

September 13, 2021

Kate Mullan

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Office of Chief Data Officer, Office of Planning, Evaluation & Policy Development
400 Maryland Ave. SW, LBJ, Room 6W208D
Washington, DC 20202-8240

Re: Comments from GLSEN regarding Agency Information Collection Activities; 21st Century Community Learning Centers Annual Performance Report [Docket ID ED-2021-SCC-0104]

To Whom It May Concern:

I write to you on behalf of GLSEN, the nation's leading organization on lesbian, gay, bisexual, transgender, queer, nonbinary, gender nonconforming, and intersex (LGBTQ+) issues in K-12 education, regarding the Department's proposed reporting form for collecting data annually from agency recipients of 21st Century Community Learning Centers funds under Title IV-B of the Elementary and Secondary Education Act (ESEA).

The Department proposes several revisions in its 21APR New GPRA Iterative Implementation Guide v 1.4 but includes no demographic questions on the participation of LGBTQ+ students and retains dated guidance on collecting data on participation by "sex" that directs Local Education Agencies (LEAs) to erase nonbinary identities by misidentifying LGBTQ+ students who identify as neither male nor female as "either male or female" (Footnote 1, p. 10). This guidance undermines the accuracy of any subsequent analysis of participation by sex and accountability for the educational outcomes of LGBTQ+ students in 21st Century Community Learning Centers programs throughout the country.

Programs, sports, and other extracurricular activities available outside standard school hours have demonstrated academic and well-being benefits.¹ LGBTQ+ students who experience societal stigma, unwelcoming homes, or who are homeless² may gain access to critical supports that promote resilience and educational success through LGBTQ+ inclusive extracurricular programming during non-school hours.³ Unfortunately, LGBTQ+ students are less likely to participate, and many report feeling unsafe in extracurricular activities and programs. LGBTQ+ students are half as likely to participate in athletic-related activities as their non-LGBTQ+ peers.⁴ According to GLSEN's 2019 National School Climate Survey, many LGBTQ+ students (71.8%) reported avoiding extracurricular activities to some extent because they felt unsafe or uncomfortable, and over a quarter avoided them often or frequently (25.9%).⁵ Compared to their cisgender LGBQ peers, nonbinary students were more likely to report that they avoided locker rooms because they felt unsafe or uncomfortable, were more likely to report feeling unsafe at school, and experienced higher levels of victimization.⁶

The Department proposes several revisions in its 21APR New GPRA Iterative Implementation Guide v 1.4 but retains dated and problematic guidance on collecting data on participation by "sex" (Footnote 1, p. 10) that reads as follows: "For purposes of reporting sex, students generally are counted consistent with the sex listed in the student's records at the time the data are reported. In the case of students who are identified as non-binary or another category that is not collected, the student should be reported as either male or female. The LEA should make the determination as best it can."

The Department’s guidance requires state agencies to adopt binary male-female reporting even when their own information systems allow for more accurate and LGBTQ+ inclusive options. For example, in Washington, a student who does not identify as male or female may be recorded as “Gender X.”⁷

The Department’s notice references the Department’s Office of Civil Rights (OCR) as its source for its problematic guidance (p. 10). However, OCR has recently taken steps to clarify earlier inconsistent and problematic guidance related to its definition of sex. In June 2021, OCR affirmed that “the Department interprets Title IX’s prohibition on discrimination ‘on the basis of sex’ to encompass discrimination on the basis of sexual orientation and gender identity” while affirming that it ‘has long recognized that Title IX protects all students, including students who are lesbian, gay, bisexual, and transgender, from harassment and other forms of sex discrimination.’⁸ In the same way that “discrimination based on sex” encompasses “discrimination based on sexual orientation and gender identity,” data collection of and related to sex can—and should—encompass data collection of and related to sexual orientation and gender identity when possible.⁹

GLSEN urges the Department to amend its guidance on collecting data on participation in 21 APR New GPRA Iterative Implementation Guide v 1.4 to read as follows:

“sex” shall refer to the male or female identity assigned at birth, gender identity, and sexual orientation. Gender identity is defined as one’s inner sense of one’s own gender, which may or may not match the sex assigned at birth. Sexual orientation refers to one’s emotional or physical attraction to the same and/or opposite sex. Respondents should report disaggregated data that reflects this definition of sex.”

This definition would enable LEAs to report sex data expressly inclusive of LGBTQ+ young people when such data is available (as in Washington). As an interim step, the Department could provide an “X” option for nonbinary and other students who do not identify as male or female and update its explanatory language to clarify that it is requesting the *gender marker* listed in students’ records, with “M”, “F”, and “X” being responses the Department can accept.

