



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY
THE EDUCATION AND LAW COMMITTEE,
COUNCIL ON CHILDREN, CHILDREN AND THE LAW COMMITTEE,
AND JUVENILE JUSTICE COMMITTEE**

**A.5691
S.1040**

**M. of A. Solages
Sen. Jackson**

AN ACT to amend the education law, in relation to school climate and codes of conduct on school property and disciplinary action following violation of such codes of conduct; and to amend the education law, in relation to making conforming amendments.

The Judith Kaye School Solutions Not Suspensions Act

THE BILL IS APPROVED

The Education and Law Committee, Council on Children, Children and the Law Committee and Juvenile Justice Committee of the New York City Bar Association (the “City Bar”) strongly urges the adoption of the Judith Kaye School Solutions Not Suspensions Act (Schools Not Suspensions Act), A.5691 / S.1040. This Act will promote restorative, age-appropriate, and equitable disciplinary measures in New York State schools. Primarily, the Act will reduce the maximum length of suspension from 180 to 20 school days (except when required by federal law); end the use of suspension for students in pre-kindergarten through third grade (except when required by federal law); ensure students receive appropriate instruction while on suspension; require school codes of conduct to include restorative approaches as a disciplinary option; and ensure the law on student behavior and school discipline applies equally to both charter and district school students.

I. BACKGROUND

A. Suspensions Are Issued Disproportionately

New York City is the largest school district in the United States. Of the 1,058,888 students in the school system in 2021-22, 41.1% are Hispanic, 24.4% are Black, 16.6% are Asian, 14.7% White, and 139,752 are in charter schools.¹ Over half (51.6%) of superintendent’s (long-term) suspensions, along with 41.7% of principal’s suspensions (up to 5 school days),

¹ *Department of Education Data at a Glance*, THE NEW YORK CITY DEPARTMENT OF EDUCATION, <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance#:~:text=24.7%20percent%20black,138%2C648%20are%20in%20charter%20schools> (All websites last visited May 24, 2023).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

went to Black students, who comprised only 20.7% of the New York City public school population (not including charter schools).² Students with disabilities—who are about 21% of the New York City student population—received 43.8% of long-term suspensions and 38.9% of principal’s suspensions.³

Nationwide, Black students with learning disabilities are three times more likely to be suspended than white students with learning disabilities.⁴ Nationally, Black girls experience discipline rates six times higher than white girls and experience suspension rates higher than 67% of boys.⁵ In elementary school, Black girls are five times more likely than their white peers to be suspended.⁶ In 2018, almost 90% of out-of-school suspensions were issued to Black and Hispanic students, who comprise 67% of New York City’s students.⁷

Several states have enacted legislation to reduce punitive, exclusionary school discipline.⁸ For example, in 2018 Indiana passed a law aimed at reducing high rates of suspension and expulsion by providing schools with resources on de-escalation techniques to encourage the adoption of more positive methods of correcting student behavior.⁹ Similarly, a Georgia law, H.B. 740, requires local school districts to implement multi-tiered systems of supports and reviews prior to suspending or expelling a student in pre-kindergarten through third grade for five days or more.¹⁰ California, Washington, and Delaware also have new laws to address exclusionary discipline.¹¹ It is only fitting that the State with the largest school district follows this approach to keep our children in school.

² News Release, *Despite a Decrease in Suspensions, New Suspension Data Continue to Show Persistent Disparities by Race and Disability Status and NYPD Data Show an Alarming Increase in Police Involvement in Student Behavior*, ADVOCATES FOR CHILDREN OF NEW YORK (Nov. 17, 2022) <https://www.advocatesforchildren.org/node/2105>.

³ *Id.*

⁴ *Zero Tolerance Discipline, Discrimination, and the School to Prison Pipeline*, ACLU OF NEW YORK, <https://www.nyclu.org/en/look-school-discipline>.

⁵ Subini Ancy Annamma, et al., *Black Girls and School Discipline: The Complexities of Being Overrepresented and Understudied*, URB. EDUC. (2016).

⁶ Monique W. Morris, *As schools prepare to reopen, we must remove cops from campuses to protect Black girls*, USA TODAY (July 7, 2020 8:19 PM), <https://www.usatoday.com/story/opinion/policing/2020/07/07/black-girls-need-protection-school-criminalization-cops-campus/5356613002/>.

⁷ Alex Zimmerman, *‘It’s Basically Jail’: Inside NYC’s School Suspension Centers*, THE CITY (Apr. 21, 2019 4:00 AM), <https://www.thecity.nyc/2019/4/21/21211107/it-s-basically-jail-inside-nyc-s-school-suspension-centers>.

