

# **Dismantling the School-to-Prison Pipeline: Best Practices for Representing Students & Needed Reforms**

**The Legal Aid Society**

# Agenda

- I. Introduction**
- II. The School to Prison Pipeline**
- III. Using a Holistic Approach to Support Students with Integrated Services**
- IV. Needed Reforms**

# The Legal Aid Society

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# **The School to Prison Pipeline**


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# Exclusionary Discipline


Exclusionary discipline results in children experiencing low achievement and isolation from normal school activities.




Students who experience exclusionary discipline often become disengaged from school and are divorced from pro-social interactions and activities.



Exclusionary discipline eventually leads to children being pushed out of schools and into juvenile justice and prison facilities.



Nationally some studies estimate that between 65% - 70% of all youth involved in the juvenile legal system are children with disabilities.



Being suspended just once in the ninth grade doubles the likelihood that students will drop out.



# Roots of the School to Prison Pipeline

- Can start as early as pre-school
- Involves excessive exclusionary discipline, often for behaviors which are developmentally typical, or the result of disabilities or trauma.

# Recognizing Patterns of Removal

- Classroom removals contribute to the problem, even when the parent doesn't recognize it as exclusionary discipline.
  - Teachers excluding kids from remote instruction (during Covid)
  - Student being told to sit separate from the class and being ignored
  - Student missing class time because sent to office or guidance every day (parents may or may not be notified)
  - Schools calling parents to pick up students in the middle of the day

# Things Schools Say that Work to Exclude Children from School

Juan should stay home the rest of the week.

Leon needs a cooling off period.

Kristy can't come back until we have a conference, and I'm not available until next week

Kindergarten isn't mandatory. Why don't you keep Blanca home and bring her back in Sept. for first grade. Maybe she'll be more mature.

Have you thought about a GED program?

You could always home school him.



# Understanding the School to Prison Pipeline

- Suspensions disproportionately affect certain groups of students (including students of color, ability or foster care status, socioeconomic status, sexual orientation and gender identity expression).
- Suspensions disproportionately affect students of color and students with disabilities or trauma, even when they engage in the same misbehaviors as their peers.
- Number and severity of students' suspensions had no effects on the behavior or academic performance of their peers in high school.

# Facts About Suspensions in New York State

In the 2021-2022 School Year:

- 766 Students were suspended every day
- 137,904 Students were suspended at least once
- Even one out of school suspension led to a 25% increase in drop out rates
- Nearly 1,000,000 lost instructional days as a result of suspension (in 2019 the number was 686,000)

# Facts about Disproportionality in Exclusionary School Discipline

- Nationally students with disabilities are suspended at more than twice the rate of students without disabilities.
- A 2016 study found that two in five LGBTQ students reported having experienced exclusionary school discipline.
- Nationally Black students with disabilities consistently have the highest risk of suspension, with almost 1 in 5 (19%) receiving a suspension in 2017–18.

# Facts about Disproportionality in Exclusionary School Discipline in NYC

- Pre-pandemic, the NYC DOE issued suspensions to students in foster care at almost four times the rate at which it issued suspensions to City students overall.
- The racial composition of New York City Public Schools' student population in 2021-2022 School Year
  - 41% Hispanic
  - 24.4% Black
  - 14.7% White
- In NYC during the 2021-22 school year, there were 5563 Superintendent's Suspensions (suspensions of more than 10 days)
  - 36.3% of the suspended students identified as Hispanic
  - 51.5% of the suspended students identified as Black
  - 5.6 % of the suspended students identified as White
- In 2016, 99% of all New York City public school students handcuffed during incidents of emotional distress were Black or Hispanic.

# Facts about Disproportionality Around New York State

A 2019 Report by AQE found that:

- In Buffalo, black students made up 48% of student body, but 65% of out of school suspensions.
  - Overall, Erie County has the largest disparity between racial/ethnic groups detained in juvenile detention centers; 18% of Erie County youth are Black, but 72% of the youth detained are Black.
- In Utica City 25% of the student body was Black – 49.8% of the school suspensions were of Black children. Black children represented 57.6% of school district referrals to law enforcement.
- In Oneida County, 9% of the student body is Black, but 59% of detained youth are Black.
- In Albany 49.4% of the student body is Black, but 67 % of student who received out of school suspensions. 63% of youth detained are Black.
- In Monroe County Black students were 21% of the student body and 74% of detained youth.
- In Rochester, 58% of students were Black, 68.5% of suspensions were of Black students, and **100%** of school referrals to law enforcement were of Black children.

