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September 8, 2025

Submitted via Federal eRulemaking Portal and email

The Honorable Linda McMahon
Secretary of Education
The Honorable Craig Trainor
Acting Assistant Secretary for Civil Rights
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

RE: Comments on Proposed Revisions to the 2025-2026 and 2027-2028 Civil Rights Data Collection, Docket No. ED-2024-SCC-0128, OMB Control No. 1870-0504

Dear Secretary McMahon and Acting Assistant Secretary Trainor:

We, the Attorneys General of California, Illinois, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington (States) write today to oppose the United States Department of Education, Office for Civil Rights' (OCR) proposal to retire and revise certain data elements for the 2025-2026 and 2027-2028 Civil Rights Data Collections (CRDC).¹ We also write to support the addition of certain proposed data elements to the 2025-2026 and 2027-2028 CRDCs.

The CRDC is the largest and, for many data elements, the only source of nationwide publicly available data about civil rights in elementary and secondary public schools. OCR and other federal agencies, policymakers, researchers, educators, and school officials use the data to analyze student equity and opportunity in education. The CRDC is vital to this type of analysis because it contains data from nearly every school and state and local education agency, allowing "[u]sers [to] search for data on a specific school or district, analyze the data using the available online data analysis tools, and create data reports."² The ability to compare data from state to

¹ Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection, 90 Fed. Reg. 150, 38137 (Aug. 7, 2025).

² Nat'l Forum on Educ. Statistics, *Forum Guide to Reporting Civil Rights Data* (Jan. 2018), <https://nces.ed.gov/pubs2017/NFES2017168.pdf> (last visited Sept. 3, 2025).

state or among school districts is critically important to evaluating outcomes, determining best practices, identifying potential civil rights compliance issues, and ensuring progress toward equitable education systems across the nation.

The data elements that OCR now proposes to retire—related to nonbinary students and harassment and bullying on the basis of gender identity and sex characteristics—are particularly critical. Nonbinary and transgender students are especially vulnerable to school-based harassment and bullying, and to the harmful effects of such harassment. Failure to collect this information will not only impede efforts to understand and ameliorate these harms but will also increase burdens on states that appropriately identify certain students as nonbinary and include harassment on the basis of gender identity in their count of incidents of harassment based on sex. Moreover, removing this information from the data the CRDC collects is neither required by nor consistent with Title IX of the Education Amendments of 1972’s³ mandate that educational institutions protect all students from sex-based harassment.

In this comment, the States urge OCR to:

- Retain the “nonbinary” sex category with respect to all data elements disaggregated by sex;
- Retain data elements about harassment or bullying of students on the basis of gender identity;
- Retain the definitions of “nonbinary” and “harassment or bullying on the basis of gender identity”; and
- Retain the current definitions of “harassment on the basis of actual or perceived sex,” “rape,” and “sexual assault.”

We oppose these proposed changes, because they would burden state and local education agencies (SEAs and LEAs) and school districts, they undermine OCR’s mandate to protect the civil rights of all students, and they are contrary to law.

The States support the addition of the new data elements on the following topics introduced in the information collection request (ICR), and we encourage OCR to implement them as proposed:

- Informal removals;
- Non-LEA facilities, including instances of restraint or seclusion of students in non-LEA facilities;
- Threat assessments;
- Bilingual teacher certification; and
- Remote instruction not tied to the COVID-19 pandemic.

These proposed additions will enhance the CRDC and serve OCR’s mandate to protect all students’ civil rights.

³ 20 U.S.C. §§ 1681-1683 (Title IX).

I. The Proposed Changes Will Harm Gender Diverse Students, Who Face an Increased Risk of Bullying and Harassment.

The proposed removal of data elements related to nonbinary students and to harassment and bullying on the basis of gender identity will harm already-vulnerable student populations by stigmatizing them and failing to bring to light instances of gender identity-based bullying and harassment. Failing to collect data that OCR recently viewed as necessary⁴ sends a clear message to nonbinary and gender diverse students that their health and safety, and any bullying and harassment they experience based on gender identity, does not matter. But the States, and OCR, know this is not true.

Nationwide, LGBTQ+ students experience verbal and physical harassment and bullying at rates disproportionate to their non-LGBTQ+ peers.⁵ For example, 75 percent of transgender students reported feeling unsafe at school because of their gender identity, compared to 32 percent and 23 percent of cisgender male and female students, respectively.⁶ Over half of LGBTQ+ students reported verbal harassment at school based on their gender identity, and more than one-fifth reported physical harassment at school based on their gender identity.⁷ Further, over half of LGBTQ+ students reported experiencing sexual harassment at school, such as unwanted touching or sexual remarks at school.⁸ The CDC recently reported that approximately 25 percent of transgender and questioning students missed school because they felt unsafe in the previous 30 days, compared to only 8.5 percent of cisgender male students and 14.9 percent of cisgender female students.⁹

⁴ See, e.g., U.S. Dep’t of Educ., Office for Civil Rights, *Civil Rights Data Collection, Resource Document: Reporting Nonbinary (NBIN) for K-12 Students* (Revised Dec. 11, 2024), p. 1, https://crdc.communities.ed.gov/sites/default/files/2024-12/Reporting%20Nonbinary%20for%20K-12%20Students_0.pdf (last visited Sept. 3, 2025) (“OCR believes that the inclusion of a nonbinary value for the sex category would allow OCR to capture data that would provide a greater understanding of the experiences of K-12 nonbinary students and would help to further OCR’s mission to enforce Title IX’s prohibition on discrimination on the basis of sex, which includes discrimination based on sexual orientation and gender identity.”).

⁵ See, e.g., Amy L. Gower, et al., *Bullying Victimization Among LGBTQ Youth: Critical Issues and Future Directions*, 10 *Current Sexual Health Reports* 246, 246–254 (2018).

