

May 1, 2023

Dear Members of the Senate Standing Committee on Education and the Senate Standing Committee on NYC Education:

We are pleased to respond to your request for testimony to support today’s Joint Public Hearing: To examine school policies related to discipline and suspension, and to hear from stakeholders about proposed legislation, S.1040 “Solutions Not Suspensions Act.”

The Opportunity Institute is a national nonprofit organization that focuses broadly on educational opportunities, beginning with infant and toddler development and continuing to Pre-K through grade 12 schooling, higher education completion, and into early career and family support. We focus on work that cuts across issue silos to address the complex barriers to social and economic mobility at critical junctures in people’s lives. In New York, we work with the Alliance for Quality Education and Citizen Action to advance more equitable practices and policies in schools, districts, and statewide.

The Whole Child Equity project at the Opportunity Institute seeks to apply recent advances in child development and brain sciences to improve the overall well-being of children, youth, and families and to improve educational outcomes — social, emotional, and academic — for young people who experience racial and economic disparities. These are the students most vulnerable to the failures of schools and the adjacent child-serving agencies on which they depend. With knowledge about science of learning and development and evidence-based practices, we believe public policy can take the transformation of education and adjacent systems to scale and improve the lives of many more people.

In this letter, we support the passage of S.1040 for four principal reasons:

1. It represents a proven, effective approach to policy on school discipline
2. Research shows the bill is likely to produce a positive return on investment
3. It is likely to disrupt longstanding and disproportionate rates of dropout, academic loss, and incarceration
4. It establishes a practical framework for change in school districts statewide

I. S.1040 represents a proven, effective approach to policy on school discipline

It is Consistent with Good Federal Examples

To begin understanding why S.1040 is a good step forward, we only need to look to the most recent attempts on the federal level to address issues of school discipline. More than a decade ago, under direction from the Obama Administration, The United States Department of Education (US ED) and the United States Department of Justice (DOJ), two agencies jointly responsible for implementing and

enforcing our nation’s civil rights laws, began the “Rethinking Discipline”¹ effort to analyze school discipline practices. The multi-year effort included various public and private meetings, the development of public-facing policy documents, the creation of several new programs and initiatives, and the release of official guidance letters from US ED and DOJ that aimed to end the school-to-prison pipeline by limiting the use of punitive discipline such as suspensions, expulsions, summons, and arrests — and reducing wide racial disparities in school discipline.

In contrast, about four years ago, President Trump created the Federal Commission on School Safety.² The “Safety Commission” made only one significant federal-level recommendation: the rescission of the anti-discrimination guidance issued by “Rethink Discipline.” The rescission of the guidance was bad policy and wildly out of step with contemporary research and related state efforts on school discipline.³

For example, around the same time, the RAND Corporation released a report⁴ detailing the positive impact of restorative discipline practices on classroom and school climate and on suspension rates. RAND’S efforts were one of the first randomized controlled trials of the relationship between teachers’ perception of teaching and learning conditions and the approach schools take towards student discipline. RAND found that teachers felt safer in schools using restorative discipline practices and that their schools had lower overall suspension rates and smaller disparities in suspension rates between white and black students and between high-income and low-income students.

RAND is not an outlier. A recent report from the Learning Policy Institute finds that suspensions do not address any of the underlying factors for behavioral incidents, nor do they create opportunities for students to learn new approaches to communicating or resolving conflicts.⁵ Recently, in the U.S. House of Representatives, a bill known as the “PUSHOUT Act” was reintroduced.⁶ The bill aims to reduce exclusionary discipline in schools, and focuses on data collection and grant programs to improve school climate. It is motivated by federal data that shows Black boys are suspended and expelled at rates three times their enrollment and Black girls are the only group of girls across all races and ethnicities who are disproportionately suspended and expelled.⁷

¹ *White House Report: The Continuing Need To Rethink Discipline* (2016). Available at:

<https://obamawhitehouse.archives.gov/the-press-office/2016/12/09/white-house-report-continuing-need-rethink-discipline>

² *Federal Commission on School Safety* (archived), available at: <https://www.ed.gov/school-safety>

³ “Study Contradicts Betsy DeVos’ Reason for Eliminating School Discipline Guidance,” U.S. News, January 4, 2019.

