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Director of Strategic Collections and Clearance
Office of the Chief Data Officer
Office of Policy Evaluation and Policy Development
U.S. Department of Education
400 Maryland Avenue SW
LBJ Room 6W201
Washington, DC 20202-8240

Re: Public Comments on Docket No.: ED-2021-SCC-0158

To Whom It May Concern:

Parents Defending Education (PDE) is a national grassroots organization working to reclaim our schools from activists promoting harmful agendas. Through network and coalition building, investigative reporting, litigation, and engagement on local, state, and national policies, we are fighting indoctrination in the classroom -- and for the restoration of a healthy, non-political education for our kids.

On December 13, 2021, the U.S. Department of Education's Office for Civil Rights (OCR) published a revised proposal to amend the Civil Rights Data Collection (CRDC), which is a mandatory biennial data collection of school district and school-level civil rights indicators. Participation in the CRDC is mandatory; nearly all public schools are required to report to OCR, through the CRDC, on approximately 1,700 data points included in the survey.

OCR has proposed to amend the CRDC to add a "nonbinary" sex category that will, for the first time, create a new sex category in addition to "male" and "female." OCR has proposed to add the "nonbinary" sex category to thirty (30) different data points within the CRDC. **PDE vigorously opposes OCR's proposed changes to the CRDC that will encourage schools to not only collect data on student sex identification, but will also empower schools to actively question and engage with children on gender and sexual identification issues that fall outside of the purview of public schools and are matters to be dealt with exclusively by parents.**

PDE is well aware of the existing social agenda within public schools to actively encourage gender redefinition and re-identification. We regularly receive reports from teachers and parents across the United States who are directly impacted by these harmful policies. [Chicago Public Schools](#) requires teachers to deceive parents about their children's "new [sexual] identities"—without parental consent; the school has a system in place to systematically hide accommodations to gendering nonconforming students, including ensuring "all documents and records that parents see will maintain the child's legal name and biological sex."

[Cocopah Middle School](#) in Scottsdale, Arizona, allows students to change their names without parental consent to ensure a more inclusive environment for students for transgender and other gender nonconforming students. And [Cedar Grove Schools](#), in Cedar Grove, New Jersey, administers surveys to

students about their gender identity, including soliciting information about their “sexual behavior and attitudes.” **These are just a few examples of the hundreds of incident reports PDE receives.** Parents are universally concerned and frustrated that schools are unilaterally—and without authority—excluding parents from sex and gender-based decisions that directly impact the wellbeing and up-bringing of children.

OCR’s proposal will incentivize schools to seek sex identification information from students—and schools will request this information without any regard to parental rights. Schools are already usurping the rights of parents in an effort to promote and encourage gender exploration and gender redefinition. OCR’s proposal will perpetuate this growing problem.

PDE opposes OCR’s proposal for the following reasons:

I. Despite the Limitations Included in the Proposal, Adding “Nonbinary” as a New Sex Category to the CRDC Will Incentivize Schools to Inquire, Question, and Record Sex-Based Preferences of Minor Children—Without Parental Consent or Knowledge.

OCR proposes to add a “nonbinary” sex category that will capture student count data regarding “nonbinary” students. OCR indicates that “[o]nly LEA’s that indicate they collect this information from students would be required to report student enrollment data for ‘nonbinary’ students.” This qualification (or limitation) is insufficient to protect parental rights and or safeguard private student information. The inclusion of this data collection will incentivize schools to ask children questions about their preferred sex identification. This type of inquiry—and questioning of minor children—should never occur within a public school *or* without parental consent or knowledge.

Significantly, there are no guardrails in OCR’s proposal to ensure that schools do not push a gender re-identification agenda. Rather, and without the knowledge of parents, schools will use the data collection as a reason to question the gender preference of students, create official school records documenting the sexual preference, and even provide services to students who indicate they may be questioning their sex identification. All of this will be done without parental knowledge or consent.

What is to keep a school district from using OCR’s data collection as the incentive for inquiring about a student’s sexual identification or pushing re-identification? There is no penalty under OCR’s proposal. A school must simply declare that it will collect such information—and it will be permitted to do so. If questioned by parents or state officials, a school will simply declare that such data is required by OCR. There are insufficient instructions and inadequate guardrails included in OCR’s proposal to ensure that parents’ rights are respected—and that the personal information of students is adequately protected.

II. Adding “Nonbinary” as a New Sex Category Would Implicate—and Likely Require Schools to Violate—the Protection of Pupil Rights Amendment (PPRA).

The Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. § 1232h, 34 C.F.R. Part 98) establishes certain parental rights. The law affords parents of minor students with certain rights—including the right to consent before a child is subject to a mandatory survey, analysis, or evaluation, if it is funded in whole or in part as part of a program administered by the U.S. Department of Education and reveals certain private information.

Under the PPRA, schools are prohibited from inquiring about a student’s “sex behavior or attitudes” without complying with the parental consent provisions in the law. This has been interpreted to include inquiring about a student’s sexual orientation or gender identity. Yet, OCR’s proposal would permit and/or require a school to inquire about a student’s sexual identification and preferences, an act otherwise prohibited by the PPRA if parental consent has not been obtained.

The provisions of the PPRA should certainly impact OCR’s proposal. At a minimum, it would require the implementation of certain guardrails within OCR’s data collection; restrictions so that school districts know and fully understand that they cannot inquire about a student’s “sex behavior or attitudes.” Failure to implement guardrails, either by specifically prohibiting schools from inquiring about a student’s “sex behavior or attitudes” or by specifically requiring schools to obtain parental consent before reporting this data puts schools at risk for violating PPRA.

III. Adding “Nonbinary” as a New Sex Category Amounts to Federal Overreach and Exceeds OCR’s Authority.

The 1979 Department of Education Organization Act empowers the Assistant Secretary for Civil Rights 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.” (See 20 U.S.C. § 3413(c)(1)). Yet, the Education Organization Act is not a blank check to collect any data OCR sees fit. The purpose of the CRDC is to collection data “*necessary to ensure*” compliance with federal civil rights laws.

Furthermore, the addition of this new sex category cannot be necessary to ensure compliance if only 11 states currently allow for the reporting of such data. With such incomplete data, it cannot be “necessary” to enforce civil rights laws. How can data from 11 states drive OCR’s enforcement? To that end, it is unclear how student enrollment data (“student count data”) assists OCR’s in the enforcement of federal civil rights laws.

The inclusion of this new data point is not “necessary to ensure compliance,” and hence, unauthorized by the 1979 Department of Education Organization Act. The inclusion of this data point, because it cannot drive enforcement, amounts to federal overreach. It is not the role of the Federal government to mandate to local school districts the addition of an entirely new sex category.

IV. Adding “Nonbinary” as a New Sex Category is OCR Engaging in Political Activism, a Back-Door Approach to Forcing Public Schools to Accept a Liberal Political Agenda and Promote Sex Redefinition and Re-Identification.

OCR’s proposal is an attempt to shift the culture in public schools by normalizing discussions relating to sex redefinition and re-identification. OCR’s proposal is an effort to bring systemic change within education—and force schools to recognize alternative sexes or genders rather than the two biological sexes that have long existed within school systems and within data collections administered by the U.S. Department of Education.

OCR’s proposal redefines sex, and it is a blank ticket for public school districts promote a political agenda that seeks to completely erase traditional sex categories. In the end, proposals like this destroy traditional sex distinctions. PDE is not opposed to ensuring that all students are educated in a safe and nurturing environment. However, the creation of a new sex category to enrollment categories does not achieve this end. Rather, it authorizes schools to not only collect such information – but to inquire, question, encourage, and promote a certain ideological belief within schools *without the consent of parents*.

V. Conclusion

For these reasons, OCR’s proposal to add a new sex category should be withdrawn. It is not the role of public school officials to encourage sex redefinition or re-identification. OCR’s goal is to break boundaries and blur gender lines; to erase any distinction between the traditional and biological roles of male and

female—and to empower educators to pursue this agenda. No adult within a public school system should be questioning, inquiring, or discussing sex or gender issues without the consent of a child’s parents.

If OCR does not withdraw this proposal, at a minimum, it should amend the proposal to: 1) Specifically prohibit, in the CRDC’s instructions to schools, any public school district from discussing, inquiring, or reporting on a minor student’s sex or gender behaviors or attitudes without parental knowledge and consent; and 2) Specifically prohibit, in the CRDC’s instructions to schools, any public school to report to OCR through the CRDC on a minor child’s “nonbinary” sex status without parental knowledge and consent.

The continual promotion and advancement of political agendas must end. The culture of indoctrination must end. PDE fully supports efforts to ensure that *no student* experiences discrimination. It is possible for OCR to fully enforce federal civil rights laws and protect students from discrimination—while respecting the fundamental rights of parents to direct the upbringing of their children.

Respectfully submitted,

/s/ Nicole Neily

Nicole Neily

President

Parents Defending Education