⁶ See Jack K. Day, et al., *Safe Schools? Transgender Youth’s School Experiences and Perceptions of School Climate*, 47 *J Youth & Adolescence* 1731, 1731–1742 (2018); see also, The Trevor Project, *The Trevor Project Research Brief: Bullying and Suicide Risk Among LGBTQ Youth* (October 2021), <https://www.thetrevorproject.org/wp-content/uploads/2021/10/The-Trevor-Project-Bullying-Research-Brief-October-2021.pdf> (last visited Sept. 3, 2025) (“Oct. 2021 Trevor Project Research Brief”).

⁷ GLSEN, *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation’s Schools* (2022), p. 19, <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf> (last visited Sept. 4, 2025).

⁸ *Id.* at 22.

⁹ Suarez, et al., *CDC Morbidity and Mortality Weekly Report: Disparities in School Connectedness, Unstable Housing, Experiences of Violence, Mental Health, and Suicidal Thoughts and Behaviors Among Transgender and Cisgender High School Students – Youth Risk Behavior Survey, United States, 2023* (Oct. 10, 2024), https://www.cdc.gov/mmwr/volumes/73/su/su7304a6.htm?s_cid=su7304a6_w%0b%0b (last visited Sept. 3, 2025).

Gender diverse students are particularly vulnerable to bullying and harassment. Indeed, while LGBTQ+ students in general face higher rates of bullying and harassment than non-LGBTQ+ students, the risks for transgender and gender diverse students are particularly high. Of all LGBTQ+ students, transgender and nonbinary students report higher rates of bullying (61 percent) compared to those who are cisgender (49 percent).¹⁰

Bullying and harassment based on gender identity have significant consequences not only for bullied and harassed students, but also for the broader school community. Bullying and harassment impacts students' interest in and success at school. LGBTQ+ students who experienced higher levels of discrimination, harassment, and bullying because of their gender identity were almost three times more likely to have missed school in the past month, felt lower levels of belonging to their school community, performed poorer academically, and were twice as likely to report that they did not plan to pursue any post-secondary education than those who experienced lower levels of discrimination, harassment, and bullying.¹¹ Across gender identities, 32 percent of transgender and nonbinary youth who were bullied attempted suicide compared to 14 percent who were not bullied, while 19 percent of cisgender LGBTQ+ youth who were bullied attempted suicide compared to 7 percent who were not.¹² Another study showed that states that passed anti-transgender laws aimed at minors, such as laws excluding transgender youth from school activities consistent with their gender identity, saw suicide attempts by transgender and gender diverse teenagers increase by as much as 72 percent in the following years.¹³

Although this is a pervasive problem, transgender and nonbinary students who attend schools that affirm their gender identity report lower rates of bullying than those in schools that do not.¹⁴ Indeed, for *all* students, a school's support for a student's social, emotional, and physical safety is necessary to enhancing learning and development.¹⁵ This is particularly true for LGBTQ+ youth. Fostering an inclusive environment for LGBTQ+ students is associated with less bias-based bullying, more positive perceptions of school safety, and improved academic achievement.¹⁶ Moreover, schools that afford affirming environments report lower rates of

¹⁰ Oct. 2021 Trevor Project Research Brief, *supra*, note 5.

¹¹ GLSEN, *The 2021 National School Climate Survey*, at xviii-xix, *supra*, note 6.

¹² Oct. 2021 Trevor Project Research Brief, *supra*, note 5.

¹³ Wilson Y. Lee et al., *State-Level Anti-Transgender Laws Increase Past-Year Suicide Attempts Among Transgender and Non-Binary Young People in the USA*, 8 *Nature Hum. Behaviour* 2096, (Sept. 26, 2024).

¹⁴ Oct. 2021 Trevor Project Research Brief, *supra*, note 5; *see also* The Trevor Project, *National Survey on LGBTQ Youth Mental Health 2021*, <https://www.thetrevorproject.org/survey-2021/?section=Introduction> (last visited Sept. 3, 2025) ("LGBTQ youth who had access to spaces that affirmed their sexual orientation and gender identity reported lower rates of attempting suicide.").

¹⁵ Samantha A. Moran et al, *LGBTQ+ Youth Policy and Mental Health: Indirect Effects Through School Experiences*, 35 *J. Res. Adolesc.* 1 (Dec. 29, 2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11682966/> (last visited Sept. 3, 2025).

¹⁶ *Id.*

transgender and nonbinary students attempting suicide.¹⁷ Inclusive educational environments are more conducive to learning and development for all students.

The CRDC is a critical resource and useful tool for identifying disparities that may reflect discriminatory school practices. With CRDC data in hand, school administrators, parents, and advocates can evaluate trends that may reflect discriminatory practices and adjust school policies and procedures to prevent discrimination, improve school climate, and foster a more equitable and inclusive environment for all students. As discussed above, such changes promote positive health and educational outcomes for LGBTQ+ students. Moreover, tracking data about the experiences of transgender and nonbinary students—and encouraging districts to do the same—not only enables gender diverse youth to share their identity and experiences, but also creates a better understanding of health and educational access disparities.¹⁸ OCR’s proposal to remove the identified data elements will exacerbate the harms already faced by nonbinary and gender non-confirming youth, and it will leave parents, districts, and advocates without a necessary tool to identify, address, and prevent discrimination.

II. The Proposed Retirement of Nonbinary, Gender Identity Definitions and Data Elements Departs from Past Data Collections Without a Reasoned Basis.

