



Written Statement of the Record  
American Civil Liberties Union

National Political Advocacy Department  
West Resendes, Policy Fellow

Serving All Students: Promoting a Healthier, More Supportive School Environment  
on  
February 16, 2022

Submitted to  
U.S. House of Representatives  
Committee on Education and Labor  
Subcommittee on Early Childhood, Elementary, and Secondary Education

On behalf of the American Civil Liberties Union (ACLU) and our more than three million members, activists, and supporters, we submit this letter for the record of the Subcommittee on Early Childhood, Elementary and Secondary Education's hearing on "Serving All Students: Promoting a Healthier, More Supportive School Environment." The ACLU is a non-partisan public interest organization dedicated to preserving the principles of liberty and equality set forth in the Constitution and in our nation's civil rights laws. We believe that every person has the right to an equal education, free from invidious discrimination. The ACLU has long worked to end the school-to-prison pipeline through federal, state, and local legislation and advocacy, and through litigation targeting punitive and discriminatory school discipline and policing practices—including corporal punishment, suspension and expulsion, and referral to law enforcement—that harm all students' educations, and disproportionately target disabled students, Black and Brown students, and especially disabled students of color.

We strongly support the Subcommittee's scrutiny of the harmful use of aversives, restraints, seclusion, and all other forms of corporal punishment in our schools. These punitive measures poison the school environment and deny students an equal opportunity to learn, violating young people's dignity, in addition to their civil rights. Since 2015, the Every Student Succeeds Act ("ESSA") has required state educational agencies receiving ESSA funds to support local educational agencies in improving school conditions for student learning, including ending "the use of aversive behavioral interventions that compromise student health and safety."<sup>1</sup> However, the mass use of harmful aversives has not ceased.

We encourage the members of the Subcommittee, along with the U.S. House Committee on Education and Labor, as they contemplate the actions they will take to support healthier, more supportive school environments to listen to youth, families, and other directly impacted individuals on how those environments should look. To this end, we urge Congress to pass the following three bills that will provide schools the appropriate resources and federal guidelines to make learning environments more supportive for all students: the Keeping All Students Safe Act (H.R. 3474/S. 1858); the Protecting our Students in Schools Act (H.R. 3836/S. 2029); and the Counseling not Criminalization in Schools Act (H.R. 4011/S. 2125).

**I. After more than a decade's worth of legislative consideration and countless students harmed, we urge Congress to act now to end seclusion and limit restraint practices.**

The practice of restraining and secluding schoolchildren has been implicated in countless and often ongoing cases of severe, pervasive, and traumatic abuse across the country. Despite numerous studies, reports, investigations, and governmental hearings at the state and federal level, too many school children continue to be

---

<sup>1</sup> Pub. L. No. 114-95, §1111(g)(1)(C), 129 Stat 1802, 1844.

subjected to actions by teachers, administrators, school-based law enforcement, and other school personnel that threaten their health and safety.<sup>2</sup> Over the years, we have become all too aware of the horrifying stories that pierced the public's consciousness—stories of children being locked in closets, arms bound in handcuffs, or even suffocating to death from inappropriate use of force. Even when these techniques cause less physical harm, children often experience lifelong mental trauma. The alarming truth is that most incidents of restraint and seclusion occur in the shadows far from public or even parental view. Indeed, 70% of school districts reported no data on students being subject to restraint and seclusion in a recent national data collection—this underreporting was so egregious that the Government Accountability Office issued a report to draw attention to this ongoing problem.<sup>3</sup>

Currently, no federal laws restrict the use of restraint and seclusion in schools. Despite varying state laws regulating restraint and seclusion, these draconian and dangerous practices are most frequently and overwhelmingly used against students with disabilities and students of color. Based on national data collected by the U.S. Department of Education, while students with disabilities represent only 14% of school enrollment, they constitute nearly 80% of those students subject to restraint and 77% of those students subject to seclusion.<sup>4</sup> The extreme disproportionality of these practices in a given school district not only speaks to the dearth of appropriate supports for students with disabilities, but also constitutes disability discrimination under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. The Department of Justice has had to expend resources to investigate numerous systemic patterns of discriminatory restraint and seclusion: the DOJ's most recent settlement led from an finding that Frederick County Public Schools in Maryland used these practices on students 7,253 times between 2017-2020 and *all* instances save for one involved a student with a disability (despite that only 11% of the district's students have a disability).<sup>5</sup> The continued absence of a comprehensive

