

July 9, 2020

VIA E-REQUEST FORM

U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Avenue, SW, LBJ 7W104
Washington, DC 20202-4536
ATTN: FOIA Public Liaison

**Re: Request Under Freedom of Information Act
Fee Waiver/Limitation Requested**

Dear FOIA Public Liaison,

This is a request for production of records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the implementing regulations of the Department of Education (“ED”), 34 C.F.R. Part 5, on behalf of the American Civil Liberties Union (“ACLU”) and The Center for Civil Rights Remedies, an initiative at the UCLA Civil Rights Project/Proyecto Derechos Civiles (“CCRR”).

The ACLU and CCRR jointly seek documents related to the 2017-2018 Civil Rights Data Collection (“CRDC”).

I. Request

Please provide all of the following materials related to the U.S. Department of Education’s Office of Civil Rights (OCR) 2017-2018 Civil Rights Data Collection:

1. LEA enrollment data required to be collected for the 2017-18 CRDC as required by the OCR. Please provide for each district the information covering the following required reporting elements:

School & District Characteristics

- Total number of students enrolled in school (disaggregated by race, sex, disability-Individuals with Disabilities Education Act (IDEA), disability-504 only, and English Learner (EL)).
- Number of EL students and number of students enrolled in EL programs (disaggregated by race, sex, disability-IDEA).



Disability Rights Program

California Office
39 Drumm Street
San Francisco, CA 94111
Tel: (415) 343-0761
aclu.org

National Office
125 Broad Street
18th Floor
New York NY 10014
(212)549-2660
aclu.org

This information also covers the following information from the sections labeled ENRL-1 through ENRL-3b at pages 14–17 in the “2017-18 Civil Rights Data Collection – School Form” document

<https://www2.ed.gov/about/offices/list/ocr/docs/2017-18-crdc-school-form.pdf>).

2. School discipline data required to be collected for 2017-18 and reported to the OCR for the federal CRDC survey. Please provide for each district the information covering the following required reporting elements:

Student Discipline (Referrals to Law Enforcement & School-Related Arrests)

- Discipline of Students Without Disabilities - Referred to Law Enforcement Agency
- Discipline of Students Without Disabilities - School-Related Arrest
- Discipline of Students With Disabilities - Referred to Law Enforcement Agency
- Discipline of Students With Disabilities - Referred to Law Enforcement Agency

Restraint & Seclusion

- Non-IDEA Students Subjected to Restraint or Seclusion - Mechanical Restraint
- Non-IDEA Students Subjected to Restraint or Seclusion - Physical Restraint
- Non-IDEA Students Subjected to Restraint or Seclusion - Seclusion
- IDEA Students Subjected to Restraint or Seclusion - Mechanical Restraint
- IDEA Students Subjected to Restraint or Seclusion - Mechanical Restraint
- IDEA Students Subjected to Restraint or Seclusion - Seclusion
- Instances of Restraint or Seclusion

This information covers all information from the sections labeled ARRS at pages 90–92 and RSTR at pages 103–107 in the “2017-18 Civil Rights Data Collection – School Form” document.

3. Staffing data required to be collected for 2017-18 and reported to the OCR for the federal CRDC Survey. Please provide for each district the information covering the following required reporting elements:

Teachers and other Personnel (funded with federal, state, and/or local funds)

- Number of FTE school counselors.
- Number of FTE psychologists.
- Number of FTE social workers.

- Number of FTE nurses.
- Number of FTE security guards.
- Number of FTE sworn law enforcement officers (including school resource officers).

This information also covers the following information from sections labeled STAF-4, STAF-5 and SECR-1 at pages 58–61 in the “2017-18 Civil Rights Data Collection – School Form” document.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive records be provided electronically in the public-use version that OCR typically issues to the public for the CRDC. For each of the above requests, please disaggregate the data exactly as required by OCR and in the same manner. However, we also request that the data for the students suspended out of school just once be combined with those students suspended more than once, especially where combining these mutually exclusive categories will overcome the need to redact information to avoid the disclosure of personally identifiable information.

Generally speaking, we request the same data submitted to OCR and request that OCR use the minimum degree of redaction and/or rounding of numbers to safeguard our request from containing personally identifiable information and to conform with all federal and state privacy protection requirements. To reiterate, we do not request the researchers’ version of the data, but rather the public-use version of the data.

We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this request would require ED to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293–94 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied in whole or in part, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any specific exemptions to FOIA that were relied upon.

II. Fee Waiver/Limitation Request

We agree to pay search, duplication, and review fees up to \$100.00. If the fees will amount to more than \$100.00, we request a fee waiver on the grounds that disclosure of the requested records is in the public interest. The disclosure of the records is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requesters. 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 34 C.F.R. § 5.33(a).

Disclosure pursuant to this request is in the public interest. The records pertain directly to the operations and activities of the federal government; the information to be learned from the requested documents is not already public knowledge; and disclosure will contribute to the public good in a significant way because the requested records, which are related to ED's authority to "collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights," 20 U.S.C. § 3413(c)(1), concern the operations of a federal agency.