In recognition of the critical importance of this information, OCR has collected data on nonbinary students and gender identity-based harassment and bullying since the 2021-2022 CRDC.¹⁹ In its supporting statement for that collection, OCR explained that it introduced the nonbinary category in order to “capture data that would provide a greater understanding of the experiences of nonbinary students” and “further OCR’s mission to enforce Title IX’s prohibition on discrimination on the basis of sex, which includes discrimination based on sexual orientation and gender identity.”²⁰

OCR’s well-considered decision to capture this data aligned with the large majority of stakeholders in the public comment process who supported its inclusion, many of whom explained relevant benefits.²¹ For example, some commenters reported that the absence of a

¹⁷ The Trevor Project, *2024 U.S. National Survey on the Mental Health of LGBTQ+ Young People*, <https://www.thetrevorproject.org/survey-2024/> (last visited Sept. 3, 2025).

¹⁸ Society for Research in Child Development, *Statement of the Evidence, Gender-Affirming Policies Support Transgender and Gender Diverse Youth’s Health* (January 2022), <https://www.srcd.org/sites/default/files/resources/SRCD%20SOTE-Gender%20Affirming%20Policies%202022.pdf> (last visited Sept. 3, 2025).

¹⁹ U.S. Dep’t of Educ., Office for Civil Rights, *2021-22 Civil Rights Data Collection, A First Look: Students’ Access to Educational Opportunities in U.S. Public Schools* (Jan. 2025), p. 4, <https://www.ed.gov/media/document/2021-22-crdc-first-look-report-109194.pdf> (last visited Sept. 3, 2025).

²⁰ U.S. Dep’t of Educ., Office for Civil Rights, *Mandatory Civil Rights Data Collection, December 2021, Supporting Statement, Part A: Justification*, p. 9, <https://www.regulations.gov/document/ED-2021-SCC-0158-0042> (last visited Sept. 3, 2025).

²¹ U.S. Dep’t of Educ., Office for Civil Rights, *Mandatory Civil Rights Data Collection, September 2022 Attachment B: CRDC Data Set for School Years 2021–22 and 2023–24: Response to First Round Public Comment*, p. 36.

nonbinary category in the past led to problematic data collection practices, including misgendering of students and inaccurate data.²² Others explained that the lack of a nonbinary category increased the reporting burden on LEAs because of the discrepancy with their internal recordkeeping.²³ Some commenters explained the importance of including sex characteristics in the proposed definition of harassment or bullying on the basis of sex for the collection of data on the experiences of intersex students.²⁴

Consistent with these comments, in the 2021-2022 CRDC, LEAs and schools in 39 states and the District of Columbia reported nonbinary student enrollment data.²⁵ OCR continued data collection on nonbinary students and gender identity-based harassment for the 2023-2024 CRDC.²⁶ In October 2024, OCR released its initial ICR for the 2025-2026 and 2027-2028 CRDCs.²⁷ At that time, OCR reported “that in more than a dozen states, at least 10 LEAs collect nonbinary data and have at least 1 nonbinary student.”²⁸ OCR commented that “[b]y requiring LEAs and schools that collect nonbinary data and have at least one nonbinary student to complete questions that disaggregate by three sex categories (male, female, nonbinary), OCR can monitor the expansion of the use of the category and the growth of the number of students who identify as nonbinary.”²⁹

However, OCR withdrew the ICR on February 10, 2025.³⁰ When it was republished on August 7, 2025, OCR proposed to end the collection of data on nonbinary students and cease the collection of data on bullying and harassment on the basis of gender identity and sex characteristics, purportedly to align with Executive Order 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” and the 2020 Title IX regulations.³¹ Specifically, OCR proposes to (1) retire from the 2025-2026 and 2027-2028 CRDCs the definitions of “nonbinary” and “harassment or bullying on the basis of gender identity;” (2) end data collection on nonbinary students with respect to multiple data

²² *Id.*

²³ *Id.*; see also *infra* at (III).

²⁴ *Mandatory Civil Rights Data Collection, September 2022 Attachment B: CRDC Data Set for School Years 2021–22 and 2023–24: Response to First Round Public Comment, supra*, note 20, at 37.

²⁵ *2021-22 Civil Rights Data Collection, A First Look: Students’ Access to Educational Opportunities in U.S. Public Schools, supra*, note 18, at 4. At that time, only school districts that already collected data about nonbinary student enrollment were required to report the data.

²⁶ In a resource document last revised in December 2024, OCR provided guidance to LEAs and schools on how to report data on nonbinary students. *Civil Rights Data Collection, Resource Document, Reporting Nonbinary (NBIN) for K-12 Students, supra*, note 3.

²⁷ Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection, 89 Fed. Reg. 201, 83671 (Oct. 17, 2024).

²⁸ U.S. Dep’t of Educ., Office for Civil Rights, *Mandatory Civil Rights Data Collection, October 2024, Supporting Statement, Part A: Justification*, p. 15, [ED-2024-SCC-0128-0002 attachment 1.pdf](#) (last visited Sept. 3, 2025).

²⁹ *Id.* at 15-16.

³⁰ U.S. Dep’t of Educ., Office for Civil Rights, *Mandatory Civil Rights Data Collection, July 2025, Supporting Statement, Part A: Justification*, p. 1.

³¹ *Id.*

elements; (3) end information collection on the number of reported allegations of harassment or bullying on the basis of gender identity; (4) cease collecting information on policies prohibiting harassment and bullying on the basis of gender identity; and (5) remove “gender identity” from data elements regarding harassment and bullying, rape, and sexual assault.³²

In essence, the proposed changes will have the effect of erasing the gender identities of students who do not identify as male or female and of failing to capture incidents of harassment, bullying, rape, and sexual assault because of a student’s gender identity. The benefits of more accurate data and better aligned state and federal recordkeeping reported by commenters will be lost. And OCR and other stakeholders will be impeded in their ability to monitor or effectively address incidents of harassment and bullying based on gender identity or sex characteristics.

Unlike the well-reasoned decision to include these data elements and definitions, OCR’s proposal to retire them is not tied to its mandate under Title IX or grounded in the needs of LEAs and other stakeholders. The proposed changes are explained only by a brief mention of Executive Order 14168 and a reference to the 2020 Title IX Final Rule—which, as discussed *infra*, does not support the proposed changes.³³ The proposal to cease collection of data on nonbinary students and discrimination based on gender identity is inadequately explained and undermines OCR’s mission to enforce Title IX’s prohibition against discrimination on the basis of sex.

