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H. R. 2248

To reduce exclusionary discipline practices in schools, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2021

Ms. PRESSLEY (for herself, Mrs. WATSON COLEMAN, Ms. OMAR, Mrs. BEATTY, Ms. LEE of California, Mr. HASTINGS, and Ms. CLARKE of New York) introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To reduce exclusionary discipline practices in schools, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ending Punitive, Unfair, School-based Harm that is Overt and Unresponsive to Trauma Act of 2021'' or the ''Ending PUSHOUT Act of 2021''.

SEC. 2. PURPOSE.

It is the purpose of this Act to—

(1) strengthen data collection related to exclusionary discipline practices in schools and the discriminatory application of such practices, which disproportionately impacts students of color, particularly girls of color;

(2) eliminate the discriminatory use and overuse of exclusionary discipline practices based on actual or perceived race, ethnicity, color, national origin, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, or other stereotype related to sex), or disability; and

(3) prevent the criminalization and pushout of students from school, especially Black and brown girls, as a result of educational barriers that include discrimination, adultification, punitive discipline policies and practices, and a failure to recognize and support students with mental health needs or experiencing trauma.

SEC. 3. STRENGTHENING CIVIL RIGHTS DATA COLLECTION WITH RESPECT TO EXCLUSIONARY DISCIPLINE IN SCHOOLS.

(a) IN GENERAL.—The Assistant Secretary for Civil Rights shall annually carry out data collection authorized under section 203(c)(1) of the Department of Education

Organization Act (20 U.S.C. 3413(c)(1)), which shall include data with respect to students enrolled in a public preschool, elementary, or secondary school (including traditional public, charter, virtual, special education school, and alternative schools) who received the following disciplinary actions during the preceding school year:

(1) Suspension (including the classification of the suspension as in-school suspension or out-of-school suspension), which shall include data with respect to—

(A) the number of students who were suspended;

(B) the number and length of suspensions each such student received;

(C) the reason for each such suspension, including—

(i) a violation of a zero-tolerance policy and whether such violation was due to a violent or nonviolent offense;

(ii) a violation of an appearance or grooming policy;

(iii) an act of insubordination;

(iv) willful defiance; and

(v) a violation of a school code of conduct; and

(D) the number of days of lost instruction due to each out-of-school suspension.

(2) Expulsion, which shall include data with respect to—

(A) the number of students who were expelled; and

(B) the reason for each such expulsion, including—

(i) a violation of a zero-tolerance policy and whether such violation was due to a violent or nonviolent offense;

(ii) a violation of an appearance or grooming policy;

(iii) an act of insubordination, willful defiance, or violation of a school code of conduct; and

(iv) the use of profane or vulgar language.

(3) The number of students subject to an out-of-school transfer to a different school, including a virtual school, and if so, the primary reason for each such transfer.

(4) The number of students subject to a referral to law enforcement, including the primary reason

for each such referral, and whether such referral resulted in an arrest.

(b) REPORT.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Assistant Secretary for Civil Rights shall submit to Congress a report on the data collected under subsection (a).

(2) REQUIREMENTS.—The report required under paragraph (1) shall—

(A) identify, with respect to the data collected under subsection (a), schools, local educational agencies, and States that demonstrate, in the opinion of the Secretary, the overuse and discriminatory use of exclusionary disciplinary practices;

(B) be disaggregated and cross tabulated by—

(i) enrollment in a preschool or in an elementary school and secondary school by grade level;

(ii) race;

(iii) ethnicity;

(iv) sex (including, to the extent possible, sexual orientation and gender identity);

(v) low-income status;

(vi) disability status (including students eligible for disability under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et. seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794));

(vii) English learner status;

(viii) Tribal citizenship or descent, in the first or second degree, of an Indian Tribe; and

(ix) if applicable, pregnant and parenting student status;

(C) be publicly accessible in multiple languages, accessibility formats, and provided in a language that parents, family, and community members can understand; and

(D) be presented in a manner that protects the privacy of individuals consistent with the requirements of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), com-

monly known as the ''Family Educational Rights and Privacy Act of 1974''.

