To prohibit the use of corporal punishment in schools, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 10, 2021

Mr. Murphy (for himself, Mr. Van Hollen, and Mr. Brown) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit the use of corporal punishment in schools, and for other purposes.

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

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the
5 “Protecting our Students in Schools Act of 2021”.
6 (b) Table of Contents.—The table of contents for
7 this Act are as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.

TITLE I—PROHIBITION OF CORPORAL PUNISHMENT

Sec. 101. Prohibition of corporal punishment.
The purposes of this Act are to—

(1) eliminate the use of corporal punishment in schools;

(2) ensure, regardless of sexual orientation, gender identity or expression, sex, race, color, national origin, disability, or religion, the health and safety of all students and program personnel in schools and promote a positive school climate and culture;

(3) assist States, local educational agencies, and schools in improving school climate and culture by implementing positive behavioral interventions and supports, and other models (including models such as restorative justice interventions, trauma-informed care, multi-tiered system of supports, crisis and de-escalation interventions, implicit bias training, and culturally responsive teaching), to address
student behavior and work to eliminate the use of exclusionary and aversive discipline practices or interventions;

(4) ensure all program personnel have the supports and training necessary to implement positive behavioral interventions and supports and other models to address student behavior and improve school climate and culture; and

(5) collect and analyze data on exclusionary and aversive discipline practices or interventions in schools.

SEC. 3. DEFINITIONS.

In this Act:

(1) CORPORAL PUNISHMENT.—The term “corporal punishment” means, with respect to a student, a deliberate act which causes the student to feel physical pain for the purpose of discipline, including an act of physical force, such as striking, spanking, or paddling, inflicted on a student’s body, requiring a student to assume a painful physical position, or the use of chemical sprays, electroshock weapons, or stun guns on a student’s body.

(2) ESEA TERMS.—The terms “elementary school”, “evidence-based”, “local educational agency”, “outlying area”, “parent”, “secondary school”,
“Secretary”, “State”, and “State educational agency” have the meanings given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) EXCLUSIONARY DISCIPLINE.—The term “exclusionary discipline” means any type of disciplinary action that removes or excludes a student from the student’s usual educational setting, or from access to education services, including such disciplinary actions as in-school suspensions, out-of-school suspensions, expulsions, or any other removal, however labeled, that results in lost instructional time for the student.

(4) MODEL.—The term “model” means an activity, strategy, framework, or intervention that is evidence-based, to the extent practicable.

(5) POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS.—The term “positive behavioral interventions and supports”—

(A) means a schoolwide, systematic approach that embeds evidence-based practices and data-driven decision making to improve school climate and culture in order to achieve improved academic and social outcomes and increase learning for all students (including stu-
dents with the most complex and intensive beh-

havioral needs); and

(B) encompasses a range of systemic and

individualized positive strategies to teach and

reinforce school-expected behaviors, while dis-

couraging and diminishing undesirable behav-

iors.

(6) PROGRAM.—The term “program” means—

(A) all of the operations of a local edu-

cational agency, system of vocational education,
or other school system;

(B) a program that serves children who re-

ceive services for which financial assistance is

provided in accordance with the Head Start Act

(42 U.S.C. 9831 et seq.); or

(C) an elementary school or secondary

school that is not a public school that enrolls a

student who receives special education and re-

lated services under the Individuals with Dis-

abilities Education Act (20 U.S.C. 1400 et 

seq.).

(7) PROGRAM PERSONNEL.—

(A) IN GENERAL.—Subject to subpara-

graph (B), the term “program personnel”

means any agent of a program, including an in-
individual who is employed by a program, or who performs services for a program on a contractual basis, including—

(i) school leaders;

(ii) teachers;

(iii) specialized instructional support personnel;

(iv) paraprofessionals; or

(v) other staff.

(B) EXCLUSION.—Notwithstanding subparagraph (A), program personnel shall not include a law enforcement officer or a school security guard.