III. The Proposed Changes Burden LEAs and Schools that Collect Data on Nonbinary Students and Bullying and Harassment on the Basis of Gender Identity.

As demonstrated in the 2021-2022 CRDC, the majority of states have at least some LEAs and schools that record the gender identity of students who identify as nonbinary. Several states, including California, require LEAs and schools to record a student’s gender identity, and consider harassment and bullying on the basis of sex to include harassment and bullying on the basis of a student’s gender identity. The proposed changes will burden LEAs and schools in these states by requiring them to either individually review and recode data for each student identified as nonbinary, leading to inaccurate gender designations, or to omit the data altogether, erasing these students from every data element in the CRDC disaggregated by sex. Likewise, in states such as California, Illinois, Colorado, Massachusetts, New Jersey, New York, Vermont, and Washington that recognize that discrimination on the basis of sex includes discrimination on the basis of gender identity, LEAs and schools will need to review and recode each instance of bullying or harassment on the basis of sex to identify those instances where a student is discriminated against on the basis of their gender identity.

California law specifically prevents discrimination against students on the basis of their gender identity and gender expression³⁴ in any activity conducted by educational institutions that

³² *Id.* at 11-13.

³³ *Id.* at 1.

³⁴ Gender expression is defined as “a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.” Cal. Educ. Code § 210.7 (2025).

receive state funding.³⁵ California schools are required to “create an equitable learning environment where all pupils, including” LGBTQ+ pupils, “feel welcome.”³⁶ Further, California law authorizes applicants for driver’s licenses and identification cards to identify as male, female, or nonbinary to conform with their gender identification.³⁷ As a result, nonbinary Californians, including students, may be officially designated as nonbinary on state government identification documents. When a person files a petition with the superior court to seek a judgment recognizing a change of gender to nonbinary, if requested, the judgment also will include an order that a new birth certificate be prepared for the person reflecting the change.³⁸ When students are enrolled in school, the LEA is required to accept the gender identity on the student’s new birth certificate.³⁹ As such, the California’s Longitudinal Pupil Achievement Data System (CALPADS) also allows schools and LEAs to report any of the three genders which are allowed on California birth certificates to ensure data are reported for all students. And LEAs in California are required to adopt policies protecting students from discrimination, harassment, intimidation, and bullying based on gender, gender identity, and gender expression.⁴⁰ Harassment or bullying on the basis of a student’s gender identity is considered to be harassment or bullying on the basis of a student’s sex.

Other states similarly require schools to adopt policies and procedures to prohibit and address discrimination, harassment, and bullying of students on the basis of gender identity.⁴¹

³⁵ Cal. Educ. Code § 220 (2025).

³⁶ Cal. Educ. Code § 202(c) (2025).

³⁷ Cal. Veh. Code §§ 12800 (2025), 13005 (2025).

³⁸ Cal. Health & Safety Code § 103425 (2025).

³⁹ See The California Longitudinal Pupil Achievement Data System (CALPADS), the data collection program of the California Department of Education (CDE). The CDE issued guidance to LEAs on their responsibilities to comply with the Gender Recognition Act. See California Department of Education – CALPADS Team, *CALPADS Update Flash #137* (Jun. 18, 2018), https://www.schooldataleadership.org/images/easyblog_articles/1018/calpadsupdf137.pdf (last visited Sept. 4, 2025). Update Flash #137 explained that the CALPADS system recognizes three gender options: male, female, and nonbinary. *Id.* at 2.

⁴⁰ Cal. Educ. Code § 234.1 (2025).

⁴¹ See also Colo. Rev. Stat. § 24-34-601(2)(a) (2025), Colo. Rev. Stat. § 22-1-143 (2025), Colo. Rev. Stat. § 22-1-143 (2025); Mass. Gen. Laws Ch. 76 § 5 (“No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, gender identity, religion, national origin or sexual orientation.”); 603 Mass. Code Regs. 26.00 *et seq.* (specifically 603 Mass. Code Regs. 26.07(2) (“All public schools shall strive to prevent harassment or discrimination based upon students’ race, color, sex, gender identity, religion, national origin or sexual orientation, and all public schools shall respond promptly to such discrimination or harassment when they have knowledge of its occurrence.”); N.J. Stat. Ann. § 10:5-12(f)(1) (2025) (prohibiting discrimination and harassment on the bases of gender identity and gender expression, including in schools); N.J. Stat. Ann. § 18A:37-14 (2025) (defining harassment, intimidation, or bullying to include acts motivated by gender identity and expression); N.J. Admin. Code § 6A:16-6.2(b) (2025) (requiring school districts to adopt policies and procedures to respond to harassment, intimidation, or bullying); 9 Vt. Stat. Ann. § 4501, *et seq.* (2025) (Vermont Fair Housing and Accommodations Act); 16 Vt. Stat. Ann. § 11(a)(26) (defining harassment); 16 Vt. Stat. Ann. § 570 (requiring school boards to develop, adopt, and ensure the enforcement of