# Factors that Contribute to Children with Disabilities being Funneled into the Pipeline

- Lack of training of education and law enforcement personnel about disabilities and de-escalation techniques.
- Overreliance/Misuse of 911 or school safety rather than effective classroom management techniques.
- Incorrect and/or nonexistent diagnoses of student disabilities. Many students who have experienced trauma present as anxious, depressed, explosive, or disengaged
- Lack of access to thorough evaluations and treatment.

# Factors that Contribute to Children with Disabilities being Funneled into the Pipeline (Cont.)

- Ineffective and/or poorly understood communications between medical personnel treating disabled students and education and law enforcement systems.
- Limited and/or poorly deployed resources.
- Lack of information about the legal rights of parents and students and dearth of effective legal advocacy on their behalf.

# **Using a Holistic Approach to Support Students with Integrated Services**



# Preventing Entry Into the Pipeline

## How can social workers help?

- Connect youth with positive activities and supports in the community
- Link school staff with medical/therapeutic personnel and ensure that school staff understand how trauma and disability may affect behavior
- Refer families to services/treatment in the community
- Encourage schools to use professionals other than law enforcement to deescalate situations or address behavioral concerns.

# Preventing Entry Into the Pipeline (Cont.)

## Social Workers

- Help parents obtain thorough and appropriate evaluations (including Functional Behavior Assessments)
- Attend IEP meetings and help ensure children with disabilities are getting the support they need at school (including Behavior Intervention Plans)
- Work in collaboration with attorneys to participate in mediations or impartial hearings to ensure that students with disabilities are getting the services to which they are legally entitled.

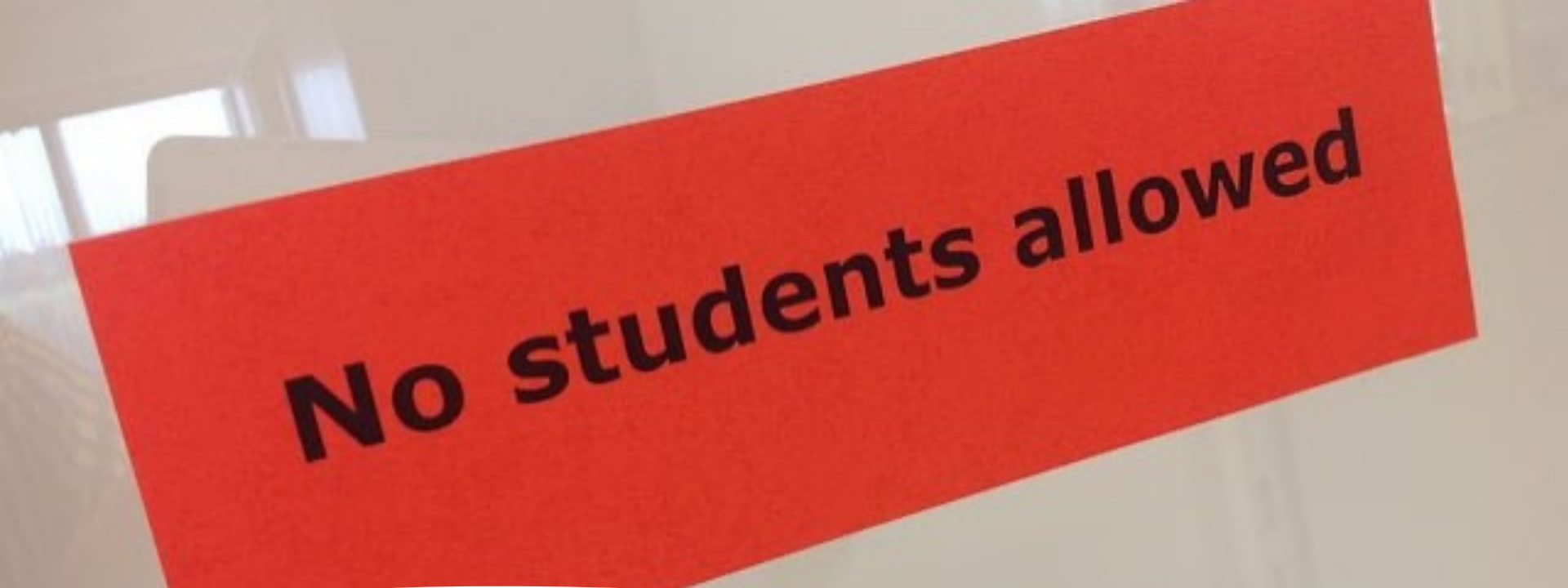
# How Can a Holistic Approach Help a Child Who Has Contact with the (In)Justice System?