Available at: <https://www.usnews.com/news/education-news/articles/2019-01-04/study-contradicts-betsy-devos-reason-for-eliminating-school-discipline-guidance>

⁴ *Can Restorative Practices Improve School Climate and Curb Suspensions?*, RAND Corporation (2018). Available at: https://www.rand.org/pubs/research_reports/RR2840.html

⁵ *Pushed Out: Trends and Disparities in Out-of-School Suspension*, Learning Policy Institute (2022). Available at: <https://learningpolicyinstitute.org/product/crdc-school-suspension-report>

⁶ “Rep. Ayanna Pressley Reintroduces the Ending PUSHOUT Act to Address Disparities in School Disciplinary Practices,” Capital B News, April 18, 2023. Available at: <https://capitalbnews.org/pushout-bill-ayanna-pressley/>

⁷ *Suspensions and Expulsions in Public Schools*, U.S. Department of Education Office for Civil Rights (August 2022). Available at: https://ocrdata.ed.gov/assets/downloads/Suspensions_and_Expulsion_Part2.pdf

The evidence keeps mounting that for teaching and learning to be successful, educators must prioritize social and emotional well-being as part of the education program. Students must feel a sense of safety both physically and emotionally and must be able to deal with their feelings and have space and time to express themselves and develop proactive responses to negative situations with adults and with their peers. Our students need guidance and boundaries but most importantly, they need strong positive relationships and a nurturing environment as they learn to navigate the changes they are undergoing. Teachers who are especially responsible for student academic success need the assurance and guidance that in-school and class time can and should be used to address the stress and traumatic experiences that students are dealing with due to various disruptions, including: family illness and death; economic uncertainty in homes; food and housing insecurity. To New York state's credit, similar guidance on teaching and learning and social-emotional well-being can already be found in the state's guidance on school reopening.⁸

S.1040 is Consistent with Good Examples from Other States

In 2015, legislators in Illinois responded to federal civil rights data showing that the state had the nation's highest black/white school suspension disparities⁹ by passing a bill that banned zero-tolerance policies and emphasized restorative justice practices. The bill required that teachers receive ongoing training in classroom management, the consequences of exclusionary discipline practices, and culturally responsive and developmentally appropriate discipline.

One year later, Illinois experienced 26,000 fewer suspensions.¹⁰ In one district¹¹ that had already been working to address students' social-emotional health, administrators eliminated "mandatory minimum" suspensions, banned suspensions lasting more than three days, and developed a policy to prevent sudden and impactful decisions on expulsions. The new policy required educators to complete a one-page questionnaire within 24 hours of finding that a student has committed a potentially expellable offense.

While some school districts went beyond the framework established by state legislation to further improve their policies and practices, not all transitioned smoothly to this new approach to school discipline. It bears noting that the statewide changes to school discipline became law without dedicated funding. Many districts, teachers, and school administrators have cited the lack of supporting funds¹² as

⁸ *Recovering, Rebuilding, and Renewing: the Spirit of New York's Schools*, New York State Education Department. Available at: <http://www.nysed.gov/common/nysed/files/programs/reopening-schools/nys-p12-school-reopening-guidance.pdf>

⁹ "Illinois Issues: Rewriting The Rule Book," NPR Illinois, August 25, 2016. Available at: <https://www.nprillinois.org/education-desk/2016-08-25/illinois-issues-rewriting-the-rule-book#stream/0>

¹⁰ "Illinois Issues: New School Discipline Philosophy One Year Later," Illinois Public Media, December 12, 2017. Available at: <https://will.illinois.edu/news/story/illinois-issues-new-school-discipline-philosophy-one-year-later>

¹¹ Champaign, Illinois. *Id.*

¹² "In Wake of School Shootings, Southern Illinois Educators Weigh Additional School Safety Measures," The Southern Illinoisian, September 27, 2018. Available at: https://thesouthern.com/news/local/education/in-wake-of-school-shootings-southern-illinois-educators-weigh-additional/article_3e9a1c6b-7964-552c-8be3-52f875d54d77.html

a stumbling block for further improving school discipline practices and school safety. A recent report¹³ from Teach Plus Illinois found that while 84 percent of teachers reported that the law had been fully or partially implemented in their schools, districts didn't always provide satisfactory training, and that in some cases, more adversarial relationships developed between students and teachers.