Many states also recognize a nonbinary gender category in student records.⁴² Illinois, for example, fosters inclusive educational environments for LGBTQ+ youth, including by prohibiting discrimination, harassment, and bullying of elementary and secondary school students on the basis of actual or perceived gender identity.⁴³ All school districts, charter schools, and non-public, non-sectarian elementary and secondary schools in Illinois must adopt and implement a policy and procedures to address and prevent such discrimination, harassment, and bullying.⁴⁴ Illinois law requires that school districts, charter schools, and nonpublic, nonsectarian elementary or secondary schools follow specific data keeping and reporting

harassment, hazing, and bullying prevention policies); Wash. Rev. Code Ann. § 28A.642.010 (2025) (prohibiting discrimination based on gender identity in public schools); Wash. Rev. Code Ann. § 28A.642.080 (2025) (requiring each school district to adopt policies and procedures that, at a minimum, incorporate elements of the model transgender student policy and procedure to eliminate discrimination in Washington public schools on the basis of gender identity and expression); Washington Office of Superintendent of Public Instruction, *Gender-Inclusive Schools*, <https://ospi.k12.wa.us/policy-funding/equity-and-civil-rights/information-families-civil-rights-washington-schools/gender-inclusive-schools> (last visited Sept. 4, 2025); Washington Superintendent of Public Instruction, *Prohibiting Discrimination in Washington Public Schools, Guidelines for School Districts to Implement Chapters 28A.640 and 28A.642 RCW and Chapter 392-190 WAC* (Feb. 2012) https://ospi.k12.wa.us/sites/default/files/2023-08/prohibiting_discrimination_in_washington_public_schools_february2012revisedsep2019disclaimer_1.pdf (last visited Sept. 4, 2025); Washington Office of Superintendent of Public Instruction, *Bulletin No. 089-19 Legal Affairs, Re: New Requirements Related to Nondiscrimination Policies and Procedures* (Dec. 12, 2019), https://ospi.k12.wa.us/sites/default/files/2023-08/b089-19_0.pdf (last visited Dec. 12, 2019).

⁴² See also Colo. Rev. Stat. 25-2-113.8 (2025); N.J. Stat. Ann. § 26:8-40.12 (2025) (directing the State registrar to provide a form allowing a “person, or the person’s guardian” to “request for a change in gender to . . . undesignated/non-binary” on their birth certificate “to conform [their] legal gender to [their] gender identity”); N.J. Admin. Code § 6A:32-7.3 (2025) (requiring school records to include students’ gender); N.Y. Civ. Rights § 79-q(1) (requiring all state agencies that collect demographic information about a person’s gender to sex to make “X” an available option); N.Y. State Educ. Dep’t, *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* (2023), p. 29, <https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf>, (last visited Sept. 5, 2025) (noting the New York State Department of Education added “X” as a nonbinary option when reporting student gender”); Washington Office of Superintendent of Public Instruction, *Gender-Inclusive Schools*, <https://ospi.k12.wa.us/policy-funding/equity-and-civil-rights/information-families-civil-rights-washington-schools/gender-inclusive-schools> (last visited Sept. 4, 2025); Washington Superintendent of Public Instruction, *Prohibiting Discrimination in Washington Public Schools, Guidelines for School Districts to Implement Chapters 28A.640 and 28A.642 RCW and Chapter 392-190 WAC* (Feb. 2012) https://ospi.k12.wa.us/sites/default/files/2023-08/prohibiting_discrimination_in_washington_public_schools_february2012revisedsep2019disclaimer_1.pdf (last visited Sept. 4, 2025).

⁴³ See 775 Ill. Comp. Stat. 5/1-103(O-1), (Q) (2025). See also 775 Ill. Comp. Stat. 5/5-101(A)(11) (2025); 775 Ill. Comp. Stat. 5/5-102(A) (2025); 105 Ill. Comp. Stat. 5/27-23.7 (2025).

⁴⁴ 105 Ill. Comp. Stat. 5/27-23.7(a), (b) (explaining bullying includes harassment), and (d) (2025).

requirements about allegations of bullying, discrimination, harassment, and retaliation, including for allegations relating to a student's gender-related identity or expression.⁴⁵

Further, students in Illinois may change their birth certificates and other government identification documents to align with their gender identity, including an option to choose "X" as a nonbinary gender marker.⁴⁶ Consistent with these protections, many school districts in Illinois recognize the nonbinary gender category and collect and submit to the CRDC harassment and bullying data on the basis of sex that includes harassment and bullying on the basis of gender identity.

The proposed changes to the 2025-2026 and 2027-2028 CRDCs will burden the schools and LEAs of California, Illinois and similarly situated states. With the elimination of the nonbinary category in several data elements, schools and LEAs will be required to expend resources reviewing the records of nonbinary students. Schools and LEAs will then face the task of determining whether to assign a designation of "male" or "female" to a student who identifies as neither—contrary to state law—or whether to omit this student's record from any or all of the data elements disaggregated by sex. This will result in either a misidentification of a student's gender or in an undercount of students in any or all of the data elements disaggregated by sex in the CRDC. Additionally, schools and LEAs in states that define discrimination on the basis of sex to include discrimination on the basis of gender identity will be required to review each instance of harassment or bullying on the basis of sex in order to determine whether it falls within the modified definition of the CRDC. This will burden schools and LEAs and result in an undercount of instances of harassment and bullying on the basis of sex, undermining OCR's duty to enforce Title IX's prohibition on discrimination on the basis of sex.

OCR failed to account for the additional burden and costs that retiring the nonbinary category will impose on schools that recognize a nonbinary category in student records and data, as well as the additional burden and costs to schools and LEAs that include gender identity in the definition of discrimination on the basis of sex. Rather than estimating the costs associated with the labor-intensive process of reviewing all nonbinary student records and all allegations of harassment or bullying on the basis of sex and determining how to report such students in all data elements disaggregated by gender and how to report such allegations of harassment or bullying on the basis of gender identity, as described above, OCR wrongly asserts that because it "is proposing to discontinue more items than OCR is proposing to add," these changes will decrease the burden in time and the associated costs elementary and secondary schools will

⁴⁵ Illinois State Board of Education, *Racism-Free Schools Law and Bully Prevention Data Collection Guidance* (July 2025), <https://www.isbe.net/Documents/Memo-Field-Bullying-RSFA.pdf> (last visited Sep. 2, 2025); see also 105 Ill. Comp. Stat. 5/27-23.7(f) (2025).

