

**Testimony of the New York Civil Liberties Union<sup>1</sup>**  
**Before the**  
**New York State Senate Standing Committee on Education**  
**April 20, 2023**

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony regarding the Judith Kaye Solutions Not Suspensions Act.

**I. INTRODUCTION**

The NYCLU, the state affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with nine offices across New York state and more than 85,000 members and supporters. The NYCLU’s mission is to defend and promote the fundamental principles, rights, and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York. We have a long history of vigorously defending students’ rights, including access to education, as well as protecting them from harmful police and disciplinary practices. The NYCLU strongly supports the passage of the Judith Kaye Solutions Not Suspensions Act.

Schools should be safe environments for all students to learn, play, and grow. Unfortunately, school districts across New York State rely heavily on exclusionary punishment to respond to student behavior. New York’s outdated school discipline laws favor harsh punishments, including mandatory suspensions and suspensions that can last for an entire school year. The result is that vulnerable student populations, including students of color, students with disabilities, and LGBTQIA+ students are pushed out of the classroom and often into the web of court involvement.

The Solutions not Suspensions Act would address this issue by encouraging schools to use education-based, age appropriate, proven alternatives to suspensions. These alternatives improve school climate, strengthen student-teacher relationships, and correct misbehavior over the long run. They have been proven in states and districts across the country, including the nation’s largest, New York City. These practices will drastically reduce the use of out-of-school punishments to respond to non-dangerous misbehavior, improving New York’s graduation rate and students’ ability to succeed.

This bill will also limit the maximum length of suspensions, restrict suspensions of students in Pre-K through third grade, and formalize processes to ensure that students who are suspended are able to stay on track academically. These reforms are meant to address the appalling racial disparities in suspensions, which are exacerbated at the extreme ends of the discipline spectrum: extremely long suspensions, suspensions of the youngest students, and suspensions for the most minor misbehavior.

**I. A Civil Rights Crisis**

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Suspensions are applied overwhelmingly to Black and Latinx students, while white students are often not suspended for the same behavior. In New York City, for example, Black students represent less than a third of enrollment, and almost half of suspensions;<sup>2</sup> in both Buffalo and Syracuse, Black students make up about half of the student body and over 65 percent of suspensions.

This is not an issue limited to city school districts. On the contrary, discipline disparities are as bad or even worse in some suburban districts. In Gates-Chili Central School District, Black students represent 17 percent of enrollment and represent about 30 percent of suspensions. In Greece, Black students represent less than 15 percent of enrollment and more than 33 percent of suspensions. In the Bronxville Union Free School District, where Black and Latinx students together represent just under 6 percent of the student body, they account for 25 percent of suspensions.<sup>3</sup>



## II. Protecting the Right to an Education

Abundant research has demonstrated the negative outcomes of overusing exclusionary punishments. Kids who are suspended from school are at increased risk of dropping out, and those who drop out of school are more likely to use drugs and to have criminal justice involvement.<sup>4</sup> This is one route on the school-to-prison pipeline. NYSED's Safe Schools Task Force Report found that there is an increased likelihood of future behavioral incidents. In middle school youth, the use of out-of-school suspension led to increased behavioral incidents for the four years after the initial incident.<sup>5</sup>

In the 2017-18 school year, New York students spent 600,911 days of instructional time serving suspensions.<sup>6</sup> There is no requirement for students to receive their regular school assignments while suspended, and they may be prohibited from taking state tests and other exams—even when there is no finding that the student poses a danger. As a result, suspensions can have a serious and extreme impact on a student's future. Worse, suspensions in New York can last up to an entire school year (180 days), which is catastrophic for any young person's ability to be successful in school. In this, New York is out of step with many other large states, including California, Washington and Florida, which limit suspensions to 5 or 10 school days.<sup>7</sup>

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<sup>2</sup> U.S. Department of Education, Office of Civil Rights, Civil Rights Data Collection, school year 2017-2018. Available at <https://ocrdata.ed.gov/>. Due to the impacts of pandemic school closures and infrequency of CRDC data reporting, we are relying on pre-pandemic data. NYSED collects, but does not disclose discipline data without FOIL.

