



www.nsba.org
Phone: 703.838.NSBA Fax: 703.683.7590
1680 Duke Street Alexandria, Virginia 22314 -3493

January 3, 2014

Via Electronic Submission

www.regulations.gov

Stephanie Valentine, Acting Director
Information Collection Clearance Division
Office of Management
U.S. Department of Education
400 Maryland Avenue, S.W.
LBJ Room 2E105
Washington, D.C. 20202-4537

Re: ED Second Notice of Information Collection
Docket ID: ED-2013-ICCD-0079
Title of Collection: Mandatory Civil Rights Data Collection
OMB Control Number: 1870-NEW

To the ICCD Director:

The National School Boards Association (NSBA), representing through our state associations approximately 13,800 school districts nationwide, offers its comments to the Second Notice, *Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection*, ED-2013-ICCD-0079,¹ issued by the U.S. Department of Education (Department) on December 4, 2013. NSBA understands that through this Second Notice, the Department continues to seek approval from the Office of Management and Budget (OMB) to permit the Department's Office for Civil Rights (OCR) to make its mandatory civil rights data collection (CRDC) for the 2013-14 and 2015-16 school years a separate data collection from ED*Facts*.

As the Department states in its Second Notice, the purpose of the 2013-14 and 2015-16 CRDC is to "obtain vital data related to the civil rights laws requirement that public local educational agencies (LEAs) and elementary and secondary schools provide equal educational opportunity."² However, in reviewing the Second Notice, OCR's Response to Comments, and OCR's supporting documents,³ NSBA continues to identify several areas of concern with regards to certain proposed new data groups and data categories, as well as proposed revisions to existing data groups and data categories.

¹ Notice, 78 Fed. Reg. 72,872 (Dec. 4, 2013).

² 78 Fed. Reg. at 72,873.

³ References to Attachments and Supporting documents refer to those included with the electronic file attached to the Second Notice to ED-2013-ICCD-0079, and are not included with NSBA's comment submission.

I. Overview of Areas of Concern Raised by the Second Notice

OCR has provided a very short window within which to submit comments on the Second Notice, as discussed in Section II. Consequently, what follows here for your consideration is an overview of the more significant areas of OCR's proposed expansion of the CRDC with which NSBA is concerned. NSBA intends to file more detailed comments early next week that identify the specific concerns raised and challenges the proposed expanded data categories and data groups will create for LEAs across the country.

NSBA continues to believe there is questionable statutory and regulatory authority that allows OCR to require the submission of data for items and categories that are not connected to civil rights enforcement, have any civil rights implications for students, or impact the provision of equal educational opportunities to students under the five specific statutes (Title VI, Title IX, Section 504, Title II/ADA, and the Age Discrimination Act) for which OCR has investigative authority and are the bases of OCR's mission. NSBA is also concerned about OCR's expanding view of their authority to require school districts to collect and report non-civil rights-related data on behalf of other offices in ED which do not have such authority of their own, and may involve conduct or information that is not relevant to the programs operated by such other ED offices.

NSBA continues to find troublesome OCR's definition of "expulsion", which it states is only for purposes of the CRDC, in terms that may be contrary to state law. Such a step would seem to require school districts to begin keeping two separate recordkeeping systems: one for disciplinary actions as defined by state law, and one for how OCR defines items for purposes of the CRDC. This runs against OCR's stated goal of attempting to find ways to reduce the reporting burden to be placed on school districts. Also, this could result in an over-reporting of the actual number of true expulsions of students taking place. These counts could be misleading to the public who review such data, and other agencies and ED offices that rely on those counts for various purposes.

NSBA continues to believe that the inquiries regarding incidents of misconduct will lead to an over-reporting and, in some cases, double- (or more) counting of incidents. Again, this information could be misleading to the public, and create a situation in which a school or school district may appear to be less safe than it actually is.

Based on the section of its Response to Comments regarding harassment or bullying, NSBA is concerned that OCR has further expanded its view of the reach of Title VI and Title IX with regards to such conduct being motivated by a student's religion and/or perceived sexual orientation (which is now going to include gender identity, gender expression, and nonconformity with gender stereotypes, as just announced for the first time in the Response to Comments made available with the December 2013 publication of the Second Notice). NSBA remains concerned about school staff having to determine a harasser's/bully's motive for such misconduct to know which situations to report, the additional (and likely manual) reporting that school staff will now have to input into student records to begin tracking such incidents, and the resulting (likely manual) file review that will have to occur to collect the counts of such incidents. Again, this seems to run counter to OCR's goal of reducing the reporting burden of already financially-strapped, under-staffed school districts.

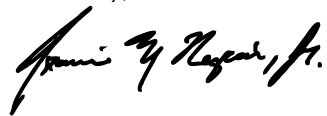
II. An Additional Comment Period Should Be Provided, Because the Winter Comment Period Allowed for the Second Notice is Not Sufficient.

NSBA appreciates OCR's efforts to obtain feedback from the federal funds recipients who will be directly impacted by the significant (and legally unsupported) expansion of categories of data and information for the upcoming two civil rights data collections. However, like the First Notice, the Second Notice has not provided the affected parties with sufficient time to compile the necessary information to respond thoroughly. In its Response to Comments, OCR responded to concerns raised about the Summer 2013 publication of the First Notice occurring "when many LEAs may be on summer break without staff to monitor and review notices from the Federal Register."⁴ OCR further stated that "a second 30-day public comment period would take place when many school districts were back in session."⁵ However, this statement has proven not to be accurate.

The Second Notice was published in the Federal Register on Wednesday, December 4, 2013, with a closing date of Friday, January 3, 2014.⁶ Most of the over 13,800 public school districts were closed for the Winter Break from approximately Monday, December 23, 2013, through Friday, January 3, 2014. During this two-week period, school buildings and administrative offices were closed, and the requisite school staff members, and access to relevant files and data, needed to compile information and draft comments to the Second Notice were not available. Thus, in actuality, OCR provided public school districts with only 13 business days or 19 calendar days, between December 4th (Wednesday) and 22nd (Sunday), within which to draft and submit comments related to the Second Notice. NSBA recommends that OCR provide the public with a third 30-day comment period that takes place when LEAs are in session to allow them to submit their detailed responses.

NSBA thanks the Department and OMB for their review and consideration of issues preliminarily raised here, and in the more detailed comments NSBA intends to submit early next week, regarding OCR's request for OMB's approval to expand the scope of the Civil Rights Data Collection.

Sincerely,



Francisco M. Negrón, Jr.
General Counsel
National School Boards Association

cc: Catherine Lhamon, Esq., Assistant Secretary for Civil Rights, U.S. Department of Education
(via electronic mail at Catherine.Lhamon@ed.gov)

⁴ Attachment B to Second Notice, p. B-12.

⁵ Attachment B to Second Notice, p. B-12.

⁶ Second Notice, 78 Fed. Reg. 72,872 (Dec. 4, 2013).