⁴⁶ See 410 Ill. Comp. Stat. 535/17(1)(e); Ill. Adm. Code tit. 77, § 500.40(f)(3) (2025); see also Illinois Department of Public Health, *Gender Reassignment*, <https://dph.illinois.gov/topics-services/birth-death-other-records/birth-records/gender-reassignment.html> (last visited Sept. 2, 2025) (describing the process to change gender on an individual's birth certificate); Officer of the Secretary of State Driver Services Department, *Gender Designation Change Form*, https://www.ilsos.gov/publications/pdf_publications/dsd_a329.pdf (last visited Sept. 2, 2025) (driver's license or ID card Gender Designation Change Form).

experience in complying with the CRDC school survey.⁴⁷ To accurately estimate the total annual cost burden to respondents from this collection of information, OCR must revise its burden and cost estimates to account for the time and associated costs to schools in the many states that recognize a nonbinary category in student records and that define sex discrimination and harassment or bullying on the basis of sex as including gender identity.

Additionally, many states do not separately collect comprehensive data on nonbinary students and on harassment and bullying on the basis of gender identity and sex characteristics from their schools and LEAs, relying on the CRDC for this information. For example, California administers a biennial Healthy Kids Survey, requiring certain LEAs to survey their students on various topics, including bullying and harassment. This survey, however, is only mandatory for recipients of certain grant funds, is voluntary for students, and only surveys students in three grades. As such, California relies on the comprehensive data included in the CRDC to fully understand the scope and contours of bullying and harassment in the state's schools. If the CRDC is changed as proposed, states will be hampered in their efforts to understand the prevalence and contours of bullying and harassment on the basis of gender identity and sex characteristics in their schools and LEAs, impeding their ability to address these critical issues, enforce anti-discrimination laws, and protect vulnerable students.

IV. The Proposed Changes Are Not Required by Title IX and Are Contrary to Law.

The ICR asserts the 2020 Title IX Rule justifies removing data elements and definitions related to gender identity, sex characteristics, and nonbinary status. However, these proposed changes to the CRDC are not compelled by either Title IX itself or by the 2020 Title IX Rule. Indeed, they are inconsistent with Title IX and will impede the effective enforcement of Title IX's prohibition on discrimination on the basis of sex. Including gender identity and sex characteristics in the definition of bullying and harassment on the basis of sex is consistent with the principles articulated by the Supreme Court in *Bostock v. Clayton County*, 590 U.S. 644 (2020) and the case law interpreting *Bostock* to apply to Title IX. Moreover, failing to track these data elements will not only harm OCR, states, and LEAs that rely on this data to effectively protect all students from discrimination on the basis of sex, but may also cause some schools to misunderstand the scope of their duty to address sex discrimination in their education programs and activities.

A. Title IX prohibits sex discrimination against all students, including transgender and nonbinary students.

Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”⁴⁸ In May 2020, the United States Department of Education (the Department) promulgated Title IX regulations

⁴⁷ *Mandatory Civil Rights Data Collection, July 2025, Supporting Statement, Part A: Justification*, *supra*, note 29, p. 23.

⁴⁸ 20 U.S.C. § 1681 (2025).

which, although “presuppos[ing] sex as a binary classification”, ultimately “decline[d]” to define sex.⁴⁹ The Department updated its Title IX regulations in 2024 to explicitly include discrimination on the basis of gender identity and sex characteristics in the scope of discrimination on the basis of sex,⁵⁰ but the 2024 rule was later vacated and OCR now enforces the 2020 Title IX Rule.⁵¹

Although the ICR explains that the proposed changes were made in part “for consistency with the Trump Administration’s 2020 Title IX Rule,”⁵² nothing in the 2020 Title IX Rule supports the removal of data elements and definitions related to gender identity, sex characteristics, and nonbinary status. Indeed, OCR first added the nonbinary sex category for the 2021-2022 CRDC, when the 2020 Final Rule was in place.⁵³ In the preamble to the 2020 Title IX Rule, the Department explained that it declined to adopt a definition of sex because the new regulations “primarily address[ed] a form of sex discrimination—sexual harassment—that does not depend on whether the definition of ‘sex’ involves solely the person’s biological characteristics . . . or whether a person’s ‘sex’ is defined to include a person’s gender identity”⁵⁴ The Department affirmed that “any individual—irrespective of sexual orientation or gender identity—may be victimized by the type of conduct defined as sexual harassment to which a [school] must respond under these final regulations.”⁵⁵

Nor does the 2020 Title IX Rule prohibit schools from tracking relevant data needed to ensure that all students are protected from harassment and discrimination. On the contrary, the 2020 Title IX Rule makes clear that OCR “will not tolerate sexual harassment against any student, including LGBTQ students,”⁵⁶ and requires schools to retain all records of such reports for seven years.⁵⁷ Thus, even though the 2020 Title IX Rule declined to define sex, LEAs are obligated to protect transgender and nonbinary students, like all students, from discrimination on the basis of sex. And as stated in Section I, *supra*, transgender and nonbinary students face disproportionately high levels of sex-based discrimination, bullying, and harassment in school. Therefore, OCR’s proposed removal of the nonbinary category and gender identity from the CRDC’s definitions and data collection requirements is inconsistent with the 2020 Title IX Rule’s clarification that sexual harassment against all students is prohibited and that LEAs are

⁴⁹ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026, 30178 (May 19, 2020).

⁵⁰ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33476 (April 29, 2024).

⁵¹ *Tennessee v. Cardona*, 762 F.Supp.3d 615, 627 (E.D. Ky. 2025); U.S. Department of Education, Office of Civil Rights, Dear Colleague Letter (Feb. 4, 2025) <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf> (last visited Sept. 2, 2025).

⁵² *Mandatory Civil Rights Data Collection, July 2025, Supporting Statement, Part A: Justification*, *supra*, note 29, p. 1.