Illinois' school discipline reform act was widely considered to be one of the most far-reaching efforts to address the national school-to-prison pipeline problem. The successes the state enjoyed on school discipline and school safety came from a confluence of sustained local advocacy, knowledge of reliable data, and federal guidelines and informational support. The rescission of federal guidance on school discipline and the lack of dedicated funding for these changes, have contributed to the already mixed bag in terms of practices from district-to-district.

In 2021, following a year of remote learning and in advance of a full return to in-person learning, the California Department of Education anticipated a rise in student misbehavior. California passed new laws and issued new school discipline guidelines¹⁴ that said schools should offer more counseling, suspend fewer students and address the underlying mental health challenges of students who misbehave in class.¹⁵ Support for implementation across the state has been somewhat uneven. Recently, reports have emerged that some districts, to avoid reporting expulsions, are either involuntarily transferring students or encouraging parents to voluntarily transfer their students to other schools.¹⁶

S.1040 is Consistent with Scientific Principles of Learning and Development

Around the world, leading scientists and researchers from various disciplines are converging around how children develop, how they learn, and how their environment either nourishes or limits the expression of their fullest potential. The basic idea of “whole child” education – that the success of the system is tied to the full array of students’ learning and developmental needs – is uncontroversial. The concept is widely accepted in education and other fields, backed by ample research, and supported by simple common sense. In fact, families and caregivers have been saying this for years.

The human brain is deeply dynamic: the architecture and genetic expression of each child’s brain grows and changes in response to that child’s context, experiences, relationships, and environment. Science shows that exposure to adverse experiences and toxic stress has a significant impact on a

¹³ *From Zero to SB100: Teachers’ Views on Implementation of School Discipline Reform*, Teach Plus (2018). Available at: https://teachplus.org/wp-content/uploads/files/publication/pdf/from_zero_to_sb100-teachers_views_on_implementation_of_school_discipline_reform_final.pdf

¹⁴ *State Guidance for New Laws on Discipline*, California Department of Education, August 19, 2021. Available at: <https://www.cde.ca.gov/nr/el/le/yr21ltr0819.asp>

¹⁵ “*Anticipating an Increase in Student Misbehavior, California Releases New Discipline Guidelines*,” EdSource, October 1, 2021. Available at: <https://edsource.org/2021/anticipating-an-increase-in-student-misbehavior-california-releases-new-discipline-guidelines/661749>

¹⁶ “*Thurmond Sets up Hotline to Report Schools with Unfair Discipline Practices*,” EdSource, February 27, 2023. Available at: <https://edsource.org/updates/thurmond-sets-up-hotline-to-report-schools-with-unfair-discipline-practices>

child’s cognitive, mental, emotional and developmental health, and ultimately, on a child’s success in school. Science also shows that positive human relationships are essential in catalyzing healthy brain development for learning. Two key hormones are at play regarding “toxic stress” and “positive relationships” within the limbic system, the “learning center” within the brain. The first is cortisol, which responds to stress, and can make children irritable and unable to concentrate or focus. With prolonged exposure, this can cause long-term negative health effects. Oxytocin, the other key hormone, is released when people experience feelings of trust and love. Oxytocin helps human beings manage stress, alleviating some of the negative effects of cortisol. In other words, positive relationships are critically important to the brain’s functioning and in helping to reduce the damage that problems like poverty, discrimination, and anxiety cause in children’s lives.¹⁷

An additional key element of the brain’s functioning is “malleability”: from birth to early adulthood, the brain is very malleable, able to change and adapt to changing circumstances. This feature of the brain makes it possible for children, when in environments conducive for their success, to overcome adverse experiences and excel.

Both science and fairness support the proposition that every child deserves instructional practices and learning environments that:

- Are academically rigorous and rich, addressing the unique learning and developmental needs and strengths of each child;
- Integrate academic, cognitive, social, emotional, identity, and health components;
- Foster deep, positive, empathetic relationships that are culturally responsive and promote each student’s physical and emotional safety;
- Engage integrated, comprehensive supports to meet individual student needs and address the effects of adversity, including poverty and racism; and
- Include the intentional development of critical skills, mindsets, and habits.