(8) PROTECTION AND ADVOCACY SYSTEM.—The term “protection and advocacy system” means a protection and advocacy system established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

(9) LAW ENFORCEMENT OFFICER.—The term “law enforcement officer”—

(A) means any person who—

(i) is a State, Tribal, or local law enforcement officer (as defined in section 1204 of title I of the Omnibus Crime Con-
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control and Safe Streets Act of 1968 (34 U.S.C. 10284)); and

(ii) is assigned by the employing law enforcement agency to a program, who is contracting with a program, or who is employed by a program; and

(B) includes an individual referred to as a “school resource officer” if that individual meets the definition in subparagraph (A).

(10) SCHOOL SECURITY GUARD.—The term “school security guard” means an individual who is not a sworn law enforcement officer and who is responsible for addressing one or more of the following safety and crime prevention activities in and around a program:

(A) Assisting program personnel in safety incidents.

(B) Educating students in crime and illegal drug use prevention and safety.

(C) Developing or expanding community justice initiatives for students.

(D) Training students in conflict resolution and supporting restorative justice programs.
(E) Serving as a liaison between the program and outside agencies, including other law enforcement agencies.

(F) Screening students or visitors to the program for prohibited items.

(11) STUDENT.—The term “student” means an individual enrolled in a program.

TITLE I—PROHIBITION OF CORPORAL PUNISHMENT

SEC. 101. PROHIBITION OF CORPORAL PUNISHMENT.

(a) Prohibition.—No student shall be subjected to corporal punishment by program personnel, a law enforcement officer, or a school security guard under any program which receives Federal financial assistance.

(b) Private Right of Action.—A student who has been subjected to corporal punishment by program personnel, a law enforcement officer, or a school security guard in violation of subsection (a), or the parent of such student, may file a civil action in any Federal or State court of competent jurisdiction against the program under which the violation is alleged to have occurred for attorneys’ fees, expert fees, injunctive relief, and compensatory damages.
SEC. 102. CIVIL ACTIONS BY THE ATTORNEY GENERAL.
Whenever the Attorney General receives a complaint in writing signed by a parent (including a legal guardian) or a group of parents (including legal guardians) to the effect that the minor children of such a parent or parents are being deprived by a program of the right under this Act to not be subject to corporal punishment by program personnel, law enforcement officers, or school security guards and the Attorney General believes the complaint is meritorious, the Attorney General is authorized, after giving notice of such complaint to the appropriate program and after certifying that the Attorney General is satisfied that such program has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

SEC. 103. ENFORCEMENT BY THE OFFICE FOR CIVIL RIGHTS.
(a) Referral to Office for Civil Rights.—The Secretary shall refer any complaint alleging a violation of
section 101(a) to the Office for Civil Rights of the Department of Education for an investigation.

(b) Process for Referral.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall develop and implement a procedure for receiving a complaint alleging a violation of section 101(a).

(e) Failure to Comply.—In the event that a program has failed to comply with section 101(a), the Secretary shall carry out at least one of the following:

(1) Withhold from such program, in whole or in part, further payments (including payments for administrative costs) under an applicable program (as such term is defined in section 400(c) of the General Education Provisions Act (20 U.S.C. 1221(c))) in accordance with section 455 of such Act (20 U.S.C. 1234d).

(2) Enter into a compliance agreement in accordance with section 457 of the General Education Provisions Act (20 U.S.C. 1234f).

(3) Issue a complaint to compel compliance of such program through a cease and desist order, in the same manner the Secretary is authorized to take such action under section 456 of the General Education Provisions Act (20 U.S.C. 1234c).
(d) Cessation of Withholding of Funds.—If the Secretary determines (whether by certification or other appropriate evidence) that a program that is subject to the withholding of payments under subsection (c)(1) of this section has cured the failure providing the basis for the withholding of payments on a date that is within one year from the date on which such payments were first withheld, the Secretary shall—

(1) cease the withholding of payments with respect to that program under such subsection; and

(2) reimburse all the withheld payments under such subsection to such program.