SEC. 4. GRANTS TO REDUCE EXCLUSIONARY SCHOOL DISCIPLINE PRACTICES.

(a) IN GENERAL.—The Secretary shall award grants (which shall be known as the ''Healing School Climate Grants''), on a competitive basis, to eligible entities for the purpose of reducing the overuse and discriminatory use of exclusionary discipline practices in schools.

(b) APPLICATION.—An eligible entity seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including an assurance that the eligible entity shall prioritize schools with the highest rates of suspensions and expulsions. The Secretary shall make applications publicly accessible in an appropriate digital format.

(c) PROGRAM REQUIREMENT.—An eligible entity that receives a grant under subsection (a) shall prohibit the use of—

(1) out-of-school suspension or expulsion for any student in preschool through grade 5 for incidents that do not involve serious bodily injury;

(2) out-of-school suspension or expulsion for any student in preschool through grade 12 for insub-

ordination, willful defiance, vulgarity, truancy, tardiness, chronic absenteeism, or as a result of a violation of a grooming or appearance policy;

(3) corporal punishment;

(4) seclusion;

(5) a mechanical or chemical restraint on a student; or

(6) a physical restraint on a student, except when—

(A) the behavior of a student poses a high risk of serious bodily injury to the student or another individual and less restrictive interventions would be ineffective in addressing such a high risk;

(B) a limited amount of force is used to protect the student or another individual from an injury and such ends immediately upon the cessation of the imminent danger of serious bodily injury to the student or another individual;

(C) the physical restraint does not restrict breathing or the flow of blood to the brain, including restraining in the prone or supine position;

(D) the physical restraint does not interfere with the ability of a student to communicate in the language or other mode of communication primarily used by such student;

(E) the physical restraint is imposed—

(i) by personnel who are trained and certified by a State in crisis intervention; or

(ii) when personnel described in clause (i) are not available, in the case of a rare and unforeseeable emergency; or

(F) the physical restraint does not affect or interfere with, with respect to a student, a disability, health care needs, or a medical or psychiatric condition documented in a—

(i) health care directive or medical management plan;

(ii) a behavior intervention plan;

(iii) an individualized education program or an individualized family service plan (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)); or

(iv) another relevant record made available to the State or eligible entity involved.

(d) USE OF FUNDS.—

(1) REQUIRED USES.—An eligible entity that receives a grant under this section shall use funds to—

(A) evaluate the current discipline policies of a school and, in partnership with students (including girls of color), the family members of students, and the local community of such school, develop discipline policies for such school to ensure that such policies are not exclusionary or discriminately applied toward students;

(B) provide training and professional development for teachers, principals, school leaders, and other school personnel to avoid or address the overuse and discriminatory disproportionate use of exclusionary discipline practices in schools and to create awareness of implicit and explicit bias and use culturally affirming practices, including training in—

(i) identifying and providing support to students who may have experienced or

are at risk of experiencing trauma or have other mental health needs;

(ii) administering and responding to assessments on adverse childhood experiences;

(iii) providing student-centered, trauma-informed positive behavior management intervention and support that creates safe and supportive school climates;

(iv) using restorative practices;

(v) using culturally and linguistically responsive intervention strategies;

(vi) developing social and emotional learning competencies; and

(vii) increasing student engagement and improving dialogue between students and teachers;

(C) implement evidence-based alternatives to suspension or expulsion, including—

(i) multi-tier systems of support, such as schoolwide positive behavioral interventions and supports;

(ii) social, emotional, and academic learning strategies designed to engage students and avoid escalating conflicts; and

(iii) other data-driven approaches to improving school environments;

(D) improve behavioral and academic outcomes for students by creating a safe and supportive learning environment and school climate, which may include—

(i) restorative practices with respect to improving relationships among students, school officials, and members of the local community, which may include partnering with local mental health agencies or nonprofit organizations;