⁵³ *See Mandatory Civil Rights Data Collection, December 2021, Supporting Statement, Part A: Justification*, *supra*, note 20, at 9. OCR thus understood that the Rule does not bar such data collection.

⁵⁴ 85 Fed. Reg. at 30,178.

⁵⁵ *Id.* at 30178-79.

⁵⁶ *Id.* at 30,179.

⁵⁷ 34 C.F.R. 106.45(b)(10)(i)(A) (2025).

obligated to respond to and retain records of sexual harassment of all students, including transgender and nonbinary students.

The ICR also fails to provide any justification for removing sex characteristics from the definition of harassment or bullying on the basis of sex. Intersex students are individuals with variations in physical sex characteristics, and the Department has previously explained that “[d]iscrimination based on intersex traits is rooted in perceived differences between an individuals’ specific sex characteristics and those that are considered typical for their sex assigned at birth.”⁵⁸ OCR should therefore retain sex characteristics in the CRDC definition of harassment or bullying on the basis of sex or explain why it has removed the term.

B. The proposed changes will undermine Title IX’s broad non-discrimination mandate by excluding transgender and nonbinary students from protection against discrimination on the basis of sex.

The proposed changes will undermine OCR’s ability to effectively enforce the dual purposes of Title IX’s non-discrimination requirement: “preventing Federal funds from supporting discriminatory practices” and protecting individuals from sex discrimination.⁵⁹ OCR’s proposed changes will weaken efforts to ensure all students have equal access to federally funded education programs and activities⁶⁰ and undermine existing efforts to ensure that all students are protected from discrimination on the basis of sex. Some of the proposed changes would prevent states, SEAs, LEAs, and OCR itself from accurately assessing the scope of discrimination in schools. For example, retirement of the nonbinary category and definition will render nonbinary students uncounted in collected data, offering no insight into discrimination they may experience in federally funded education programs and activities. Similarly, retiring the “number of reported allegations of harassment or bullying of K-12 students on the basis of gender identity” data element will make it more difficult to hold schools accountable for effectively addressing incidents of sexual harassment against all students, “irrespective of sexual orientation or gender identity,”⁶¹ and may expose recipients of federal funds to liability for failing to address conduct that the 2020 Title IX Rule “defined as sexual harassment to which a [school] must respond.”⁶² In eliminating the requirement to report complete and accurate data about prohibited sex-based harassment, the ICR will make it more difficult for a range of

⁵⁸ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41,390, 41,532 (July 12, 2022); *see also* U.S. Department of Education, Office for Civil Rights, *Supporting Intersex Students: A Resources for Students, Families, and Educators* (Oct. 2021) (explaining that Intersex students may experience sex discrimination at school, including “[b]ullying, harassment, and other discrimination related to their physical characteristics or because they do not conform to sex stereotypes.”).

⁵⁹ 85 Fed. Reg. at 30,063.

⁶⁰ *Id.* at 30,035 (“The Department believes that sexual harassment affects ‘the equal access to education that Title IX is designed to protect.’”) (*quoting Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 652 (1999)).

⁶¹ *Id.* at 30,177.

⁶² *Id.* at 30,178.

stakeholders and OCR itself to address or even identify discrimination against this student population.

Other proposed changes similarly understate the breadth of Title IX's non-discrimination mandate and may cause federally funded schools to misapprehend the scope of their obligation to respond to all forms of sex discrimination. The CRDC has no authority to relieve LEAs of that duty. Yet by eliminating "sex characteristics" from the definition of harassment or bullying on the basis of sex, OCR's ICR improperly suggests that harassment related to sex characteristics cannot form the basis of a harassment allegation under Title IX even though such harassment is barred by Title IX, including in instances when a student is subjected to harassment because their sex characteristics do not conform to sex stereotypes.⁶³ As OCR itself noted in the preamble to the 2020 Final Rule, "[n]othing in these final regulations, or the way that sexual harassment is defined in § 106.30, precludes a theory of sex stereotyping from underlying unwelcome conduct on the basis of sex that constitutes sexual harassment as defined in § 106.30."⁶⁴

In removing both gender identity and sex characteristics from the definition of harassment or bullying on the basis of sex, OCR not only creates the false impression that schools are not obligated to address sex discrimination against students in such circumstances but also fails to require schools to report such data in the CRDC school survey. Without CRDC data about the extent to which harassment and bullying on the basis of gender identity and sex characteristics is reported in federally funded schools, neither the Department nor any other stakeholder will be able "to measure students' access to educational opportunities and the educational environment in the nation's public schools."⁶⁵ This is the very harm the Department warns against in its discussion of "the consequences to Federal programs or policy activities if the collection is not conducted."⁶⁶ Without this information, OCR and other stakeholders will be deprived of critical information about "possible barriers to equity and nondiscriminatory access to education."⁶⁷ OCR should retain gender identity and sex characteristics in the definition of harassment or bullying on the basis of sex, and should continue to collect data on instances of harassment or bullying on the basis of gender identity and sex characteristics.

⁶³ See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (recognizing sex stereotyping as a form of prohibited sex discrimination under Title VII of the Civil Rights Act of 1964). Sex stereotyping is also recognized as a form of prohibited sex discrimination under Title IX. See, e.g., *Pederson v. La. State Univ.*, 213 F.3d 858, 880 (5th Cir. 2000) ("If an institution makes a decision not to provide equal athletic opportunities for its female students because of paternalism and stereotypical assumptions about their interests and abilities, that institution intended to treat women differently because of their sex."); *Videckis v. Pepperdine Univ.*, 150 F.Supp.3d 1151, 1160 (C.D. Cal. 2015) ("It is undisputed that Title IX forbids discrimination on the basis of gender stereotypes. Gender stereotyping is a concept that sweeps broadly."), citing *Price Waterhouse*, 490 U.S. at 251.