(e) Withheld Funds.—The funds appropriated or made available for the payments that were withheld under subsection (c)(1) shall be available for expenditure to that program pursuant to this subsection for up to one year from the date upon which the determination in subsection (d) was made.

(f) Rule of Construction.—Nothing in this section shall be construed to limit the Secretary’s authority under the General Education Provisions Act (20 U.S.C. 1221 et seq.).
SEC. 104. PARENT NOTIFICATION AND PROTECTION AND ADVOCACY SYSTEMS.

(a) Notification.—If a student is subject to corporal punishment committed by program personnel, a law enforcement officer, or a school security guard at a program, the program serving such student shall notify, in writing, not later than 24 hours after such use of force occurs, the facts of such use of force to—

(1) the parent or parents of such student;
(2) the State educational agency; and
(3) the local law enforcement agency.

(b) Notification for Students With Disabilities.—In the case of a student described in subsection (a) who is an individual with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) the program serving such student shall—

(1) in addition to the notification described in such subsection, notify, in writing, not later than 24 hours after the use of force described in such subsection occurs, the facts of such use of force to the relevant protection and advocacy system; and
(2) provide any information to the relevant protection and advocacy system that the protection and advocacy system may require.
(c) Restatement of Authority.—Protection and advocacy systems shall have the same authorities and rights provided under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.) with respect to protections provided for students under this Act when such students are otherwise eligible to be clients of the protection and advocacy system, including investigating, monitoring, and enforcing such protections.

TITLE II—STATE ACTIVITIES AND GRANT PROGRAM

SEC. 201. STATE PLAN AND ENFORCEMENT.

(a) State Requirements.—In accordance with the schedule specified in subsection (c), each State educational agency that receives Federal financial assistance shall provide to the Secretary—

(1) in the case of a State that did not prohibit corporal punishment in schools before the date of enactment of this Act, a written assurance that—

(A) all programs located in such State have been notified of the requirements of this Act;

(B) all program personnel of such State educational agency have received training with respect to such requirements;
(C) parents of students served by such State educational agency have been notified of the requirements, rights, and remedies available under this Act; and

(D) the notification required under subparagraph (C) is publicly available on the website of the State educational agency;

(2) in the case of a State that prohibited corporal punishment in schools before the date of enactment of this Act, a written assurance that all programs located in such State have been notified of the requirements of this Act; and

(3) a school climate report that includes a description of—

(A) the policies and procedures of the State educational agency with respect to exclusionary and aversive discipline practices or interventions in such schools;

(B) how the State educational agency plans to implement, is implementing, or has implemented positive behavioral interventions and supports and other models to address student behavior and reduce the use of exclusionary and aversive discipline practices or interventions in the public elementary and secondary schools of
such State as required under section 1111(g)(1)(C) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(g)(1)(C)); and

(C) efforts of the State educational agency to ensure program personnel receive the supports and training necessary to implement the interventions, supports, and other models described in subparagraph (B).

(b) LOCAL EDUCATIONAL AGENCY REQUIREMENTS.—In accordance with the schedule specified in subsection (c), each local educational agency shall submit to the State educational agency a report that includes the information the State educational agency determines necessary to comply with the requirements of subsection (a).

(e) SUBMISSION SCHEDULE.—States and local educational agencies shall make the submissions required under subsections (a) and (b) as follows:

(1) The initial submissions shall be made not later than one year after the date of enactment of this Act and on an annual basis during each of the 3 years following the year of the first submission.

(2) After the expiration of the 3-year period described in paragraph (1), subsequent submissions
shall be made not less frequently than once every two years.

(d) Report.—For each year in which the Secretary receives submissions from States in accordance with the schedule specified in subsection (c), the Secretary shall—

(1) submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report summarizing the findings of the school climate reports received from States for such year; and

(2) make the school climate reports publicly available.