---

<sup>2</sup> See, e.g., U.S. Gov't Accountability Office, GAO-09-719T, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers ("GAO Report") (May 2009), <https://gao.gov/new.items/d09719t.pdf>; Nat'l Disability Rights Network, School is Not Supposed to Hurt: The U.S. Department of Education Must Do More To Protect School Children from Restraint and Seclusion (Mar. 2012), [https://www.ndrn.org/wp-content/uploads/2019/03/School\\_is\\_Not\\_Supposed\\_to\\_Hurt\\_3\\_v7.pdf](https://www.ndrn.org/wp-content/uploads/2019/03/School_is_Not_Supposed_to_Hurt_3_v7.pdf); Council of Parent Attorneys and Advocates, The Crisis of Trauma and Abuse in Our Nation's Schools (2020), [https://www.copaa.org/resource/resmgr/docs/2020\\_docs/restraint\\_and\\_seclusion\\_pape.pdf](https://www.copaa.org/resource/resmgr/docs/2020_docs/restraint_and_seclusion_pape.pdf).

<sup>3</sup> U.S. Gov't Accountability Office, GAO-19-551R, K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data [Reissued with revisions on July 11, 2019.] (July 2019), <https://www.gao.gov/products/gao-19-551r>. Further, there is currently no data collected on the tens of thousands of students with disabilities who are placed by their school districts into nonpublic schools. This is despite the fact that significant number of the deaths and injuries reviewed by the 2009 GAO report – the report that helped spur federal tracking of restraint and seclusion data in 2009 – occurred in such segregated private placements.

<sup>4</sup> U.S. Educ. Dep't, Office for Civ. Rts., Civil Rights Data Collection, The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools (Oct. 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>.

<sup>5</sup> U.S. Dep't of Justice, Investigation of Frederick County Public Schools and Related Findings (Dec.

federal law will perpetuate this whack-a-mole approach while these practices continue unchecked, and in many cases untracked, in our states.<sup>6</sup> A legislative response is necessary and long overdue.

The Keeping All Students Safe Act (“KASSA”), first introduced in 2009 and reintroduced multiple times since, would provide essential protections for all students, and particularly those disproportionately impacted by these practices.<sup>7</sup> It would put in place national standards regarding these punitive practices. KASSA would prohibit the use of seclusion, mechanical restraint, chemical restraint and aversives, and limit the use of physical restraints to emergency situations where a student’s behavior poses an imminent danger of serious physical injury and where less restrictive interventions would be ineffective in stopping such imminent danger. Often, restraint and seclusion is carried out because of inadequate teacher training, a desire to punish a student on the part of school personnel, or bias against students with disabilities, students of color, or those students who fall into both categories. Importantly, this bill would fund training for school personnel to support students through evidence-based methods to promote safe and healthy classrooms. Eliminating the use of seclusion and drastically reducing the use of restraints in schools is a critical component of our ongoing effort to shed outdated practices and move toward supportive, evidence-based approaches to enable our students to thrive in schools.

## **II. In recognizing the racist and ableist use of corporal punishment, Congress should act to ban the practice in our schools.**

Today, 19 states continue to allow corporal punishment—another outdated, archaic practice—to be used in schools.<sup>8</sup> Corporal punishment usually takes the form of paddling with a hard wooden paddle, but can also include—depending on state law—hitting, spanking, slapping, or other forms of physical force. The effects of corporal punishment include substantial physical and emotional injuries and disruptive exclusions from the educational process. These punitive and harmful practices can lead to lifelong traumas. Further, these practices are out of step with international practice and jurisprudence on the use of corporal punishment in schools.<sup>9</sup>

---

1, 2021), <https://www.justice.gov/opa/press-release/file/1452626/download>.

<sup>6</sup> Non-DOJ investigations have also taken place, leading to discovery of statewide issues and subsequent legislative responses. *See, e.g.*, ProPublica, The Quiet Rooms: Children Locked Away in Illinois Schools (2021), <https://www.propublica.org/series/illinois-school-seclusions-timeouts-restraints>.

<sup>7</sup> H.R. 3474/S. 1858.

