



Legislative Affairs  
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## 2019 – 2020 Legislative Memorandum

**Subject: “The Judge Judith S. Kaye Safe and Supportive Schools Act”:  
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  
S.767 (Montgomery) / A.1981 (Nolan)**

**Position: SUPPORT**

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Schools should be safe environments for students to learn, play, and grow. Unfortunately, school districts across New York State rely heavily on exclusionary punishment and police involvement to control student behavior. New York’s current 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 LGBTQI students are pushed out of the classroom and into the web of court involvement.

The Judge Judith S. Kaye Safe and Supportive Schools Act would address this issue by encouraging schools to use education-based, age appropriate, proven alternatives to suspensions. In addition, it ensures that police officers who work in schools are trained to be part of a healthy and supportive school climate. Finally, the bill limits the length of suspensions and formalizes processes to ensure that students who are suspended are able to stay on track academically.

### **The NYCLU strongly supports S.767/A.1981 and urges its passage.**

During the 2016-17 school year, New York districts suspended a student at least once every minute.<sup>1</sup> These punishments 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; in both Buffalo and Syracuse, Black students make up about half of the student body and 60 percent of suspensions.<sup>2</sup>

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<sup>1</sup> The New York Equity Coalition, “Stolen Time: New York State’s Suspension Crisis,” December 2018. Available at <https://equityinedny.edtrust.org/stolen-time/>.

<sup>2</sup> U.S. Dep’t of Education, Office of Civil Rights, Civil Rights Data Collection, school year 2015-2016. Available at <https://ocrdata.ed.gov/Home>.

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 Great Neck, Black students represent less than 2 percent of enrollment and more than 14 percent of suspensions; Latinx students, less than 9 percent of enrollment and almost quarter of suspensions. In Greece, Black students represent less than 15 percent of enrollment and more than 31 percent of suspensions. In the Queensbury School District near Albany, where Black and Latinx students together represent just over 2 percent of the student body, they account for 15 percent of suspensions.<sup>3</sup>

Additionally, most school districts work in some way with local law enforcement, but few have adopted policies to protect children from unnecessary exposure to the criminal justice system. In districts that rely heavily on police tactics, students are subject to arrest for common misbehavior like scribbling on a desk, skipping class, or simply acting out.<sup>4</sup> In New York City, students can be arrested and handcuffed in the middle of an emotional crisis. Nearly 100 percent of the students subjected to this treatment are Black.<sup>5</sup>

### **Suspensions and classroom removals**

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>6</sup> This is one route on the school-to-prison pipeline.

In the 2015-16 school year, New York students spent 686,000 days of instructional time serving suspensions.<sup>7</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, Texas, Washington, and Florida, which limit suspensions to between 3 and 10 school days.<sup>8</sup>

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

<sup>4</sup> *See*, Amended complaint and demand for jury trial at 15, BH v. City of New York, No. 10 CV 0210 (RRM) (ALC), Filed June 11, 2010.

<sup>5</sup> New York Police Department, School Safety Data, Fourth Quarter 2018. Available at <https://www1.nyc.gov/site/nypd/stats/reports-analysis/school-safety.page>.

<sup>6</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/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf).

<sup>7</sup> U.S. Dep’t of Education, note 2 *supra*.

<sup>8</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,

The Safe and Supportive Schools 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 requires that students who are suspended be provided their regular assignments for school credit and given the opportunity to take exams. If students are repeatedly removed from the classroom, the bill requires schools to pause and create a support plan for the student to keep him or her in school. Currently, these supports are provided, at best, on an ad hoc basis. But school discipline should never deny students their opportunity to succeed academically.

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 virtually 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.

The Safe and Supportive Schools 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.

### **Police in Schools**

Most school districts in New York have some relationship with local law enforcement, either through participating in a school resource officer program, the assignment of police or sheriff's deputies to school buildings, or by employing private security guards. Yet very few districts have any policies in place to limit police involvement in minor student misbehavior. As a result, many young people have their first contact with the criminal justice system as a result of breaking a school rule.

This year, New York adopted a law that requires districts with police in their schools to clearly delegate responsibility for school discipline to educators. The Safe and Supportive Schools Act will build on this new requirement by ensuring that police are trained adequately to support positive discipline and are not permitted to intervene in every day school infractions. The exact training requirements will be left

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“(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.”

to school districts and local police departments to determine together, with input from local stakeholders.

The fact is, when police are in schools, more kids get arrested. The Justice Policy Institute found that schools with police had five times as many arrests for "disorderly conduct" as schools without police.<sup>9</sup> The students who get referred to cops are far more likely to be children of color than white children. New York has taken the first step to reel in unfettered police discretion in schools; the Safe and Supportive Schools Act represents the next important step.

**The NYCLU calls upon lawmakers to support and swiftly pass S.767/A.1981.**

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<sup>9</sup> Libby Nelson and Dara Lind, "The School to Prison Pipeline, Explained," Justice Policy Institute, 2015. Available at <http://www.justicepolicy.org/news/8775>.