(e) Enforcement.—

(1) In general.—

(A) Use of remedies.—If a State educational agency fails to comply with subsection (a), the Secretary shall carry out at least one of the following:

(i) Withhold, in whole or in part, further payments under an applicable program (as such term is defined in section 400(c) of the General Education Provisions Act (20 U.S.C. 1221(c))) in accord-
ance with section 455 of such Act (20

(ii) Enter into a compliance agree-
ment in accordance with section 457 of the
General Education Provisions Act (20
U.S.C. 1234f).

(iii) Issue a complaint to compel com-
pliance of the State educational agency
through a cease and desist order, in the
same manner the Secretary is authorized
to take such action under section 456 of
the General Education Provisions Act (20
U.S.C. 1234e).

(B) CESSION OF WITHHOLDING OF
FUNDS.—If the Secretary determines (whether
by certification or other appropriate evidence)
that a State educational agency that is subject
to the withholding of payments under subpara-
graph (A)(i) has cured the failure providing the
basis for the withholding of payments within
one year from the date on which such payments
were first withheld, the Secretary shall—

(i) cease the withholding of payments
with respect to the State educational agen-
ecy under such subparagraph; and
(ii) reimburse all the withheld payments under such subparagraph to such State educational agency.

(2) WITHHELD FUNDS.—The funds appropriated or made available for the payments that were withheld under paragraph (1)(A)(i) shall be available for expenditure to that program pursuant to this paragraph for up to one year from the date upon which the determination in paragraph (1)(B) was made.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary’s authority under the General Education Provisions Act (20 U.S.C. 1221 et seq.).

SEC. 202. GRANT AUTHORITY.

(a) IN GENERAL.—From the amount appropriated under section 306, the Secretary may award grants to State educational agencies to improve school climate and culture by implementing positive behavioral interventions and supports and other models to address student behavior and reduce the use of exclusionary and aversive discipline practices or interventions in public elementary schools and secondary schools.

(b) DURATION OF GRANT.—
(1) IN GENERAL.—A grant under this section shall be awarded to a State educational agency for a three-year period.

(2) REAPPLICATION.—At the end of a grant period described in paragraph (1), a State educational agency desiring a subsequent grant under this section may be eligible for such grant if such State educational agency—

(A) submits an application under subsection (c); and

(B) demonstrates—

(i) that such State educational agency effectively used grant funds to carry out the required activities under subsection (e) during the previous grant period; and

(ii) with respect to such State educational agency, a decrease in at least one of the following:

(I) Exclusionary and aversive discipline practices or interventions, including in-school suspensions, out-of-school suspensions, and expulsions.

(II) School-related arrests.

(III) Referrals of students to law enforcement.
(3) **DATA.**—A State educational agency shall, with respect to the data used under paragraph (2)(B)(ii)—
(A) cross-tabulate such data and disaggregate by race, gender, disability, and English learner status; and
(B) redact all personally identifiable information from such data.

(e) **APPLICATION.**—
(1) **IN GENERAL.**—Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require, including—
(A) information on how the State educational agency will carry out the required activities specified in subsection (e);
(B) a description of how the State educational agency will improve school climate and culture by reducing the use of exclusionary and aversive discipline practices or interventions;
(C) a description of how the State educational agency will implement positive behavioral interventions and supports, and other models (including models such as restorative
justice interventions, trauma-informed care, multi-tiered systems of support, crisis and de-
escalation interventions, implicit bias training, and culturally responsive teaching), to address student behavior and work to eliminate the use of exclusionary and aversive discipline practices or interventions; and

(D) a description of how the State educational agency will develop and implement high-quality training for program personnel designed to improve school climate and culture and increase the use of positive behavioral interventions and supports and other models to address student behavior and reduce the use of exclusionary and aversive discipline practices or interventions.