- A social worker can help complete a comprehensive, holistic needs assessment for the client – and can help ensure that the needs that were assessed are being addressed.
- Connecting the individual and/or family to therapy, mentoring programs, recreational programming – sports, arts, and performance, skill building, and vocational services.
- Watch for concurrent suspension hearings and court proceedings.

# Case Example - Daniel

Daniel was struggling in school – especially with interpersonal relationships. His altercations with other students often resulted in him being sent to the office or guidance counselor. His parents requested an evaluation by the school district who determined that he was ineligible to receive special education services.

Daniel's parents disagreed and sought out assistance from the Education Law Practice.



**No students allowed**

## Why is Representation at Suspension Hearings Important?

- Students with disabilities often become the class “scapegoat.”
- School exclusions result in decreased academic achievement and often lead to youth dropping out (Push outs).
- In some cases, suspension hearing officers can order expedited evaluations or school transfers.
- Students need advocates to ensure that schools follow appropriate procedures before excluding a student

# Due Process in Suspension and Expulsion Hearings

- Goss v. Lopez, 419 U.S. 565 (1975)
- Students have a right to an education and do not “shed their constitutional rights at the schoolhouse door.”
- Schools must have fair procedures to determine if the misconduct actually occurred before excluding students.
- Students facing suspension of ten days or less must be provided with the oral or written notice of the charges against him, explanation of the evidence, and the opportunity to present an opposing view.

Longer suspensions will require a hearing at which evidence will be presented.



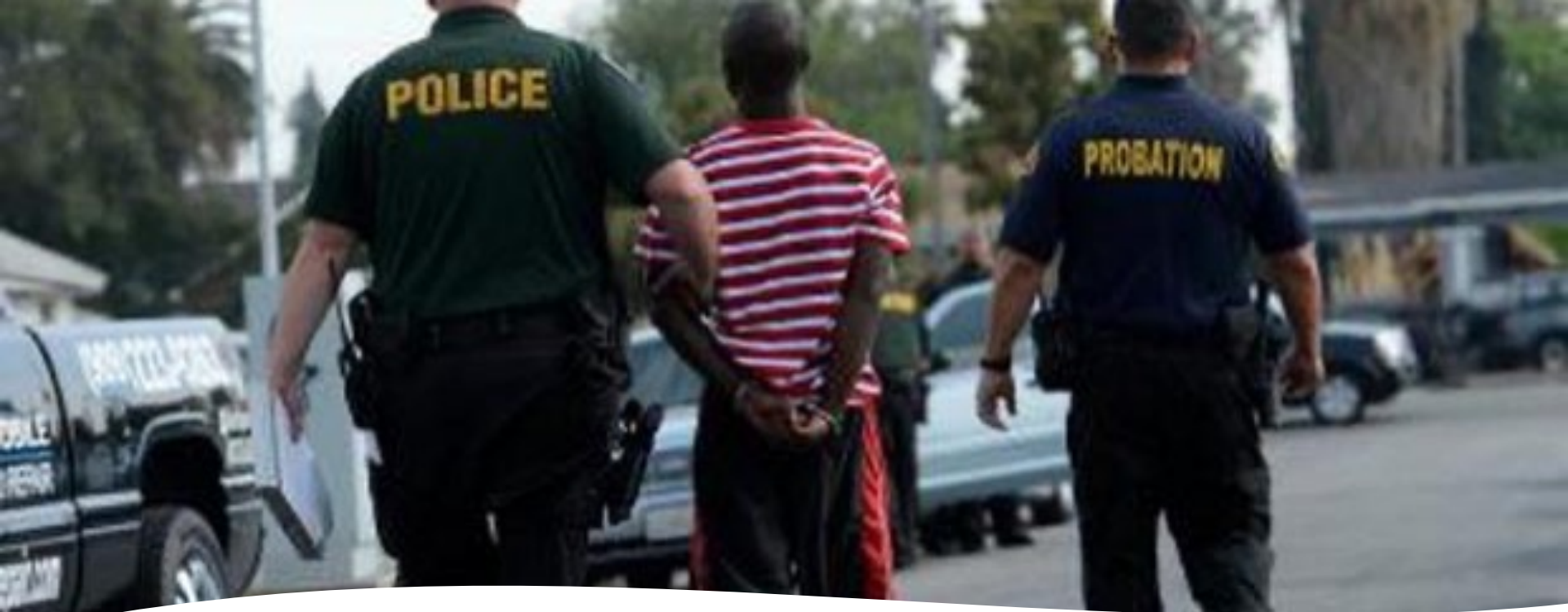
## Legal Protections for Students with Disabilities Who are Being Suspended/Expelled