<sup>8</sup> Elizabeth Gershoff & Sarah Font, Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy. *Social Policy Report*, 30, 1 (2016) at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5766273/>.

<sup>9</sup> Human Rights Watch & ACLU, A Violent Education: Corporal Punishment of Children in US Public Schools (Aug. 2008), <https://www.aclu.org/violent-education-corporal-punishment-children-us>.

As with restraint and seclusion, students with disabilities bear the disproportionate brunt of these punitive and dangerous practices. ACLU data shows that in Missouri, for example, students with disabilities were more likely to be hit compared to their peers without disabilities—a pattern that has held constant throughout the years.<sup>10</sup> In a recent report by the Intercultural Development Research Association examining 2017-18 data from Texas, students with disabilities were found to be nearly twice as likely to be punished as students without a disability—at a rate of 4.5% compared to 2.6%.<sup>11</sup> Black boys with disabilities had it the worst, as they were punished at a rate of 7.7% compared to 1.7% for white girls. The academic use of corporal punishment in educational settings has no pedagogical justification, discriminates against students with disabilities—particularly those of color, and impairs public schools’ educational objectives.

The Protecting our Students in Schools Act (“POSSA”) would ban the practice of corporal punishment in any school receiving federal funding.<sup>12</sup> The legislation would create a grant program to support school districts in implementing positive behavioral interventions to replace past reliance on punitive practices. Allowing corporal punishment practices to continue unabated is a dereliction of the federal government’s duty to protect the civil rights of young people in schools. Advancing this legislation would pull the students of these 19 states into step with their peers in the rest of the nation and enable youth learning in these school districts to do so safely, free from the threat of wooden paddles and other inhumane, unwarranted uses of physical force.

### **III. We urge Congress to recognize the continued harms of policing in schools and act to shift federal funding to supportive resources.**

In addition to curbing these aversive discipline practices, we urge Congress to listen to the ongoing calls of Black and Brown youth with and without disabilities who ask you to stop the flow of federal funding to law enforcement in schools across the country. Police are overtasked with performing school discipline—including restraint, seclusion, and corporal punishment—which has resulted in the mass entanglement of youth in the school-to-prison and school-to-deportation pipelines.<sup>13</sup>

---

[public-schools](#), at 2.

<sup>10</sup> ACLU of Missouri, Missouri’s Pipeline of Injustice: From School to Prison (Oct. 2018), [https://www.aclu-mo.org/sites/default/files/stpp\\_report\\_new\\_brand\\_with\\_update\\_oct\\_2018\\_as\\_pages\\_with\\_blanks.pdf](https://www.aclu-mo.org/sites/default/files/stpp_report_new_brand_with_update_oct_2018_as_pages_with_blanks.pdf), at 25.

<sup>11</sup> Morgan Craven, Stopping Harmful Corporal Punishment Policies in Texas, Intercultural Development Research Association (June 2021), <https://www.idra.org/wp-content/uploads/2021/06/Stopping-Harmful-Corporal-Punishment-Policies-in-Texas-June-2021-IDRA.pdf>

<sup>12</sup> H.R. 3836/S. 2029.

<sup>13</sup> For more on the school-to-deportation pipeline, see Coshandra Dillard, The School-to-Deportation Pipeline (Learning for Justice, Fall 2018), <https://www.learningforjustice.org/magazine/fall-2018/the-school-to-deportation-pipeline>.

The ACLU is especially concerned by the rise of criminalization of students in schools with law enforcement. The rate of school-based referrals to law enforcement in schools increased 12% from the 2015–16 school year to the 2017–18 school year, and the rate of school-based arrests increased 5% during the same time period.<sup>14</sup> In California, ACLU data shows that Black students’ arrest rates are 7.4 times higher in schools with assigned law enforcement than in schools without; similarly that rate is 6.9 times higher for Latine students, and 4.6 times higher for students with disabilities.<sup>15</sup> Students of color with and without disabilities, as well as other students with disabilities, are more likely to be subject to harmful police interactions at school with substantial immediate and collateral consequences. Moreover, police in schools contribute to a negative school climate for the entire school community. Schools that received federal funding to hire more police experienced a decrease in graduation rates,<sup>16</sup> while schools that employed more mental health providers saw improved student engagement and graduation rates.<sup>17</sup> In a nationwide survey, students overwhelmingly chose their friends (84%) and teachers (63%) as essential to a safe school environment—not police (16%).<sup>18</sup> Those respondents also identified mental health supports as the top resource they wanted to see more of in school (78%)—law enforcement was ranked dead last (8%). Further, the presence of police in schools increases the possibility that students will be entangled in threat assessments, which are too often used disproportionately against Black students with disabilities.<sup>19</sup> Of course, these students also experience referrals and arrests in schools at much higher rates than students without disabilities and white students.<sup>20</sup>