(ii) access to mentors and peer-based support programs;

(iii) extracurricular programs, including sports and art programs;

(iv) social and emotional learning strategies designed to engage students and avoid escalating conflicts;

(v) access to counseling, mental health programs, and trauma-informed care programs, including suicide prevention programs; and

(vi) access to culturally responsive curricula that affirms the history and con-

tributions of traditionally marginalized people and communities;

(E) hire social workers, school counselors, trauma-informed care personnel, and other mental health personnel; and

(F) support the development, delivery, and analysis of school climate surveys.

(2) PROHIBITED USES.—An eligible entity that receives a grant under this section may not use funds to—

(A) hire or retain school-based law enforcement personnel, including school resource officers;

(B) purchase, maintain, or install surveillance equipment, including metal detectors or software programs that monitor or mine the social media use or technology use of students;

(C) arm teachers, principals, school leaders, or other school personnel; and

(D) enter into formal or informal partnerships or data and information sharing agreements with—

(i) the Secretary of Homeland Security, including agreements with U.S. Immi-

gration and Customs Enforcement or U.S. Customs and Border Protection; or

(ii) local law enforcement agencies, including partnerships that allow for hiring of school-based law enforcement.

(e) TECHNICAL ASSISTANCE.—The Secretary, in carrying out subsection (a), may reserve not more than 2 percent of funds to provide technical assistance to eligible entities, which may include—

(1) support for data collection, compliance, and analysis of the activities of the program authorized under subsection (a); and

(2) informational meetings and seminars with respect to the application process under subsection (b).

(f) REPORT BY GRANTEES.—Not later than one year after the date of enactment of this section, an eligible entity receiving a grant under this section shall submit to the Secretary a report on the activities funded through the grant. The Secretary shall make each such report publicly accessible in an appropriate digital format. Such report shall include, at a minimum, a description of—

(1) the evaluation methods of disciplinary practices prior to the grant;

(2) training and professional development services provided for school personnel to address discriminatory discipline practices, implicit and explicit bias, and other uses described in subsection (d)(1);

(3) aggregated and de-identified behavioral, social emotional, and academic outcomes experience by students;

(4) any instance of physical restraint used on a student with an explanation of a circumstance described in subsection (c)(6);

(5) the number of students who were referred to some form of alternative practice described in subsection (d)(1)(C);

(6) disaggregated data on students suspended, expelled, and referred to the juvenile or criminal legal system, cross tabulated by—

(A) reason for disciplinary action;

(B) grade level;

(C) race;

(D) ethnicity;

(E) sex (including to the extent possible, sexual orientation and gender identity);

(F) low-income status;

(G) disability status;

(H) English learner status;

(I) Tribal citizenship or descent, in the first or second degree, of an Indian Tribe; and

(J) if applicable, pregnant and parenting student status; and

(7) any other information required by the Secretary.

(g) ELIGIBLE ENTITIES.—In this section, the term ''eligible entity'' means—

(1) one or more local educational agencies (who may be partnered with a State educational agency), including a public charter school that is a local educational agency under State law or local educational agency operated by the Bureau of Indian Education; or

(2) a nonprofit organization (defined as an organization described in section 501(c)(3) of the Internal Revenue Code, which is exempt from taxation under section 501(a) of such Code) with a track record of success in improving school climates and supporting students.

SEC. 5. JOINT TASK FORCE TO END SCHOOL PUSHOUT OF GIRLS OF COLOR.

(a) ESTABLISHMENT.—The Secretary and the Secretary of Health and Human Services shall establish and

operate a joint task force to end school pushout (in this section referred to as the ''Joint Task Force'').

(b) COMPOSITION.—

(1) CHAIRS.—The Secretary and the Secretary of Health and Human Services shall chair the Joint Task Force.

