August 10, 2012

VIA EMAIL
The Honorable Russlynn Ali
Assistant Secretary for Civil Rights
Office for Civil Rights
United States Department of Education
400 Maryland Avenue, SW, Room 4E313
Washington, D.C. 20202-6510

Re: Civil Rights Data Collection Recommendations

Dear Assistant Secretary Ali:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and fifty-three affiliates nationwide, we are writing in reference to the 2009-2010 and upcoming Civil Rights Data Collections (CRDC). We applaud both your reinstating and expanding the CRDC -- an essential tool and critical first step in identifying and assessing disparities in our education system. We write today, however, to express our concerns with the completeness of some of the school districts’ reporting in key areas and to suggest ways in which to improve future collections.

The ACLU works to identify and reduce overly punitive school discipline policies that push kids out of school and into the criminal justice system, contributing to the school-to-prison pipeline. With respect to school discipline issues in particular, we commend OCR for the addition of several new categories related to punitive discipline, such as multiple suspensions and expulsions under zero tolerance policies. In addition, we believe the addition of “referral to law enforcement” and “school-related arrest” categories can give us a much-needed picture of how law enforcement is operating in schools.

Unfortunately, as you know, many school districts failed to report certain data items adequately, and reporting on law enforcement referrals and school-related arrests was particularly poor. While we understand that this was the first year these categories were included in the CRDC, in some jurisdictions we know this data to exist, and in others it could certainly be compiled. Districts must be held accountable for complying with mandatory reporting requirements, and we are committed to working with your office to ensure that meaningful reporting takes place.
This document lays out some ideas for ensuring districts comply with the 2011-2012 and upcoming collections, and that gaps in the 2009-2010 data are not repeated.

We also hope that the 2009-2010 state and national projections will be released soon, so we can have a better snapshot of the current reach of punitive school discipline practices nationwide. The CRDC represents a significant opportunity to fill our gap in knowledge about law enforcement and other punitive discipline practices in schools, and we look forward to working with you to ensure that opportunity is realized.

I. 2009-2010 CRDC Reporting Inaccuracies

Based on reports from ACLU affiliates across the country, we’ve identified several problematic gaps in the 2009-2010 data. While we understand that focus is now being placed on the upcoming collections, we still encourage OCR to follow up with the states and/or districts identified below and urge them to report complete and accurate data. We encourage OCR to replace inaccurate numbers with “unreported” or comparable language to indicate that the current data is unreliable or in the process of being changed.

In addition, we hope OCR will ensure that the forthcoming state and national projections account for these gaps in the data, and make clear that statewide and national figures on arrests, law enforcement referrals, and potentially other new discipline categories are likely to be seriously under-estimated and/or unreliable.

Listed below is data highlighted by some ACLU affiliates based on qualitative and sometimes quantitative information they and their cooperating organizations have obtained. This is not intended to be a comprehensive list of the reporting concerns.

• **New York City, New York** data shows no referrals to law enforcement and no school-related arrests, yet it is clear that this information is inaccurate. There are more than 5,100 police personnel stationed in the New York City public schools and, under city law, the New York City Police Department (NYPD) is required to report quarterly the number of arrests made and summonses issued by the school safety division of the NYPD. According to the NYPD data from the first quarter of 2012, there were 327 arrests – more than five per day, and police issued 555 summonses – more than nine per day.¹

• **Los Angeles, California** data shows no referrals to law enforcement and no school-related arrests. Given the district has over half a million students and its own police force – a force that issued more than 30,000 tickets to students between 2009 and 2011² – it is inconceivable that these numbers could be zeroes. In addition, through communications with the Los Angeles School Police Department, we have

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determined that the department tracks arrests and its data reflects that there were, in fact, more than zero arrests in 2009-2010.

- **Data for Dallas, Houston, Austin, and Fort Worth, Texas** all show no arrests and no referrals to law enforcement, despite the fact that these districts combined have a student population of over 500,000. By contrast, San Antonio reported (for students without disabilities) 1,780 arrests and 1,815 law enforcement referrals, though the district has only about 50,000 students. Research by Texas Appleseed found that, during the 2006-2007 school year, more than 7,000 students were arrested across only 17 school districts (which account for only 13% of the total student population). The report also uncovered thousands of class C misdemeanor tickets issued to students in districts across the state, including Dallas, Houston and Austin. Clearly these law enforcement encounters are not captured in Texas’ reporting to OCR.

- **Data for many Florida school districts** shows no school-related arrests, including some of the more populous counties in the state. Broward County, for instance, has over 250,000 students and reported more than 6,000 referrals to law enforcement, but no arrests. And Palm Beach County, which has close to 175,000 students, reported over 5,000 referrals to law enforcement, but no arrests.

- **Detroit, Michigan** data shows 580 referrals to law enforcement and no school-related arrests, despite the fact that the district has over 90,000 students and has a deputized police force that includes about 100 officers. Additionally, the Detroit Public Schools (DPS) Police Department is supplemented by private security in all K-8 buildings and high schools. The DPS Police Department issued a press release on crime data in February of 2012, which noted that while crime is down overall, “felony arrests obtained increased by 42%.” This release makes clear that the DPS Police Department tracks school-related arrests and that such arrests are not insubstantial, making the district’s report of zero problematic.