⁶⁴ 85 Fed. Reg. at 30,178.

⁶⁵ *Mandatory Civil Rights Data Collection, July 2025*, Supporting Statement, Part A: Justification, *supra*, note 29.

⁶⁶ *Id.*

⁶⁷ *Id.* at 5.

C. Collecting data on nonbinary students and harassment or bullying on the basis of gender identity is consistent with the Supreme Court’s reasoning in *Bostock v. Clayton County*.

The collection of accurate data related to gender identity and nonbinary students aligns with the principles articulated by the Supreme Court in *Bostock*, where the Court held that the protections of Title VII of the Civil Rights Act of 1964 that prohibit discrimination on the basis of sex apply to transgender employees. *Bostock* reasoned that when an individual is fired because of their sexual orientation or gender identity, their employer has fired them “for traits or actions it would not have questioned in members of a different sex.”⁶⁸ Several courts of appeals have since applied *Bostock*’s reasoning and similarly concluded that Title IX’s prohibition of discrimination “on the basis of sex” likewise encompasses discrimination on the basis of gender identity.⁶⁹ OCR’s proposed changes are inconsistent with these holdings and with the principle, articulated by the Supreme Court in *Bostock*, that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”⁷⁰ Because discrimination based on gender identity is necessarily a form of discrimination based on sex, the CRDC data elements and definitions related to gender identity, nonbinary status, and sex characteristics support Title IX’s mandate to protect all students from sex discrimination.

V. The States Support the Proposed Addition of Certain Data Elements to the CRDC.

The States support OCR’s proposed addition of data elements related to remote instruction, informal removals, students enrolled in non-LEA facilities (including instances of restraint and seclusion in such facilities), bilingual teacher certification, and threat assessments. Of these, the States wish to particularly highlight the proposed inclusion of bilingual certification and informal student disciplinary removal data elements.

The States support the proposed addition of data elements regarding the certification of instructors in bilingual education and informal removals of students from the classroom. The CRDC already collects the number of teachers who are certified in four specialized areas: math, science, special education, and English as a Second Language. The collection of data on

⁶⁸ 590 U.S. at 652.

⁶⁹ See *Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110, 1116 (9th Cir. 2023) (“The [*Bostock*] Court held that discrimination ‘because of’ sexual orientation is a form of sex discrimination under Title VII. We conclude the same result applies to Title IX.”) (internal citations omitted); *Doe v. Snyder*, 28 F.4th 103, 113-14 (9th Cir. 2022) (same); *B.P.J. v. W.Va. State Bd. of Educ.*, 98 F.4th 542, 563 (4th Cir. 2024), *cert. granted*, __S.Ct.__, No. 24-43, 2025 WL 1829164 (July 3, 2025) (recognizing that “discrimination based on gender identity is discrimination ‘on the basis of sex’ under Title IX”); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616-19 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (2021). Cf. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 183 (2005) (noting Title IX’s private cause of action is interpreted “broadly to encompass diverse forms of intentional sex discrimination”). Some of these cases also observed that “[t]he Supreme Court has often looked to its Title VII interpretations of discrimination in illuminating Title IX.” *Grabowski*, 69 F.4th at 1116 (citation omitted).

⁷⁰ 590 U.S. at 660.

certifications of bilingual educators will allow the States to identify trends and gaps in bilingual education across state lines.

The addition of school-level data elements on the informal removal of students from the classroom will also have a positive effect on student outcomes. Informal removals, in which students are temporarily removed from their classroom for disciplinary purposes, but without a formal suspension, can result in significant harm to students. School removals, including informal school removals, result in the loss of instructional hours, which in turn leads to a cascade of negative impacts on educational attainment, including a decreased likelihood of graduating high school.⁷¹ When a student is informally removed from class, the student is also denied the disciplinary process and protections required under law, including the particular protections for students to whom the Individuals with Disabilities in Education Act or Section 504 of the Rehabilitation Act apply. Indeed, students with disabilities, and particularly students of color with disabilities, may be disproportionately affected by informal removals.⁷² Collection of this data will improve school-level transparency in student discipline practices and help identify disproportionate and discriminatory practices in the use of informal removals.

It is essential that the CRDC continue to collect data on nonbinary students, and information regarding harassment and bullying on the basis of gender identity and sex characteristics, in the 2025-2026 data collection and going forward. This data is not only critical to understanding the experiences of a vulnerable group of students, but also essential to comprehensively and effectively addressing bullying and harassment in schools. And the failure to collect this information is neither required by nor consistent with Title IX's requirement that federally funded educational institutions protect all students from sex-based harassment. For the reasons set forth above, the States urge OCR to reconsider its proposed changes.

Sincerely,



ROB BONTA
California Attorney General



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Illinois Attorney General



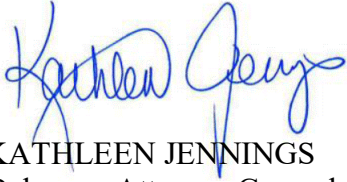
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⁷¹ National Disability Rights Network, *Out From the Shadows: Informal Removal of Children with Disabilities from Public Schools* (Jan. 2022), p. 17, <https://www.ndrn.org/wp-content/uploads/2022/01/Out-from-The-Shadows-1.pdf> (last visited Sept. 2, 2025).

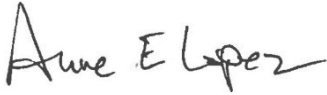
⁷² *Id.*



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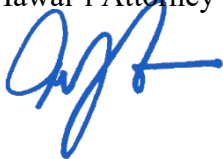
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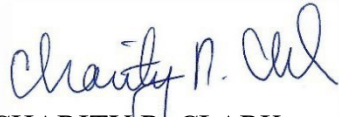
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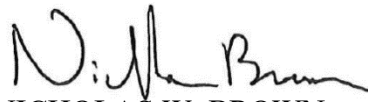
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