



April 28, 2022

Stephanie Valentine

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division
Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

**Re: ED*Facts* Data Collection School Years 2022-23, 2023-24, and 2024-25 (With 2021-22 Continuation)
[ED-2021-SCC-0159; Docket # 2022-06553; Fed. Reg. Vol. 87, No. 60]**

Dear PRA Coordinator Stephanie Valentine,

I write to you regarding measures to advance data inclusion and equity for lesbian, gay, bisexual, transgender, queer, nonbinary, Two-Spirit, and intersex youth (LGBTQ+) in the Department's proposed ED*Facts* data collection. As the leading national organization on LGBTQ+ issues in K-12 education, GLSEN urges the Department to revise the proposed instrument to allow reporting of nonbinary gender identity data from those schools that use a nonbinary gender marker.

ED*Facts* is a critical source of data on student educational outcomes that supports education policy, planning, and budget decision-making. The CDC's Youth Risk Behavior Survey (YRBS) shows that LGBTQ+ young people are far more likely than their non-LGBTQ+ peers to experience victimization, including bullying at school.¹ GLSEN's national survey research demonstrates that experiencing anti-LGBTQ+ victimization is associated with a range of adverse educational outcomes in K-12 schools, including increased absences, lowered GPAs, and a decreased likelihood of pursuing post-secondary education.² Given that available data shows that anti-LGBTQ+ victimization in K-12 schools adversely impacts education outcomes that ED*Facts* collects data on, it is essential that the Department enable reporting of available LGBTQ+ administrative data by allowing schools that use a nonbinary gender marker to report nonbinary gender identity data.

We thank the Department for proposing to ask State Education Agencies (SEAs) whether they "collect more than two permitted values (male and female)" for students and to further question those SEAs that indicate "yes" on the values and definitions that the SEA uses. The addition of these measures will provide much-needed data; specifically, it will illuminate the scope of adoption and variations in implementation of a nonbinary gender identity category for student records.

However, for schools that are already using a nonbinary gender identity category, the absence of this category on ED*Facts* and other federal collections leads to problematic reporting and

inaccurate data. For example, the Department has directed LEAs to report nonbinary students “as either male or female... mak[ing] the determination as best it can.”³ Requiring schools, LEAs, and SEAs that use a nonbinary option to report students as male or female creates a burden for LEAs tasked with misgendering nonbinary students, and results in the collection of data that is known to be inaccurate, potentially obscuring salient findings across and between students of different genders.

As the U.S. Department of Education’s Office of Civil Rights (ED OCR) noted when proposing the addition of a nonbinary gender category beginning with the 2020-2021 Civil Rights Data Collection (CRDC), several SEAs have an option for collecting student gender identity data beyond male and female.⁴ ED OCR identified eleven SEAs with such an option and GLSEN is aware of two other SEAs; in total, at least one-quarter of SEAs enable the use of a nonbinary gender identity.⁵

The exclusion of a nonbinary option for gender identity data conceals notable research findings and impedes the advancement of data collection to advance equity in K-12 schools. For example, the absence of a nonbinary category on *EDFacts* specifically inhibits ED OCR’s enforcement of nondiscrimination protections as ED OCR obtains school data on the number of students who are students with disabilities served under IDEA, the number of students who are chronically absent, and the number of students who graduated high school through the *EDFacts* Submission System.⁶

Allowing schools that use a nonbinary gender identity category aligns with President Biden’s Executive Order on advancing racial equity and support for underserved communities, including BIPOC communities, LGBTQ+ people, and people with disabilities⁷ and the recommendations of the National Academies of Sciences, Engineering, and Medicine (NASEM). In 2020, NASEM recommended that federal, state, local, and tribal agencies “should consider adding measures of sexual orientation, gender identity, and intersex status to all data collection efforts and instruments,” including in education.⁸ In 2022, NASEM issued a consensus study report with recommended measures and guiding principles for collecting LGBTQ+ demographic data.⁹ NASEM also recently published a report titled “A Vision and Roadmap for Education Statistics,” with the recommendation (#2-4) that “NCES should proactively embed diversity, equity, inclusion, and accessibility in all of its work” and specifically that “[a]s a significant producer of education statistics, NCES’s data collections, methods, and products should accurately measure contemporary diverse populations and their lived experiences.”¹⁰

We thank the Department for considering these recommendations. To discuss the recommendations that we raised in this comment, please contact me at aaron.ridings@glsen.org.