(2) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to State educational agencies—

(A) with a high percentage of in-school suspensions, out-of-school suspensions, expulsions, school-related arrests, and referrals of students to law enforcement;
(B) that lack positive behavioral interventions and supports and other models to improve school climate and culture; or

(C) that are in most need of assistance relating to improving school climate and culture by reducing the use of exclusionary and aversive discipline practices or interventions, as determined by the Secretary.

(d) AUTHORITY TO MAKE SUBGRANTS.—

(1) IN GENERAL.—A State educational agency receiving a grant under this section may use such grant funds to award subgrants, on a competitive basis in accordance with subsection (e)(2), to local educational agencies.

(2) APPLICATION.—A local educational agency desiring to receive a subgrant under this section shall submit an application to the applicable State educational agency at such time, in such manner, and containing such information as the State educational agency may require, including the information described in subparagraphs (A) through (D) of subsection (c)(1) with respect to the local educational agency.

(e) REQUIRED ACTIVITIES.—
(1) In general.—A State educational agency receiving a grant, or a local educational agency receiving a subgrant, under this section shall use such grant or subgrant funds to carry out the following:

(A) Developing and implementing high-quality training for program personnel designed to—

(i) improve school climate and culture;

(ii) increase use of positive behavioral interventions and supports and other models to address student behavior; and

(iii) reduce the use of exclusionary and aversive discipline practices or interventions and the discriminatory and disproportionate impact such practices have on students based on their race, ethnicity, gender, or disability.

(B) Providing technical assistance to improve school climate and culture by implementing positive behavioral interventions and supports, and other models (including models such as restorative justice interventions, trauma-informed care, multi-tiered systems of support, crisis and de-escalation interventions, implicit bias training, and culturally responsive
teaching), to address student behavior and work
to eliminate the use of exclusionary and aver-
sive discipline practices or interventions.

(C) Researching, developing, implementing,
and evaluating models, policies, and procedures
to reduce the use of exclusionary and aversive
discipline practices or interventions in public el-
lementary schools and secondary schools.

(2) PRIORITY.—A State educational agency or
local educational agency shall prioritize carrying out
the activities specified in subparagraphs (A) through
(C) of paragraph (1) in public elementary schools
and secondary schools—

(A) in which a disproportionately high per-
centage of students who have been subjected to
disciplinary proceedings or have otherwise expe-
rienced the application of such a school’s dis-
pline policies, practices, and procedures, rel-
ative to such school’s total student population,
are students of color or students with disabil-
ities (as defined in section 602 of the Individ-
uals with Disabilities Education Act (20 U.S.C.
1401));

(B) with a high percentage of in-school
suspensions, out-of-school suspensions, expul-
sions, school-related arrests, and referrals of
students to law enforcement;

(C) that lack positive behavioral interven-
tions and supports and other models to improve
school climate and culture; or

(D) that have demonstrated meaningful
community engagement in selecting models to
improve school climate and culture.

(f) Evaluation and Report.—

(1) Local Educational Agency Reports.—
Each local educational agency receiving a subgrant
under this section shall, at the end of the grant pe-
period for such subgrant, prepare and submit to the
State educational agency a report that—

(A) evaluates the progress of the local edu-
cational agency toward carrying out the re-
quired activities under subsection (e); and

(B) includes any additional information the
State educational agency determines necessary
to complete the report required under para-
graph (2).

(2) State Educational Agency Reports.—
Each State educational agency receiving a grant
under this section shall, at the end of the three-year
grant period for such grant, prepare and submit to
the Secretary a report that—

(A) evaluates the State’s progress toward
carrying out the required activities under sub-
section (e);

(B) includes data on the impact of the
grant program on school climate and culture
during such grant period, including, with re-
spect to the State educational agency, data on
the prevalence of, and increase or decrease in—

(i) exclusionary and aversive discipline
practices or interventions, including in-
school suspensions, out-of-school suspen-
sions, and expulsions;

(ii) school-related arrests; and

(iii) student referrals to law enforce-
ment;

(C) includes the number of high-quality
school climate and culture trainings conducted
for program personnel during such grant pe-

dium;

(D) describes the models implemented to
improve school climate and culture during such
grant period;
(E) specifies the number of subgrants made under subsection (d) and the local educational agencies that were awarded such subgrants; and

(F) includes such information as the Secretary may require.