There are many proactive positive approaches to teaching positive behavior through a well established Positive Behavioral Interventions and Supports (PBIS) framework.¹⁸ Exclusionary discipline practices advance none of these goals.

II. Research shows the bill is likely to produce a positive return on investment

Political, economic, and social circumstances vary across states, but brains work the same everywhere. Investments in public education must come with clearer support for effective practices. It is important for political leaders to have the knowledge and courage to articulate what practices need to stop because they are at odds with science and evidence. This includes acknowledging that investments in punitive

¹⁷ *How the Science of Learning and Development Can Transform Education*, Science of Learning And Development Alliance (2020). Available at: https://soldalliance.org/wp-content/uploads/2021/12/SoLD-Science-Translation_May-2020_FNL.pdf

¹⁸ See, for example, materials available on the homepage of the Center for Positive Behavioral Interventions and Supports, available at: <https://www.pbis.org/>

practices and programs that isolate students - e.g., out-of-school suspensions - are proven to be wasteful, counterproductive. These practices are contrary to scientific findings about learning and development and have a proven track record of ineffectiveness. The research record for this is both wide and deep. For example, the American Institutes for Research, in a recent study of schools in New York City, found that "More severe exclusionary discipline, even as early as in middle school, has a consistent and substantive negative effect on the likelihood that a student will graduate on time from high school."¹⁹

Productive investments are those that ensure greater access and support for every learner and help to accelerate learning in safe and supportive environments. They provide a greater number of students with more rigorous courses, more high-dosage, high-quality grade-level tutoring, mentorships, work-based learning experiences, and after-school activities rooted in experiential learning. These kinds of investments support students broadly in their development and their ability to learn and thrive.

III. S.1040 is likely to disrupt longstanding and disproportionate rates of dropout, academic loss, and incarceration

"School discipline" as we have known it over the years, has been largely punitive and exclusionary, focused on using fear to stop behavior rather than teaching skills that are needed to change behavior. Not only are these strategies ineffective in terms of addressing the fundamental issues underlying student behavior, they are also bad for student learning. Overall academic achievement goes down in schools with high rates of punitive discipline.²⁰

What's more, the link between this approach to managing student behavior and adverse academic and life outcomes, already clear, is only becoming more pronounced. In a recent study,²¹ researchers from Boston University, the University of Colorado Boulder and Harvard University found evidence of a "school to prison pipeline," where students assigned to middle schools with stricter discipline practices and policies are 3.2 percentage points more likely to have been arrested and 2.5 percentage points more likely to have been incarcerated as adults. These students were also 1.7 percentage points more likely to drop out of high school and 2.4 percentage points less likely to attend a four-year college. The impacts are significantly more predictive for Black and Hispanic boys who attended strict middle schools.²² The researchers also cited findings showing that completing more years of

¹⁹ LiCalsi, Osher, Bailey, "An Empirical Examination of the Effects of Suspension and Suspension Severity on Behavioral and Academic Outcomes," American Institutes for Research (2021). Available at: <https://www.air.org/sites/default/files/2021-08/NYC-Suspension-Effects-Behavioral-Academic-Outcomes-August-2021.pdf>

²⁰ "How to Fix the Growing Discipline Problem in US Classrooms," WBUR, April 6, 2023. Available at: <https://www.wbur.org/onpoint/2023/04/06/how-to-fix-the-growing-discipline-problem-in-u-s-classrooms>

²¹ Bacher-Hicks, Billings, Deming, "Proving the School-to-Prison Pipeline," Education Next (Volume 21, No. 4, 2021). Available at: <https://www.educationnext.org/proving-school-to-prison-pipeline-strict-middle-schools-raise-risk-of-adult-arrests/>

²² "Study Confirms School-to-Prison Pipeline," U.S. News & World Report, July 27, 2021. Available at: <https://www.usnews.com/news/education-news/articles/2021-07-27/study-confirms-school-to-prison-pipeline>

school²³ reduces subsequent criminal activity, as does enrolling in a higher-quality school²⁴ and graduating from high school.²⁵

These findings are similar to the findings in a recent New York State Education Department of Education Task Force Report that a student’s likelihood of juvenile legal contact within the subsequent academic year increased threefold after suspension for a “discretionary” offense.”²⁶ The report also found:

