further responds to the final report.

The final report addresses a number of data quality issues related to R&S data for the 2015-16

¹ *K-12 Education: Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data*, GAO-20-345, April 2020, available at <https://www.gao.gov/products/GAO-20-345>.

² *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>.

³ See OCR's March 23, 2020, letter to GAO, available at <https://www2.ed.gov/about/offices/list/ocr/correspondence/federal-entities/20200323-gao-response.pdf>.

CRDC. However, the public should know of the critical improvements which OCR put into place for the 2017-18 CRDC. OCR gave this information to GAO in advance of the final report's release. As GAO knows, OCR is committed to continuing diligently working with school districts to improve R&S data. In fact, for the last two years, improving R&S data quality has been a priority for OCR and this Administration. We believe that GAO could have recognized more of OCR's data quality processes improvements. OCR is disappointed that GAO's final report did not include general or high-level information pertaining to OCR's R&S data quality analysis and improvements in advance of publishing its final report. In December 2019, OCR pointedly showed and explained to GAO OCR's significant improvements for the 2017-18 CRDC. Unfortunately, GAO's final report on the 2015-16 survey did not recognize OCR's actions. While GAO states that the information provided about the 2017-18 CRDC improvements was shared on a confidential basis because of timing considerations, at the very least, a high-level description of OCR's efforts would have been appropriate. Ultimately the improvements were not covered, and as a result, we believe that the final report does not appropriately characterize the current state of the CRDC and is not as helpful as it should have been to the public. We discuss and clarify those mischaracterizations at length below, but first we summarize the changes put into place in relation to GAO's June 2019 report.

The GAO Recommendations of 2019 and OCR's Subsequent Efforts.

OCR has already implemented several of GAO's June 2019 recommendations.

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, former Assistant Secretary Kenneth L. Marcus sent a letter to all school districts and communicated both of these important points.⁴

Another 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 June 2019 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 local educational agency (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.

By not including this important information, the final report paints an incomplete and misleading portrayal of OCR efforts on these matters, including OCR's responsiveness to GAO's June 2019 report in adopting GAO's recommendations and swiftly acting upon them. Unlike the picture provided in the final report OCR is very serious and made very effective strides in improving data collection methodologies. We are glad to have this opportunity to provide this important information.

⁴ *Supra* at 2., Department's December 2019 reply letter, p. 6.

The Final Report's Review of Quality Control Processes in Table 2 Fails to Consider 2017-18 Improvements.

In Table 2, column four, labeled “Issue with CRDC business rule,” the final report’s statements that no other data quality checks (“business rule”) exist is only relevant to the 2015-2016 CRDC, and GAO does not acknowledge OCR’s methodological improvements in the 2017-18 data collection. As for the 2017-18 data quality review, OCR’s contractor performed a three-phase data quality check before, during, and after data were submitted by school districts.⁵ Specific analyses focused mostly on issues of internal consistency and data reasonableness (e.g., duplicate data, summation to totals, comparisons with other data sources).

The Final Report's Conclusion that Misreporting Data is a Problem Relies on Incomplete Data in Table 3.

At page 12, the final report states that “findings from Education’s data quality review, along with those from our analysis, suggest that misreporting is a problem among districts of all sizes.” GAO’s conclusory statement is somewhat misleading and reaches beyond what the information in Table 3 represents. The information in Table 3 illustrates the number of districts that reported zeros by enrollment size; however, without knowing how many of these districts corrected their data, it is difficult from this information in the report to determine how many actually misreported, or how widespread a problem misreporting is based solely on this information.

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

OCR is aware that GAO took the position that it could not discuss the 2017-18 improvements, but we believe that GAO could have and should have provided a high-level summary of the improvements that were put into place. GAO’s final 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 final report tends to overstate 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 GAO knows from OCR’s December 18, 2019, letter, 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 GAO on December 19, 2019.

For the 2017-18 CRDC,⁶ OCR’s contractor performed a three-phase data quality check before, during, and after data were submitted by school districts, and conducted general and specific analyses.

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 analyses, 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.

⁵ *Supra* at 3, p. 3.

⁶ This is a high-level summary and not a comprehensive accounting of all 2017-18 data quality efforts.

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

- reports of identical counts across instances⁷ (rather than students) of mechanical restraint, instances of physical restraint, and instances of seclusion for non-IDEA students and IDEA students;⁸
- reports of identical counts across students subjected to mechanical restraint, physical restraint, and seclusion for students not served by IDEA (non-IDEA students) and IDEA students with disabilities served under IDEA (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
- Local educational agencies (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 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)⁹ 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.

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,

⁷ Refers to the number of instances of mechanical restraint, physical restraint, and seclusion for students in grades K-12 (or the ungraded equivalent), not the number of students who were subjected to restraint or seclusion. See 2017-18 CRDC School Form, p. 107, available at <https://www2.ed.gov/about/offices/list/ocr/docs/2017-18-crdc-school-form.pdf>.

⁸ See definitions for non-IDEA and IDEA students appearing on the 2017-18 CRDC School Form, p. 11, available at <https://www2.ed.gov/about/offices/list/ocr/docs/2017-18-crdc-school-form.pdf>.

⁹ 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>.

worked with school districts to ensure detailed written corrective action plans were put into place; and increased collaboration with the Institute of Education Sciences' (IES) National Center for Education Statistics (NCES).