⁸ Andrew Barton, *States Seek Changes in Public School Discipline Policies*, NATIONAL CONFERENCE OF STATE LEGISLATORS (Aug. 3, 2021), <https://www.ncsl.org/research/education/states-seek-changes-in-public-school-discipline-policies-magazine2021.aspx>; Alyssa Rafa, *The Status of School Discipline in State Policy*, EDUCATION COMMISSION OF THE STATES (Jan. 2019), <https://www.ecs.org/wp-content/uploads/The-Status-of-School-Discipline-in-State-Policy.pdf>.

⁹ *See Barton supra*.

¹⁰ Alyssa Rafa, *The Status of School Discipline in State Policy*, EDUCATION COMMISSION OF THE STATES (Jan. 2019), <https://www.ecs.org/wp-content/uploads/The-Status-of-School-Discipline-in-State-Policy.pdf>.

¹¹ NYS Educ. Dep’t, *Safe Schools Task Force Report: Recommendations for Reducing Disparities in and Reforming School Discipline in New York State* (Dec. 2022), <https://www.regents.nysed.gov/sites/regents/files/P-12%20-%20Recommendations%20for%20ATT%20-%20Recommendations%20for%20Reducing%20Disparities%20in%20and%20Reforming%20School%20Discipline%20in%20New%20York%20State.pdf>.

B. Suspensions Cause Significant Short- and Long-Term Harm

Students who are suspended are twice as likely to stop attending school which can have long-term negative consequences.¹² Suspended students are significantly less likely than their classmates to advance to the next grade, which negatively affects their likelihood of graduating.¹³ In fact, school climate data shows that schools with higher suspension and expulsion rates are the same schools that experience low rates of academic achievement.¹⁴

Students sometimes receive lengthy suspensions for minor infractions such as wearing hats in class or chewing gum.¹⁵ Further, out-of-school suspensions are issued for subjective behavior categorized as insubordinate such as wearing the wrong shoes, styling their hair in a way that is considered distracting, not attending school, or wearing pajamas during asynchronous days.¹⁶ There is also evidence demonstrating that Black students are more likely to be disciplined for more subjective infractions, such as disrespect and loitering, while their white classmates often appear to be suspended for more objective offenses, such as smoking.¹⁷

Our students need appropriate behavioral support and restorative discipline. Punishing and removing them from their classrooms and schools does not address the reason(s) for their behavior. There is strong evidence to suggest that zero-tolerance and exclusionary discipline policies are ineffective in preventing future misbehavior.¹⁸ Suspensions do not teach students how to improve their behavior, or why they should stop engaging in this behavior in the future.¹⁹ Studies have consistently shown that as many as 42% of suspensions are faced by students subjected to prior suspensions, with suspensions serving as the primary predictor of

¹² Melanie Leung-Gagné Jennifer McCombs Caitlin Scott Daniel J. Losen, *Pushed Out: Trends and Disparities in Out-of-School Suspension*, Learning Policy Institute (Sept. 30, 2022), <https://learningpolicyinstitute.org/product/crdc-school-suspension-report>; See also Elka Torpey, *Measuring the value of education*, U.S. BUREAU OF LABOR STATISTICS (April 2018), <https://www.bls.gov/careeroutlook/2018/data-on-display/education-pays.htm> (Full-time workers who didn't graduate from high school had a median weekly wage of \$520, compared with \$712 a week for workers with a high school diploma but no college); See also Brett Arends, *Black kids more likely to be suspended than white kids over same behavior*, NEW YORK POST (October 16, 2019 2:38 PM), <https://nypost.com/2019/10/16/black-kids-more-likely-to-be-suspended-than-white-kids-over-same-behavior/>.

¹³ Lama Hassoun Ayoub, Elise Jensen, Talia Sandwick, Dana Kralstein, Josephine Wonsun Hahn, and Elise White, *School Discipline, Safety, and Climate*, CENTER FOR COURT INNOVATION (Sept. 2019), https://www.courtinnovation.org/sites/default/files/media/documents/2019-10/report_schoolsafety_10252019.pdf.

¹⁴ Udi Ofer, *Criminalizing the Classroom: The Rise of Aggressive Policing and Zero Tolerance Discipline in New York City Public Schools*, 56 N.Y.L. Sch. L. Rev. 1373, 1402 (2012).