Based on the preponderance of credible studies and the personal experiences of the countless youth who have experienced harm at the hands of school police, the ACLU

---

<sup>14</sup> U.S. Educ. Dep’t, Office for Civ. Rts., Civil Rights Data Collection, 2017-18 State and National Estimations (Jun. 2021), <https://ocrdata.ed.gov/estimations/2017-2018>.

<sup>15</sup> See Amir Whitaker et al., No Police in Schools: A Vision for Safe and Supportive Schools in CA (ACLU Foundations California, 2021), <https://www.aclusocal.org/en/no-police-in-schools>.

<sup>16</sup> Emily K. Weisburst, Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-Term Education Outcomes (A Sub-project of ‘Building Pathways to College Access and Beyond), (Education Research Center, 2018), <https://texaserc.utexas.edu/wp-content/uploads/2018/11/21-UTA034-Brief-BPCAB-11.1.18.pdf>.

<sup>17</sup> Sharon Hoover et al., Advancing Comprehensive School Mental Health: Guidance From the field. (National Center for School Mental Health, 2019), [http://www.schoolmentalhealth.org/media/SOM/Microsites/NCSMH/Documents/Bainum/Advancing-CSMHS\\_September-2019.pdf](http://www.schoolmentalhealth.org/media/SOM/Microsites/NCSMH/Documents/Bainum/Advancing-CSMHS_September-2019.pdf), at 18 (citing sources).

<sup>18</sup> Kate Hamaji & Kate Terenzi, Arrested Learning: A survey of youth experiences of police and security at school (Center for Popular Democracy, Apr. 2021), <https://www.populardemocracy.org/sites/default/files/Police-Free%2BSchools%2BFinal%2BV4%2B%281%29.pdf>.

<sup>19</sup> See National Disability Rights Network et al., K-12 Threat Assessment Processes: Civil Rights Impacts (Feb. 2022), <https://www.ndrn.org/resource/the-problems-with-threat-assessments-in-schools/>.

<sup>20</sup> See Amir Whitaker et al., Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students (ACLU, 2019), <https://www.aclu.org/report/cops-and-no-counselors>.

calls on Congress to pass the Counseling not Criminalization in Schools Act (“CNC”).<sup>21</sup> This legislation would end U.S. Department of Justice funding for school-based law enforcement and instead grant \$5 billion to help schools hire personnel who can support safe and healthy schools. Schools that used these types of supports, including restorative and trauma-informed practices, saw beneficial results, including reduced disciplinary incidents, suspensions, dropouts, and expulsions.<sup>22</sup> We call on Congress to take leadership in allocating our valuable resources towards personnel who approach young people with the intent of supporting them, not subduing them with guns and handcuffs.

#### **IV. We urge Congress to advance these three bills to promote a healthier, more supportive school environment for all students.**

Creating safer, more positive and supportive learning environments requires addressing the entire spectrum of counterproductive and harsh punishments that disproportionately affect our nation’s most vulnerable students. In the absence of federal standards governing the use of these aversive disciplinary practices, states will continue to allow school personnel and law enforcement to inflict physical and psychological harm on students. Our youth will continue to be subject to some of these harmful practices just because of the state they live in. These three bills will address these ongoing school climate problems, and have the broad support of the civil rights and disability rights communities.<sup>23</sup> We urge Congress to lead and act now to support our youth in learning in healthy schools free from traumatic and harmful practices.

---

<sup>21</sup> H.R. 4011/S. 2125.

<sup>22</sup> See *supra* note 15, nn.32–34 and accompanying text.

<sup>23</sup> The Leadership Conference on Civil and Human Rights, *Support Legislation to Advance Safe, Healthy, and Inclusive School Climates* (Jan. 19, 2022) <https://civilrights.org/resource/co-sponsor-legislation-to-advance-safe-healthy-and-inclusive-school-climates/>.