Research has demonstrated that exclusionary discipline has harmful impacts on educational and social outcomes for young people. When students are suspended, for example, they are more likely to drop out of school and have subsequent involvement with the juvenile justice system; they are also less likely to enroll in postsecondary education (Losen & Martinez, 2013; Fabelo et al., 2011; Balfanz et al., 2015; Rosenbaum, 2018). High rates of suspension have long-lasting impacts on student success, with frequent out-of-school suspensions predicting low academic achievement, course completion, and attendance (Chu & Ready, 2018; Noltemeyer et al., 2015). While many studies focus on out-of-school suspension, removal from the classroom (e.g., in-school suspensions), too, results in lower grade point averages and an increased risk of dropout (Cholewa et al., 2018).²⁷

The number, nature, and age of the citations in the text convey this is not breaking news. Whether we are talking about the recent report on the “Preschool-to-Prison pipeline” from the Center for American Progress, or the “School-to-Prison pipeline” report a decade ago from the Forum on Public Policy, or the literally decades of work that Marian Wright Edelman and the Children’s Defense Fund have done on the “Cradle-to-Prison pipeline,” we certainly know by now what does *not* work for children and have been on notice for some time about the adverse civic effects of exclusionary school discipline.

²³ Anderson, “*In School and Out of Trouble? The Minimum Dropout Age and Juvenile Crime*,” Review of Economics and Statistics (May 1, 2014). Available at: <https://www.semanticscholar.org/paper/In-School-and-Out-of-Trouble-The-Minimum-Dropout-Anderson/c565146c74278e2efa468e34920c277bd1ebc6bd>

²⁴ Cook, Kang, “*Birthdays, Schooling, and Crime: Regression-Discontinuity Analysis of School Performance, Delinquency, Dropout, and Crime Initiation*,” American Economic Journal (Volume 8, No. 1, January 2016). Available at: <https://www.jstor.org/stable/24739070>

²⁵ Lochner, “*The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*,” American Economic Review (Volume 94, No. 1, February 2004). Available at: https://www.researchgate.net/publication/4901649_The_Effect_of_Education_on_Crime_Evidence_from_Prison_Inmates_Arrests_and_Self-Reports

²⁶ *Safe Schools Task Force Report: Recommendations for Reducing Disparities in and Reforming School Discipline in New York State*, Office of Student Support Services (December 2022). Available at: <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>

²⁷ Id, p. 25.

IV. S.1040 establishes a practical framework for change in school districts statewide

In New York, while there is statewide guidance on social and emotional learning, there are no clearly articulated, concrete expectations from the state regarding implementation and no system of improvement in place to support local efforts to align educational practices with what we know about learning and development from scientific principles. Progress on improving school discipline policies and practices in the state is likely to be uneven and inequitably distributed without more fully established metrics and guidance to support actual implementation. S.1040 aims to address this gap.

Recent experiences with changes to school discipline policies in Buffalo and Rochester speak to this. Buffalo revised its student discipline policy in 2013, but has yet to realize the full benefit of those changes. While suspensions across the district are down, and are not given for most minor misbehavior, across the school district, a large percentage of suspensions are still being given for student actions subjectively deemed as “disrespectful” or “insubordinate”: last year, 14% of suspensions were for insubordination, 10% for disrespectful behavior and 7% for classroom disruption.²⁸ Significant disagreements persist among school and district officials, youth, families, and community members about whether school discipline is being meted out in a disproportionate or inequitable fashion.

In Rochester, a new Code of Conduct²⁹ came into effect in 2016, with the goal of de-emphasizing expulsions and exclusionary discipline in favor of restorative practices. Over the next two years, the district saw a 27% overall drop in suspensions, a 28% drop in courses failed by students who were suspended, and a 47% drop in suspensions for non-violent, non-threatening behaviors. A recent report by district officials indicates that school suspensions in Rochester are down annually, with 6,732 fewer days of suspension this year compared to last year at the same point.³⁰

