H. R. 5325

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2019

Ms. PRESSLEY introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ending Punitive, Un-
fair, School-based Harm that is Overt and Unresponsive
to Trauma Act of 2019” or the “Ending PUSHOUT Act
of 2019”.

SEC. 2. PURPOSE.

It is the purpose of this Act to—

(1) strengthen data collection related to exclu-
sionary discipline practices in schools and the dis-
criminatory application of such practices, which dis-
proportionately impacts students of color, particu-
larly girls of color;

(2) eliminate the discriminatory use and over-
use of exclusionary discipline practices based on ac-
tual or perceived race, ethnicity, color, national ori-
gin, sex (including sexual orientation, gender iden-
tity, pregnancy, childbirth, a medical condition re-
lated 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, punitive discipline policies and prac-
tices, and a failure to recognize and support stu-
dents with mental health needs or experiencing trau-
ma.

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 in-
clude data with respect to students enrolled in a public
preschool, elementary, or secondary school (including tra-
ditional public, charter, virtual, special education school,
and alternative schools) who received the following dis-
ciplinary 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 re-
spect to—

(A) the number of students who were sus-
pended;

(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 pol-
icy 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 con-
duct; 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 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary, acting through 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), commonly 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.

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

(3) corporal punishment;
(4) mechanical and chemical restraints of students;

(5) physical restraints of students, except in situations involving imminent danger of serious physical harm; and

(6) seclusion.

(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 non-profit 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 pro-
grams, including suicide prevention programs; and

(vi) access to culturally responsive curricula that affirms the history and contributions 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 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. Immigration 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 police and school resource officers.

(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) ELIGIBLE ENTITIES.—In this section, the term “eligible entity” means—

(1) 1 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 or-
ganization described in section 501(c)(3) of the In-
ternal 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 Sec-
cretary 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 (e)(2).
SEC. 6. AUTHORIZATION OF APPROPRIATION.

(a) IN GENERAL.—There is authorized to be appropriated $500,000,000 for each of fiscal years 2021 through 2025 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 2021 through 2025, 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 professional 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 disciplinary 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 free-
ly, 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 evi-
dence-based approach to achieve improved academic
and social outcomes for students.

(16) **Pushout.**—The term “pushout” means
an instance when a student leaves elementary, mid-
dle or secondary school, including a forced transfer
to another school, prior to graduating secondary
school due to overuse of exclusionary discipline prac-
tices, 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 Official.**—The term “school of-
official” means a teacher, school principal, adminis-
trator, or other personnel engaged in the perform-
ance of duties with respect to a school.

(18) **Seclusion.**—The term “seclusion” means
the involuntary confinement of a student alone in a
room or area where the student is physically pre-
vented from leaving, and does not include a time
out.
(19) SECRETARY.—The term “Secretary” means the Secretary of Education.

(20) 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.

(21) SEXUAL ORIENTATION.—The term “sexual orientation” means homosexuality, heterosexuality, or bisexuality.

(22) 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).

(23) 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”.

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