(3) DATA.—A State educational agency shall, with respect to the data described in paragraph (2)(B)—

(A) cross-tabulate and disaggregate the data in the same manner as under subsection (b)(3)(A); and

(B) redact all personally identifiable information from such data.

(4) PUBLICATION.—Not later than one year after receiving a report under paragraph (2), the Secretary shall make the report publicly available on the website of the Department of Education.

(g) FUNDS AVAILABLE FOR THE DEPARTMENT OF THE INTERIOR.—From the amount appropriated under section 306, the Secretary shall allocate—

(1) 0.5 percent of such funds to the Secretary of the Interior for activities under this section with respect to schools operated or funded by the Depart-
ment of the Interior, under such terms and conditions as the Secretary may prescribe; and

(2) 0.5 percent of such funds for activities under this section with respect to schools operated in the outlying areas, under such terms and conditions as the Secretary may prescribe.

**TITLE III—ADDITIONAL PROVISIONS**

**SEC. 301. FEDERAL REGULATIONS.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall issue such regulations as are necessary to reasonably ensure compliance with this Act.

(b) NEGOTIATED RULEMAKING PROCESS.—In carrying out subsection (a), the Secretary shall use a negotiated rulemaking process described in section 1601 and section 1602 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6571; 6572) except subparagraph (A) of subsection (b)(3) of such section 1601 shall apply by substituting “establish a negotiated rulemaking process;” for the text of such subparagraph.

**SEC. 302. OTHER SCHOOLS.**

(a) DEPARTMENT OF DEFENSE.—The Secretary of Defense shall ensure that schools operated or funded by the Department of Defense Education Activity or other-
wise operated or funded by the Department of Defense for the education of military-connected dependents comply with the regulations promulgated by the Secretary pursuant to this Act.

(b) **DEPARTMENT OF INTERIOR.**—The Secretary of the Interior shall ensure that schools operated or funded by the Department of the Interior comply with the regulations promulgated by the Secretary pursuant to this Act.

**SEC. 303. LIMITATION OF AUTHORITY.**

(a) **IN GENERAL.**—Nothing in this Act shall be construed—

(1) to restrict or limit, or allow the Secretary to restrict or limit, any other rights or remedies otherwise available to students or parents under Federal, State, or local law or regulation; or

(2) to restrict or limit Federal, State, or local laws, regulations, or policies that provide for more stringent prohibitions or limitations on the use of corporal punishment than the prohibitions or limitations that are provided for in this Act.

(b) **LAW ENFORCEMENT OFFICER DUTIES.**—Nothing in this Act shall be construed to prevent a sworn law enforcement officer from carrying out the lawful duties of the officer under otherwise applicable law.

**SEC. 304. Applicability to Private Schools and Home Schools.**

(a) **Private Schools.**—Nothing in this Act shall be construed to affect any private school that does not receive, or does not serve students who receive, support in any form from any program or activity supported, in whole or in part, with Federal funds.

(b) **Home Schools.**—Nothing in this Act shall be construed to—

(1) affect a home school, whether or not a home school is treated as a private school or home school under State law; or

(2) consider parents who are schooling a child at home as program personnel.

**SEC. 305. Severability.**

If any provision of this Act or the application of such provision to any person or circumstance is held to be un-
1 constitutional, the remaining provisions of this Act and
2 the application of such provisions to any person or cir-
3 cumstance shall not be affected thereby.

4 SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

5 There are authorized to be appropriated such sums
6 as may be necessary to carry out this Act for fiscal year
7 2021 and each fiscal year thereafter.