This is where S.1040 provides helpful structure for statewide efforts. Section 2 of the bill requires schools to develop a code of conduct to promote and sustain a safe, respectful and supportive school environment, but also specifically requires the code to include age-appropriate graduated disciplinary measures including restorative practices. The bill further guides action at a local level by articulating that suspensions are not permitted for “willful disobedience,” and that removals and suspensions are not permitted for tardiness, unexcused absence from class or school, leaving school without permission, violation of dress code and lack of ID. Further, requiring schools to use the least severe action necessary to respond to a code violation and requiring them to provide alternate education during

²⁸ “*Are School Suspensions Effective? Advocates Press Buffalo Schools to Find a Better Way*,” the Buffalo News, February 14, 2023. Available at:

https://buffalonews.com/news/local/education/are-school-suspensions-effective-advocates-press-buffalo-schools-to-find-a-better-way/article_43292a7a-980d-11ed-9cf7-df28cbdb5510.html

²⁹ *Rochester City School District Code of Conduct Policy 1400*, available at:

<https://www.rcsdk12.org/cms/lib/NY01001156/Centricity/Domain/16/Code%20of%20Conduct%206.16.16%20-%20approved.pdf>

³⁰ “*Proposed Bill Aims to Place Caps on Length of School Suspensions*,” News10 NBC, April 19, 2023. Available at:

<https://www.whec.com/top-news/proposed-bill-aims-to-place-caps-on-length-of-school-suspensions/>

removal/suspension would preserve some flexibility at the local level while still providing broad protections across the state.

What's more, the bill also applies learnings gained from similar efforts in Rochester and Buffalo by requiring that codes of conduct be developed in collaboration with representatives from interested stakeholders including students, teachers, administrators, parents, school safety personnel, collective bargaining units, and other school personnel. There is no path towards sustainability and success without collaboration among these stakeholders.

Conclusion

It is worth remembering that what was in place prior to the pandemic was not working well for many children. According to federal civil rights data, during the 2015–2016 school year 16.1 percent of schools in New York were disciplining Black students at a higher rate.³¹ In these years, prior to the pandemic, many schools and districts did not have adequate numbers of nurses, social workers or psychologists. The need for these professionals has grown exponentially since. Given the new challenges being faced by students, school staff, and families, we must do better than simply re-create pre-existing systems, practices, and policies. This is reflected in one of the guiding principles in the New York State Education Department's reopening guidance for schools: "We will continuously monitor the situation and provide updated guidance, policies, and regulatory changes as the situation requires."³²

What this means, practically speaking, is that students need to be guided through their development to understand appropriate social behaviors. There is no better place for this guidance to happen than in schools, where staff and students have many hours together each day to develop these behaviors. It is important that the state, through policy and guidance, help communities develop a full picture of what it takes to address the holistic needs of each student by providing guidance and supportive protocols based on developmental science, equity, and what supports are needed in a school to help each student learn and thrive. This way, everyone can arrive at the best strategies and opportunities worthy of funding.

S.1040's articulation of clear and concrete expectations regarding approaches to school discipline would help districts and schools collaborate more effectively with their communities to improve school climates and student outcomes. Clearer expectations and more active oversight are needed to ensure student well-being and the timely provision of academic supports. Considering the vast differences in local capacity across and among school districts, the absence of these expectations and supports can only result in the uneven and inequitable use of state investments in education.

In addition, research shows that funding exclusionary discipline practices is a waste of taxpayer dollars. These policies and practices are ineffective, regressive in their impact, and contrary to what we know

³¹ *Safe Schools Task Force Report*, FN 26, p. 13

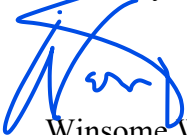
³² *Recovering, Rebuilding, and Renewing*, FN 8.

about how students develop in mind and body. To be effective and support improvement, New York's investments in public education must be informed by scientific principles of learning and development and accompanied by more careful and intentional guidance.

We note that New York, as other states, needs to develop better, more durable indicator systems to monitor equity and improve the evidence available to policymakers and the public at all levels. In the meantime, the state has a key role to play in requiring districts to track and measure their progress, particularly regarding the discipline measures that affect the most vulnerable students.

At this point the alternatives to S.1040 are, honestly, perverse: continuing to wastefully pour public money into fundamentally regressive practices or standing by and remarking upon inequities without taking meaningful action. We support passage of the bill and thank you for the opportunity to submit these comments. We would be happy to offer additional information as helpful.

Sincerely,



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Guy Johnson