- **Data for Delaware** appears to significantly under-estimate referrals to law enforcement and school-related arrests. Although the Delaware statewide projection for 2009-2010 is not yet out, the combined number of arrests reported by the districts under the CRDC for that year totals less than 300. By contrast, independent data from the Delaware juvenile court shows 739 arrests originating at school during the 2010-2011 school year, which suggests significant under-reporting to OCR.

- **Data for Springfield and Worcester, Massachusetts** shows no school-related arrests, while research by the ACLU shows that there were in fact 210 arrests in

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Springfield and 13 arrests in Worcester during the 2009-2010 school year. Springfield school officials have indicated that they do not collect arrest data since it is collected by the police department, and reported ‘zero’ in this category since they did not have the data required by the CRDC.

- Data from **Little Rock, Arkansas** – the largest school district in the state – shows no law enforcement referrals, no arrests and no expulsions of any kind, despite the fact that the district has over 25,000 students. The neighboring districts of North Little Rock and Pulaski County (which have another 27,000 students between them) also show no law enforcement referrals and no arrests. North Little Rock data also shows no expulsions of any kind. By contrast, Springdale, which is the second largest school district in the state with approximately 18,000 students, reported 60 expulsions, 120 law enforcement referrals and 55 arrests. Several other major Arkansas districts report data in these categories as well, indicating not only that the Little Rock and North Little Rock reports are inaccurate and but also that more accurate data collection on these topics is possible in Arkansas.

- Data for **Washoe County, Nevada**, which has close to 65,000 students, shows no expulsions. The district also reported equal numbers of law enforcement referrals and arrests, likely indicating that the district has not distinguished between the two categories. In addition, several other Nevada school districts – including Carson City, Esmeralda, Eureka, Humboldt, Lander, Mineral, Nye, Storey, and White Pine – also reported no expulsions.

**II. Recommendations for Future Data Collections**

We understand that the 2011-2012 CRDC is about to get underway. In order to avoid some of the concerns cited in this letter, we urge you to implement the following recommendations, with a particular focus on jurisdictions reporting inadequate data for 2009-2010, including those mentioned in this letter:

- Assist states and districts in developing effective mechanisms for tracking law enforcement referrals, arrests, and other new school discipline categories.

- Assist districts that have not been tracking this data in reconstructing the information through incident reports, police department statistics, juvenile court records and any other relevant means.

- Devise a mechanism for flagging districts that are not reporting certain categories of data. Because many districts that did not track school-related arrests simply reported ‘zero,’ neither OCR nor the general public can distinguish between districts without any arrests and those which simply did not collect this data. While

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reporting is mandatory and districts should not be let off the hook by being permitted to report “N/A,” it is also critical that both OCR and the public be able to identify districts that are failing to report categories of data.

• After developing a system for identifying districts out of compliance with data collection requirements, follow up with those districts to make clear that failure to comply could lead to a withholding of federal education funds.

• Clarify in the instructions to schools what data should be included in the categories “referral to law enforcement” and “school-related arrest.” More specifically:
  
  ▪ Clarify whether these categories capture each individual instance of referral/arrest or the number of students referred/arrested.
  ▪ Clarify that “referral to law enforcement” can include an instance in which a police officer approaches a student directly, and is not limited to incidents in which a student is “referred” by a school official to the police.
  ▪ Clarify what is included in the “referral to law enforcement” category, and in particular whether tickets are included. We recommend that this category include all interactions between a police officer (including an SRO) and a student that puts the student at risk of being detained (excepting arrests). In some jurisdictions, the majority of police-student encounters result in tickets rather than arrests, so it is especially important to ensure that these encounters are captured in the CRDC given the serious impact they can have on youth.  

• Include all incidents of corporal punishment in future data collections. While we applaud OCR for expanding the CRDC to include incidents of restraints and seclusion, recording just the number of students subjected to corporal punishment does not give a complete picture of the number of times students are hit and brutalized in our nation’s schools. Incidents of corporal punishment should be reported in the same manner as incidents of restraint and/or seclusion.

Conclusion
Again, we greatly appreciate your commitment to the CRDC as evidenced by your both reinstituting it and expanding the categories to shine a light on how America’s youth – including youth of color and those with disabilities in particular – are being disciplined at school. We also applaud the CRDC’s annual and universal collection starting next year.

A recent analysis by the Center for Public Integrity and the Labor-Community Strategy Center, for example, found that the Los Angeles Unified School District police force issued more than 30,000 tickets to students 10-18 from 2009-2011. A significant number were for violations of the city’s daytime curfew ordinance (i.e. truancy), carrying a hefty fine and requiring a court appearance. Ferriss, supra note 2.
We look forward to working with you to ensure compliance with this critical data collection. Please feel free to contact Deborah J. Vagins, Senior Legislative Counsel, at dvagins@dcaclu.org or (202) 675-2335.

Sincerely,

Laura W. Murphy
Director, Washington Legislative Office

Deborah J. Vagins
Senior Legislative Counsel