(2) MEMBERS.—The Joint Task Force shall be composed of—

(A) Native American girls;

(B) students, including Black and brown girls;

(C) teachers;

(D) parents with children in school;

(E) school officials;

(F) representatives from civil rights and disability organizations;

(G) psychologists, social workers, trauma-informed personnel, and other mental health professionals; and

(H) researchers with experience in behavioral intervention.

(3) ADVISORY MEMBERS.—In addition to the members under paragraph (2), the Assistant Attorney General of the Civil Rights Division of the Department of Justice and the Director of the Bureau

of Indian Education shall be advisory members of the Joint Task Force.

(4) MEMBER APPOINTMENT.—Not later than 60 days after the date of the enactment of this Act, the Secretary and the Secretary of Health and Human Services shall appoint the members of the Joint Task Force—

(A) in accordance with paragraph (2);

(B) using a competitive application process; and

(C) with consideration to the racial, ethnic, gender, and geographic diversity of the Joint Task Force.

(c) STUDY AND RECOMMENDATIONS.—The Joint Task Force shall—

(1) conduct a study to—

(A) identify best practices for reducing the overuse and discriminatory use of exclusionary discipline practices; and

(B) determine to what extent exclusionary discipline practices contribute to the criminalization of—

(i) girls of color;

(ii) English learners;

(iii) Native American girls;

(iv) students who identify as lesbian, gay, bisexual, transgender, queer, or questioning; and

(v) students with disabilities; and

(2) develop recommendations based on the study conducted under paragraph (1).

(d) REPORT.—Not later than 360 days after the date of the enactment of this Act, and biannually thereafter, the Secretary and the Secretary of Health and Human Services shall submit to Congress a report on the recommendations under subsection (c)(2).

SEC. 6. AUTHORIZATION OF APPROPRIATION.

(a) IN GENERAL.—There is authorized to be appropriated $500,000,000 for each of fiscal years 2022 through 2026 to carry out sections 4 and 5.

(b) ADDITIONAL FUNDING TO THE OFFICE FOR CIVIL RIGHTS.—There is authorized to be appropriated $500,000,000 for fiscal year 2022 through 2026, and each fiscal year thereafter, to carry out section 3.

SEC. 7. DEFINITIONS.

In this Act:

(1) ACT OF INSUBORDINATION.—The term ''act of insubordination'' means an act that disrupts a school activity or instance when a student willfully defies the valid authority of a school official.

(2) APPEARANCE OR GROOMING POLICY.—The term ''appearance or grooming policy'' means any practice, policy, or portion of a student conduct code that governs or restricts the appearance of students, including policies that—

(A) restrict or prescribe clothing that a student may wear (such as hijabs, headwraps, or bandanas);

(B) restrict specific hair styles (such as braids, locks, twists, bantu knots, cornrows, extensions, or afros); or

(C) restrict whether or how a student may apply make-up, nail polish, or other cosmetics.

(3) CHEMICAL RESTRAINT.—The term ''chemical restraint'' means a drug or medication used on a student to control behavior or restrict freedom of movement that is not—

(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(B) administered as prescribed by a licensed physician or other qualified health pro-

fessional acting under the scope of the authority of a health professional under State law.

(4) DIRECT SUPERVISION.—The term ''direct supervision'' means a student is physically in the same location as a school official and such student is under the care of the school official or school.

(5) DISABILITY.—The term ''disability'' means a mental or physical disability that meets the conditions set forth in clauses (i) and (ii) of section 602(3)(A) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(3)(A)(i) and (ii)).

(6) ELEMENTARY AND SECONDARY EDUCATION ACT TERMS.—The terms ''elementary school'', ''English learner'', ''local educational agency'', ''secondary school'', and ''State educational agency'' has the meanings given such terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(7) GENDER IDENTITY.—The term ''gender identity'' means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual regardless of the designated sex at birth of the individual.

(8) INDIAN TRIBE.—The term ''Indian Tribe'' has the meaning given the term in section 4(e) of

the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

(9) IN-SCHOOL SUSPENSION.—The term ''in-school suspension'' means an instance in which a student is temporarily removed from a regular classroom for at least half a day but remains under the direct supervision of a school official.