<sup>3</sup> *Id.*

<sup>4</sup> Council of State Governments Justice Center, "Breaking Schools' Rules: A Statewide Study on How School Discipline Relates to Students' Success and Juvenile Justice Involvement," 2011. Available at [https://csgjusticecenter.org/wp-content/uploads/2020/01/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](https://csgjusticecenter.org/wp-content/uploads/2020/01/Breaking_Schools_Rules_Report_Final.pdf).

<sup>5</sup> LiCalsi, C., Osher, D. & Bailey P. (2021). An Empirical Examination of the Effects of Suspension and Suspension Severity on Behavioral and Academic Outcomes, American Institutes for Research. <https://www.air.org/sites/default/files/2021-08/NYC-Suspension-Effects-Behavioral-Academic-Outcomes-August-2021.pdf>

<sup>6</sup> U.S. Department of Education, *Id.*

<sup>7</sup> *See, e.g.*, Florida Statutes §1003.01 (5)(a), "Suspension...means the temporary removal of a student from all classes of instruction...for a period not to exceed 10 school days."; California Statutes §48911.(a), "The principal...or the district superintendent of schools may suspend a pupil from the school...for no more than five consecutive schooldays."; Revised Code of Washington § 28A.600.015, "(2) Short-term suspension procedures may be used for suspensions of students up to and including, ten consecutive school days...(4) School districts may not impose long-term suspension or expulsion as a form of discretionary discipline."

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The Solutions Not Suspensions Act would step in to protect students' right to receive an education. It would limit suspensions in New York to 20 school days (which is an entire month of instructional time). It would require that students who are suspended be provided their regular assignments for school credit and given the opportunity to take exams. Currently, these supports are provided, at best, on an ad hoc basis. But school discipline should never deny students their opportunity to progress academically.

Since the pandemic caused schools to shut their physical doors in 2020, there has been extensive public concern about "learning loss."<sup>8</sup> Yet, since the adoption of New York's draconian school discipline laws in the late 1990s, hundreds of thousands of students have lost millions of hours of class instruction due to suspension. In the 2017-18 school year alone, the federal Department of Education estimates that New York students lost more than 600,000 days of school to suspension.<sup>9</sup> If lawmakers are truly concerned about learning loss, updating New York's school discipline laws will have an immediate impact.

Under current law, there is no requirement that suspension be a last resort. As a result, suspensions are rarely paired with educational or positive discipline tactics, either before or in conjunction with exclusion. This means kids aren't given any new strategies for managing their emotions and behavior. For some students, this cycle guarantees they cannot succeed: misbehavior in class results in a classroom removal or suspension, the student falls behind in their learning, they return to class with too many lessons to make up, they become alienated and frustrated, and they act out again. This time they could be suspended for an even longer period, but still there is no intervention required to encourage a different outcome. In many districts, repeated school discipline can itself result in a suspension. For example, in Buffalo Public Schools, if a student is tardy they receive a detention and if they miss their detention they're suspended. This senseless policy virtually requires educators to ignore underlying causes of misbehavior.

The Solutions Not Suspensions Act seeks to disrupt this pattern. Where feasible, it requires schools to attempt positive discipline strategies either before or in conjunction with a suspension. The exact response would be up to the districts, but could include restorative practices, conflict resolution, one-on-one or group counseling, or other programs that keep students in school while helping them learn from their mistakes. Some intervention strategies work when schools can invest lots of time and resources, but others require nothing more than an adult taking time to get to the root of a child's discipline problem. This bill provides a path for both.

## II. CONCLUSION

The NYCLU supports A.5691/S.1040 and calls for its swift passage.

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<sup>8</sup> See, e.g., Christina Veiga, "NYC officials keep a lid on data from tests to address 'learning gaps'," Chalkbeat, Jan. 27, 2022, Available at <https://ny.chalkbeat.org/2022/1/27/22905019/nyc-pandemic-learning-loss-testing-data>.

<sup>9</sup> U.S. Department of Education, Office of Civil Rights, Civil Rights Data Collection, school year 2017-2018, "2017-18 Days Missed Due to Out-of-School Suspensions Estimations," Available at <https://ocrdata.ed.gov/assets/downloads/2017-2018/Discipline/Discipline/Days-missed-due-to-OoS-Suspensions.xlsx>.



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