For example, OCR posted various R&S technical assistance presentations¹⁰ on-line to further assist state educational agencies (SEAs) and LEAs or school districts in better understanding 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 technical assistance webinar on-line, *Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools*, to support both students with disabilities and school systems serving those students.¹¹ The webinar has been viewed nearly 21,000 times.

In addition, for the first time, OCR implemented 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.¹² GAO's final report does not include any of this important information.

The Final 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."¹³ As reported to GAO, 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 OCR's letter to all LEAs, sent on August 14, 2019.¹⁴ In fact, 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 \$671,549.35 to provide year-round technical assistance support to all school districts.

Further, page 25¹⁵ of the final report contains a section titled "All Nine School Districts We Visited Used Data to Reduce Incidence of Restraint and Seclusion and Developed Strategies for Improving Reporting." That section discusses how the nine school districts GAO visited use R&S data. However, GAO does not provide the precise answers given to the questions GAO asked. Using such answers from non-CRDC submissions raises serious validity and reliability concerns as the GAO did not demonstrate how any of these nine districts compare along

¹⁰ See <https://www2.ed.gov/about/offices/list/ocr/data.html>, *Technical Assistance on Restraint and Seclusion*.

¹¹ See <https://sites.ed.gov/idea/education-department-releases-webinar-use-restraint-seclusion/>, and <https://www.youtube.com/watch?v=EZ9Yx0LC8TI&feature=youtu.be>.

¹² 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>.

¹³ See final report, at p. 38.

¹⁴ *Supra* at 4.

¹⁵ See final report, at p. 25.

important dimensions such as: the relevant definitions they implemented, the technical guidance they requested and received, their capacity to report data, etc. All of these are important to ensure that these nine districts are being appropriately compared to others that are similarly situated. Each CRDC survey instrument uses carefully formulated questions and instructions that undergo two phases of notice and comment, an initial 60-day comment period, followed by a 30-day comment period, as required by the Paperwork Reduction Act of 1995. Therefore, CRDC survey questions and instructions are carefully reviewed by OCR, the Department, and the Office of Management and Budget; and comments made by members of the general public are reviewed and responded to by OCR. In comparison, GAO gathered input from a small portion of all school districts. Therefore, the information provided by those nine school districts appears to lack statistical integrity and provides unverifiable and non-replicable information, which may suggest a path of further inquiry, but does not provide a fully accurate and general understanding of the potential challenges CRDC submitters may face during any particular collection cycle.

Further, 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 final report references that the nine 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) information on the benefits of post-incident teacher debriefing; (v) information on the benefits of coaching teachers; (vi) information on 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.

OCR Will Implement GAO's Recommendations.

For background to OCR's formal response to the final report's recommendations, 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 to 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 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.

Commencing with the next CRDC, every school district reporting zeros to indicate that no students were subjected to physical restraint, mechanical restraint, and seclusion, will be required to choose a drop down reason code to confirm that the use of "zeros" is in

fact accurate. School districts will not be able to submit data without making this confirmation. School districts will also be required to select a reason code to confirm that they failed to collect R&S data; and therefore, those school districts will be required to create action plans before data can be submitted, and the reported zeros will be changed to nulls.

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's letter to GAO, dated March 23, 2020, stated that it will determine the best means to implement this recommendation.¹⁶ As such, OCR is reviewing proposed business rules that will identify and address when very low numbers of incidents of R&S are reported through the CRDC submission system. As previously indicated, OCR will determine the best means to implement this recommendation and expects to do so with the next data 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 numbers of incidents and set data-driven thresholds to detect such incidents.

OCR's letter to GAO, dated March 23, 2020, stated that it will determine the best means to implement this recommendation.¹⁷ Accordingly, OCR is reviewing proposed business rules that will identify and address when very high numbers of incidents of R&S are reported through the CRDC submission system. As previously indicated, OCR will determine the best means to implement this recommendation and expects to do so with the 2020-21 collection.

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.

OCR's letter to GAO, dated March 23, 2020, stated that the CRDC currently uses this business rule in a limited fashion.¹⁸ For the 2015-16 and 2017-18 collections, it was triggered whenever an LEA had 100 or more incidents of restraints or seclusions. OCR is currently reviewing options for executing this recommendation and will endeavor to have an approach in place in time for the next data collection.

¹⁶ Former Assistant Secretary Kenneth L. Marcus' letter to GAO, March 23, 2020, p. 6, available at: <https://www2.ed.gov/about/offices/list/ocr/correspondence/federal-entities/20200323-gao-response.pdf>.

¹⁷ *Id.*

¹⁸ *Id.* at 7.

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 is currently evaluating this recommendation. OCR also is considering, as appropriate, and consistent with the Paperwork Reduction Act of 1995, how to engage in conversations with SEAs, LEAs, and external stakeholders to learn more about the factors underlying underreporting and misreporting of restraint and seclusion.

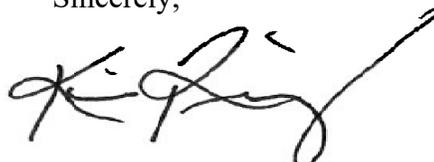
GAO's Sixth Recommendation:

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 is currently seeking internal and external input on this very important topic. OCR has met with stakeholders and has consulted with various Departmental offices. OCR will continue to evaluate feedback to understand how to best implement this recommendation.

I appreciate GAO's consideration of all of our comments in this response. 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 appreciate GAO's work on this area and its recommendations, which will help improve future collections.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberly M. Richey', with a long, sweeping flourish extending to the right.

Kimberly M. Richey
Acting Assistant Secretary for Civil Rights