(10) MECHANICAL RESTRAINT.—The term ''mechanical restraint'' has the meaning given the term in section 595(d)(1) of the Public Health Service Act (42 U.S.C. 290jj(d)(1)), except that the meaning shall be applied by substituting ''student'' for ''resident''.

(11) MULTI-TIER SYSTEM OF SUPPORTS.—The term ''multi-tier system of supports'' means a comprehensive continuum of evidence-based, systemic practices to support a rapid response to the needs of students, with regular observation to facilitate data-based instructional decision making.

(12) OUT-OF-SCHOOL SUSPENSION.—The term ''out-of-school suspension'' means an instance in which a student is excluded from school for disciplinary reasons by temporarily being removed from regular classes to another setting, including a home or behavior center, regardless of whether such dis-

ciplinary removal is deemed as a suspension by school officials.

(13) PHYSICAL ESCORT.—The term ''physical escort'' has the meaning given the term in section 595(d)(2) of the Public Health Service Act (42 U.S.C. 290jj(d)(2)), except that the meaning shall be applied by substituting ''student'' for ''resident''.

(14) PHYSICAL RESTRAINT.—The term ''physical restraint'' means a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, torso, or head freely, except that such term does not include a physical escort, mechanical restraint, or chemical restraint.

(15) POSITIVE BEHAVIOR INTERVENTION AND SUPPORT.—The term ''positive behavior intervention and support'' means using a systematic and evidence-based approach to achieve improved academic and social outcomes for students.

(16) PUSHOUT.—The term ''pushout'' means an instance when a student leaves elementary, middle or secondary school, including a forced transfer to another school, prior to graduating secondary school due to overuse of exclusionary discipline practices, failure to address trauma or other mental health needs, discrimination, or other educational

barriers that do not support or promote the success of a student.

(17) SCHOOL-BASED LAW ENFORCEMENT OFFICER.—The term ''school-based law enforcement officer'' means an individual who—

(A) is—

(i) assigned by a law enforcement agency to a secondary or elementary school or local educational agency;

(ii) contracting with a secondary or elementary school or local educational agency; or

(iii) employed by a secondary or elementary school or local educational agency;

(B) has the power to detain, arrest, issue a citation, perform a custodial investigation, or refer a person to a criminal or juvenile court;

(C) meets the definition of a law enforcement personnel under State law; or

(D) may be referred to as a ''school resource officer'', a ''sworn law enforcement officer'', or a ''school police officer''.

(18) SCHOOL OFFICIAL.—The term ''school official'' means a teacher, school principal, administrator, or other personnel, not considered school-

based law enforcement, engaged in the performance of duties with respect to a school.

(19) SECLUSION.—The term ''seclusion'' means the involuntary confinement of a student alone in a room or area where the student is physically prevented from leaving, and does not include a time out.

(20) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(21) SERIOUS BODILY INJURY.—The term ''serious bodily injury'' has the meaning given that term in section 1365(h)(3) of title 18, United States Code.

(22) SEXUAL ORIENTATION.—The term ''sexual orientation'' means homosexuality, heterosexuality, or bisexuality.

(23) SPECIAL EDUCATION SCHOOL.—The term ''special education school'' means a school that focuses primarily on serving the needs of students who qualify as ''a child with a disability'' as that term is defined under section 602(3)(A)(i) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(3)(A)(i)) or are subject to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(24) TIME OUT.—The term ''time out'' has the meaning given the term in section 595(d)(5) of the Public Health Service Act (42 U.S.C. 290jj(d)(5)), except that the meaning shall be applied by substituting ''student'' for ''resident''.

(25) ZERO-TOLERANCE POLICY.—The term ''zero-tolerance policy'' is a school discipline policy that results in an automatic disciplinary consequence, including out-of-school suspension, expulsion, and involuntary school transfer.

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