For purposes of reporting sex, students generally are counted consistent with the sex listed in the student’s records at the time the data are reported. In the case of students who are identified as non-binary or another category that is not collected, the student should be reported as either male or female. The LEA should make the determination as best it can

We thank the Department for considering these comments and recommendations. To discuss GLSEN’s recommendations, please contact me at 202-621-5815 or aaron.ridings@glsen.org.

Sincerely,

Aaron Ridings
Interim Chief of Staff
Director of Public Policy

Notes

¹ See e.g., U.S. Office of the Assistant Secretary for Health, *The National Youth Sports Strategy* (2019), https://health.gov/sites/default/files/2019-10/National_Youth_Sports_Strategy.pdf.

² LGBTQ+ youth are more than twice as likely (120% more likely) to experience homelessness, compared to non-LGBTQ+ youth. See: Voices of Youth Count. (2017). *Missed Opportunities: Youth Homelessness in America*. Chicago: Chapin Hall at the University of Chicago. <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>.

³ For example, in one survey of homeless students, 62% rated after- or before-school programs and activities as very important for staying in and succeeding at school. See: Erin S. Ingram, John M. Bridgeland, Bruce Reed, and Matthew Atwell. "Hidden in Plain Sight: Homeless Students in America's Public Schools," Civic Enterprises (2017). Available at <https://files.eric.ed.gov/fulltext/ED572753.pdf>.

See also: V. Paul Poteat, Jillian R. Scheer, and Ethan H. Mereish, "Factors affecting academic achievement among sexual minority and gender-variant youth," *Advances in child development and behavior* 47 (2014): 261-300.

⁴ 15.9% of LGBTQ+ students participated in intramural sports, compared to 35.8% of cisgender, heterosexual students, and 19.2% of LGBTQ+ students participated in interscholastic sports, compared to 40.2% of cisgender, heterosexual students. See: Emily A. Greytak, Joseph G. Kosciw, Christian Villenas, and Noreen M. Giga, *From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary School Students and Teachers* (New York: GLSEN, 2016). https://www.glsen.org/sites/default/files/2019-12/From_Teasing_to_Torment_Revised_2016.pdf.

See also: U.S. Office of the Assistant Secretary for Health, *The National Youth Sports Strategy*, pp. 35, 51. The Trevor Project, "LGBTQ Youth Sports Participation" (2020). <https://www.thetrevorproject.org/wp-content/uploads/2020/06/June-2020-Brief-LGBTQ-Youth-Sports-Participation-Research-Brief.pdf>.

Human Rights Campaign, "Play to Win: Improving the Lives of LGBTQ Youth in Sports" (2018). <https://www.hrc.org/resources/play-to-win-improving-the-lives-of-lgbtq-youth-in-sports>.

⁵ Joseph G. Kosciw, Caitlin M. Clark, Nhan L. Truong, and Adrian D. Zongrone, *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* (New York: GLSEN, 2020). Available at <https://www.glsen.org/research/2019-national-school-climate-survey>. (p. 18).

⁶ Kosciw et al., *The 2019 National School Climate Survey*. (p. 103).

⁷ Washington Office of Superintendent of Public Education. (2020). *Comprehensive Education Data and Research System (CEDARS) Data Manual*. <https://www.k12.wa.us/sites/default/files/public/cedars/pubdocs/2019-20CEDARSDataManual.pdf>. (p. 43)

Washington Office of Superintendent of Public Education. (2020). *Title I, Part A Program Guide Tools and Tips for Title I, Part A Directors*.

https://www.k12.wa.us/sites/default/files/public/titlei/pubdocs/documents/TitleI%20Guide%202020_2021%20MAS%20TER%20ADA.pdf. (p. 57).

⁸ U.S. Department of Education, "Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*," *Code of Federal Register* 86, no. 117: 32637-32640. <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-13058.pdf>.

⁹ For GLSEN's recommendations to OCR on improving its Civil Rights Data Collection see: GLSEN. (August 6, 2020). *Comment on FR Doc # 2020-14486, Mandatory Civil Rights Data Collection*. <https://www.regulations.gov/comment/ED-2019-ICCD-0119-0936>.

For information on the importance of—and methods for—collecting data on the experiences of LGBTQ+ people, including young people see: Baker, K. Durso, L. E. (2015). *Filling in the Map: The Need for LGBT Data Collection*. Center for American Progress. 5).

<https://www.americanprogress.org/issues/lgbtqrights/news/2015/09/16/121128/filling-in-the-map-the-need-for-lgbt-data-collection/> (Accessed August 16, 2021).

The GenIUSS Group. (2014). *Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys*, edited by J.L. Herman. Los Angeles, CA: The Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SurveyMeasures-Trans-GenIUSS-Sep-2014.pdf>.