Sincerely,
Aaron Ridings
Chief of Staff and Deputy Executive Director for Public Policy and Research

Notes

¹ Johns, M. M., Lowry, R., Haderxhanaj, L. T., Rasberry, C. N., Robin, L., Scales, L., ... & Suarez, N. A. (2020). Trends in violence victimization and suicide risk by sexual identity among high school students—Young people

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- Risk Behavior Survey, United States, 2015–2019. *MMWR supplements*, 69(1), 19.
https://www.cdc.gov/mmwr/volumes/69/su/su6901a3.htm?s_cid=su6901a3_w.
- Johns, M. M., Lowry, R., Andrzejewski, J., Barrios, L. C., Demissie, Z., McManus, T., ... & Underwood, J. M. (2019). Transgender identity and experiences of violence victimization, substance use, suicide risk, and sexual risk behaviors among high school students—19 states and large urban school districts, 2017. *Morbidity and Mortality Weekly Report*, 68(3):67–71. DOI: <http://dx.doi.org/10.15585/mmwr.mm6803a3>.
- ² Kosciw, J. G., Clark, C. M., Truong, N. L., & Zongrone, A. D. (2020). *The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation’s schools*. New York: GLSEN. <https://www.glsen.org/research/2019-national-school-climate-survey>.
- ³ For example, schools that use a nonbinary gender category have been directed to report these students’ genders “as either male or female... mak[ing] the determination as best it can.” See: GLSEN. (2021). Comment on U.S. Department of Education Agency Information Collection Activities; Comment Request; 21st Century Community Learning Centers Annual Performance Report. 86 Fed. Reg. 133. Available at <https://www.glsen.org/21st-Century-Community-Learning-Center-LGBTQ-Inclusive-Data>. GLSEN commends the U.S. Department of Education for revising this collection to provide an alternative to binary coding for nonbinary students.
- ⁴ U.S. Department of Education, Office of Civil Rights. (December 7, 2021). *Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection: Supporting Statement A*. Available at <https://www.regulations.gov/document/ED-2021-SCC-0158-0042>.
- ⁵ The 13 SEAs represent California, Connecticut, the District of Columbia, Illinois, Maryland, Massachusetts, New Jersey, New Mexico, Oregon, Pennsylvania, Utah, Virginia, and Washington. See: U.S. Department of Education, Office of Civil Rights. (December 7, 2021). *Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection. Supporting Statement A*.” Available at <https://www.regulations.gov/document/ED-2021-SCC-0158-0042>.
- Pennsylvania Information Management System. (2021). *User Manual, Vol. 1*. Available at <https://www.education.pa.gov/DataAndReporting/PIMS/ManualsCalendar/Pages/default.aspx>.
- 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>.
- ⁶ U.S. Department of Education, Office of Civil Rights. (December 7, 2021). *Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection*, “Attachment A-2: Data Groups for Civil Rights Data Collection for School Year 2021–22.” Available at <https://www.regulations.gov/document/ED-2021-SCC-0158-0043>.
- ⁷ Executive Order 13985 of January 20, 2021. *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. 86 Fed. Reg. §14 (January 25, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>.
- ⁸ National Academies of Sciences, Engineering, and Medicine. (2020). *Understanding the Well-Being of LGBTQI+ Populations*. Washington, DC: The National Academies Press. Available at <https://doi.org/10.17226/25877>.
- ⁹ National Academies of Sciences, Engineering, and Medicine. (2022). *Measuring Sex, Gender Identity, and Sexual Orientation*. Washington, DC: The National Academies Press. Available at <https://doi.org/10.17226/26424>.
- ¹⁰ National Academies of Sciences, Engineering, and Medicine. (2022). *A Vision and Roadmap for Education Statistics*. Available at: <http://nap.edu/26392>.