¹⁵ Rachel Klein, *Keeping our Kids in School and Out of Court: Rooting Out School Suspension Hearings and a New Alternative*, 17 Cardozo J. Conflict Resol. 633, 641 (2016).

¹⁶ Brenda Alvarez, *School Suspensions Do More Harm than Good*, NATIONAL EDUCATION ASSOCIATION (Sept. 10, 2021), <https://www.nea.org/advocating-for-change/new-from-nea/school-suspensions-do-more-harm-good#:~:text=New%20study%20finds%20more%20severe,behavior%3B%20educators%20have%20better%20olutions.>

¹⁷ Ofer, *supra* note 17 at 1403.

¹⁸ *Id.*

¹⁹ Ofer, *supra* note 17 at 1402; Klein, *supra* note 18 at 642.

future suspensions and the greatest predictor of school pushout.²⁰ This data makes clear that suspensions are not achieving the goal of deterring misbehavior in students.

Further, suspensions are more likely to propel such behavior because they alienate students from their community.²¹ A student who is suspended not only misses out on learning opportunities in the classroom but also misses out on the ability to spend time with their peers, which can be critical for their wellbeing.²² Suspensions also cut off students from school faculty such as teachers and guidance counselors who are available in school to support students.²³ A student's feelings of isolation from their peers and school faculty while suspended can cause a student to fall further behind academically.²⁴ Students suspended without a reentry plan for their return often repeat the behavior, and administrators issue the same punitive procedures in an exhausting cycle that does not yield any real solutions.²⁵

Moreover, students fail to receive appropriate schoolwork at suspension sites.²⁶ Students at suspension centers often report that they spend their days filling out worksheets that have little to do with the coursework from their original schools.²⁷ The inconsistency between the work a student is doing at suspension centers and the work done at their original schools makes it harder for students to transition back to school once their suspension is over.²⁸ Additionally, some students are not provided with enough work to fill their day with students only receiving enough work to keep them occupied for an hour or two.²⁹ Notably, even students who complete their schoolwork at suspension centers still face issues on their return to their original school in that some students do not even receive credit for the work they completed while at the suspension center.³⁰ Suspension centers fail to provide children with the necessary instruction and learning environment.³¹ Moreover, it is also quite likely that some of these students were already behind academically due to the digital divide exacerbated by the COVID-19 pandemic, i.e., lack of internet access—that prevented students, especially low-income and homeless students (85% of which identify as Black and Hispanic) from accessing virtual

²⁰ Ofer, *supra* note 17 at 1402.

²¹ Susan Dominus, *An Effective but Exhausting Alternative to High-School Suspensions*, THE NEW YORK TIMES (Sept. 7, 2016); <https://www.nytimes.com/2016/09/11/magazine/an-effective-but-exhausting-alternative-to-high-school-suspensions.html>; “When students are removed, they lose learning, fall further behind, and over time, become alienated and disenfranchised.” — Dr. Ross Greene, Jillian Enright, *Suspensions Do More Harm Than Good*, THE MEDIUM (Aug. 30, 2021), <https://medium.com/educate-pub/suspensions-do-more-harm-than-good-435b7a6caf25>.

²² Klein, *supra* note 18 at 642.

²³ *Id.*

²⁴ Klein, *supra* note 18 at 643.

²⁵ Enright, *supra* note 24.

²⁶ Alex Zimmerman, *‘It’s Basically Jail’: Inside NYC’s School Suspension Centers*, THE CITY (April 21, 2019, 4:00 AM), <https://www.thecity.nyc/2019/4/21/21211107/it-s-basically-jail-inside-nyc-s-school-suspension-centers>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

classrooms and participating in remote learning.³² Further, at the 102 suspension hub middle schools in New York City, 1 in 7 homeless students were suspended compared to the 1 in 25 students overall.³³ It is egregious to send students, especially those who are homeless and / or affected by the digital divide, to suspension sites that fail to provide them with adequate school work. We do our students a great disservice when they fail to learn substantive material in suspension sites.