Additionally, disclosure of the information requested is in neither the ACLU's nor CCRR's commercial interest. Any information disclosed to the ACLU and CCRR as a result of this FOIA request will be made available to the public at no cost. The ACLU is "a non-profit, non-partisan, public interest organization." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003) (citation omitted). CCRR is an initiative of the UCLA Civil Rights Project/Proyecto Derechos Civiles, which is co-directed by two UCLA professors and housed in the UCLA Graduate School of Education & Information Studies. Additionally, the purpose of the request is to monitor and vindicate legal rights; it is unrelated to business, trade, or profit. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See id.* at 1312 ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," but that "in practice, the Freedom of Information Act has not always lived up to the ideals of that Act" (citation omitted)).

Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU. *See, e.g., Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 290 (D. Conn. 2012) (finding that the ACLU Women's Rights Project—a sister project of the ACLU Disability Rights Program—was entitled to a public interest fee waiver for records relating to the military's response to sexual violence). In fact, ED waived fees for a similar request submitted by the ACLU in October 2019.¹

We also request a waiver of search and review fees on the grounds that the CCRR qualifies as an "educational institution," 34 C.F.R. § 5.31(d) and the ACLU qualifies as a "representative of the news media." 34 C.F.R. § 5.31(f). Accordingly, fees associated with the processing of this request should, at most, be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 34 C.F.R. § 5.32(b)(1)(ii).

The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); 34 C.F.R.

¹ Letter from Shahanga Lee, Gov't Info. Specialist, U.S. Dep't of Educ., to Rebecca Ojserkis, Legal Fellow, Am. Civil Liberties Union (Oct. 18, 2019) (granting a fee waiver for FOIA Request No. 20-00122-F).

§ 5.31(f); *see also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n. 5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in the dissemination of information”); *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of FOIA).

The ACLU regularly gathers information on issues of public significance (including information gathered through FOIA requests), and uses its editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials. It distributes these materials to the general public through various channels, such as its heavily subscribed website (www.aclu.org), a newsletter sent to more than 1.2 million members, and an electronic newsletter, which is distributed to subscribers by email. Because of these activities, fees associated with responding to FOIA requests are regularly waived for the ACLU.² *See, e.g., Serv. Women's Action Network*, 888 F. Supp. 2d at 287–88 (finding that the ACLU Women's Rights Project—a sister project of the ACLU Disability Rights Program—is a representative of the news media).³

The CCRR meets the statutory and regulatory definitions of an “educational institution” because it is part of the University of California, Los Angeles' Graduate School of Education & Information Studies—“an institution of graduate higher education.” 5 U.S.C. § 552(a)(4)(A)(ii); 34 C.F.R. § 5.31(d). CCRR “conducts new research to identify problems or issues with educational policy or its implementation” and “provides ongoing empirical analysis and annual reporting at the federal, state and district levels to demonstrate the size and relevance of the problem and to equip agents of change with the data tools they need to put in place and then monitor effective remedies.” Center for Civil Rights Remedies page at <https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/front-matter>. Daniel Losen, a co-requester in the present FOIA request, is the Director of CCRR and “authorized [this] request.” 34 C.F.R. § 5.31(d). CCRR also seeks to obtain the requested records from the CRDC to “further scholarly research,” 34 C.F.R. § 5.31(d), as it has previously published reports using data from the 2015-16 and 2013-14 data collections. *See* Daniel J. Losen, et al., *The Striking Outlier: The Persistent, Painful*

² For example, the Department of Housing and Urban Development granted a fee waiver to the ACLU for a FOIA request filed in April 2008. The ACLU subsequently posted the response to this FOIA request on its website at <https://www.aclu.org/other/aclu-foia-request-and-hud-response-regarding-huds-implementation-violence-against-women-act?redirect=cpredirect/38690>. The Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in 2006. The Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003.

³ Following the court's grant of this fee waiver, the ACLU Women's Rights Project co-published a report based on the FOIA production, entitled *Battle for Benefits: VA Discrimination Against Survivors of Military Sexual Trauma* (2013), and made the production available at <https://www.aclu.org/battle-benefits-va-discrimination-against-survivors-military-sexual-trauma>.

and Problematic Practice of Corporal Punishment in Schools (2019) (primarily relying on the 2013-14 collection); Daniel J. Losen and Amir Whitaker, *11 Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools* (2018) (primarily relying on the 2015-16 collection). Further, CCRR's request is not a commercial use request, as it is not "for the purpose of affecting [its] application for, or prospect of obtaining, new or additional grants, contracts, or similar funding." 34 C.F.R. § 5.31(d). CCRR intends to use the data from this FOIA request to further its scholarly research with the goal of producing new reports to the public based on data from the 2017-18 data collection.

Finally, pursuant to the applicable regulations and statute, we expect the determination of this request for documents within 20 working days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 34 C.F.R. § 5.21(c). We reserve the right to appeal a decision to respond without any information or to deny a waiver of fees. We also would consider our request fulfilled if the requested data is posted on the CRDC website for public access within 20 working days.

Thank you for your prompt attention to this matter. If you have any questions, please feel free to reach me at wresendes@aclu.org or (415) 343-0761. The records should be sent electronically to both West Resendes and Daniel Losen.

Dated: July 9, 2020

Sincerely,



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/s/

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