Therefore, instead of applying antiquated approaches that fail to address the root cause of behavior and lead to significant harm, we need to use effective approaches that keep students in the classroom supported, engaged, and learning. We should provide restorative, trauma-informed, healing-centered approaches, positive behavioral supports and interventions, collaborative problem solving, peer mediation and other positive approaches. Restorative practices provide a holistic approach to preventing and addressing conflict by building and healing relationships, teaching positive behaviors, and allowing each person involved in an incident to be heard.³⁴ Further, restorative practices work to hold students accountable for their actions while also working to restore the student's relationship with the school community as opposed to the isolation and alienation a student would experience if they were suspended.³⁵ Restorative justice models are also beneficial in that they allow schools to gain a fuller understanding of what caused a student's behavior.³⁶ Initial research on restorative justice approaches found that they reduced future incidents.³⁷ Furthermore, the adoption of restorative practices is correlated with improved academic outcomes, school climate, and staff-student relationships.³⁸

C. The New York State Education Department Safe Schools Task Force Recommends Reforming New York's School Discipline Laws

In January 2023, the New York State Education Department (NYSED) presented the report, *Recommendations for Reducing Disparities in and Reforming School Discipline in New York State*, to the Board of Regents in January 2023.³⁹ The report contains recommendations from The Safe Schools Task Force convened by the NYSED to examine issues related to school

³² Support for Legislation Providing Internet Access to Individuals Living in Temporary Housing Throughout New York State, NEW YORK CITY BAR ASSOCIATION (Reissued May 4, 2022), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/digital-divide-free-wifi-for-homeless-shelter-residents>.

³³ *Suspension Hubs: The Rise in Suspensions Among Homeless Students*, INSTITUTE FOR POVERTY, CHILDREN, AND HOMELESSNESS (April 2018), <https://www.icphusa.org/reports/suspensionhubs/#key-findings>.

³⁴ Hassoun Ayoub, *supra* note 16.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ NYS Educ. Dep't, Office of Student Support Services, *Recommendations for Reducing Disparities In and Reforming School Discipline in New York State: Report from the Safe Schools Task Force* <https://www.regents.nysed.gov/meetings/2023/2023-01/p-12-education>.

safety in New York State, including the disproportionate effect of exclusionary discipline on students.⁴⁰

The NYSED report recommends amending NYS Education Law with provisions that are strikingly similar to those in the Solutions Not Suspensions Act. Among other things, NYSED’s report and the Solutions Not Suspensions Act both: require proactive, supportive alternatives to punishment and exclusion that build a positive, inclusive climate; prohibit the use of exclusionary discipline for students in pre-K through third grade (unless required by federal law); limit the length of suspension to 20 days (in the vast majority of situations); and require academic instruction and exams during suspension.

II. RECOMMENDATION: SWIFT PASSAGE OF THE BILL AND ENACTMENT INTO LAW

We urge the prompt passage of the Solutions Not Suspensions Act to shift away from ineffective exclusionary and biased discipline policies that disproportionately push Black and Brown students and students with disabilities out of school and towards building healing-centered, equitable learning environments.

The Act moves away from the traditional disciplinary formula—namely, suspension and removal of a child from school—and towards less punitive and more healing-oriented and equitable approaches. The legislation treats suspensions as a last resort and instead promotes student accountability and the value of learning from one’s mistakes.

Specifically, the bill will:

- End the use of suspensions for pre-Kindergarten-3rd grade students (unless required by federal law);
- Promote the use of restorative practices and other evidence-based approaches to supporting students;
- Limit the amount of time that a student can be out of school from 180 to 20 school days (unless required by federal law), and guarantee access to appropriate work and instruction so that students who are suspended can stay on track academically;
- Prohibit suspensions for the most minor infractions, like tardiness, dress code violations and insubordination, which are better addressed in school; and
- Ensure the law on student behavior and school discipline applies equally to both charter and district school students.

⁴⁰ NYS Educ. Dep’t, Safe Schools Task Force Report: *Recommendations for Reducing Disparities in and Reforming School Discipline in New York State* (Dec. 2022), <https://www.regents.nysed.gov/sites/regents/files/P-12%20-%20Recommendations%20for%20ATT%20-%20Recommendations%20for%20Reducing%20Disparities%20in%20and%20Reforming%20School%20Discipline%20in%20New%20York%20State.pdf>.

These provisions are designed to keep students engaged and learning, and connected to their peers, teachers, and supportive services in their school communities, with the ultimate goal of ensuring that disciplinary actions are equitable and proportionate, and underlying issues that lead to misbehavior are addressed in constructive ways that reduce repeat infractions.

III. CONCLUSION

For the reasons discussed above, it is imperative that the State act quickly to promote restorative approaches and other positive behavioral supports and interventions, reduce the number and length of suspensions, and ensure our students receive appropriate instruction and instructional materials during suspension, for the sake of our children. Therefore, we urge the New York State Legislature to promptly pass, and Governor Kathy Hochul to sign, the Judith Kaye School Solutions Not Suspensions Act into law to keep public school students learning in a school environment designed for their academic, social, and emotional success.

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