- Students with disabilities get extra protection under the Individuals with Disabilities Education Act.
- Except in specific circumstances children with disabilities cannot be excluded from their program for more than 10 days for behavior that is:
  - Caused by or in direct and substantial relationship to the child's disability, OR
  - The result of the school district's failure to properly implement a child's IEP (Including the Behavior Intervention Plan).
- A Manifestation Determination Review (MDR) is held to determine whether either of the above are true.

# How can Representation at Suspension Help Disrupt the Pipeline?

- Use the suspension hearing process to establish that a student is a student “suspected of having a disability”
- Force the school district to complete expedited evaluations or conduct Manifestation Determination Reviews.
- If a youth does become involved in the juvenile legal system, preventing or minimizing suspensions is important. Poor school performance and engagement affect court outcomes.
- Use the hearing for discovery.





## Representing Students who Have Been Arrested At School Suspension Hearings

### Use the Suspension Hearing for Discovery

- Documentary evidence, such as witness statements
- Surveillance videos
- Collaborate with the delinquency attorney about whether the client should testify (usually no)
- Subpoena witnesses
- Obtain school records
- Get transcripts
- Get expedited evaluations
- Communicate with the defense team!

Dismantling the School to Prison Pipeline:

Best Practices and Needed Reforms

**THE  
LEGAL AID  
SOCIETY**

# Advocacy After a Suspension

- If the student is suspected of having a disability consider whether an initial referral for special education services or a reevaluation request should be made so that changes can be made to the IEP.
  - Is student in correct placement?
  - Receiving counseling?
  - Does the student have/need a Functional Behavior Assessment and Behavior Intervention Plan?
- Consider a transfer for the student (bullying, safety issues)
- If high school student, consider helping investigate other charters or transfer schools that might be better for the student.
- Have a mediation and “welcome back circle” when the student returns to school.
- Use restorative justice practices and techniques to ensure the student is reintegrated to the school community.

# Case Study - Steve

Seventeen-year-old Steve was a good student on his high school basketball team who was well on his way to earning a Regents diploma. One day during a basketball game with another school, Steve had a fight with a player on the opposing team. The tension broke out into the community.

One day Steve was jumped by four people on his way home from school. After this he made angry comments about the incident to adults at school. A few days later it was reported that shots had been fired in the neighborhood.

It was reported to the police that Steve had a dispute with the person who was shot at and he was arrested as a possible suspect. Steve didn't have a weapon and he was later released, but when he tried to return to school he was told that he had been expelled.

Steve had spoken with a Legal Aid lawyer in the criminal practice when he was arrested. That lawyer connected Steve with EAP. The EAP attorney contacted the school and ensured that the school followed their own procedures and scheduled a hearing before expelling Steve. She then represented Steve at that hearing and questioned the school's evidence and procedures.

After the hearing Steve was permitted to return to school.

# Integration Across Disciplines and Practices

An interdisciplinary approach can be helpful in Juvenile Court. Communication between the Education legal team and the delinquency/criminal legal team is essential to providing holistic representation.

Social workers, psychologists and other professionals can provide individualized assessments and present information to the court such as:

- Pre-trial Hearings
  - Did the youth have the capacity to understand Miranda warnings?
  - Did speech and language deficits affect his ability to understand and respond to questioning?
- Mitigation Evidence
  - Manifestation Determination Reviews - A finding by the school or an impartial hearing officer that behavior was a manifestation of a disability may be persuasive to a judge.
  - Information about the child's educational needs and which needed services may be unavailable in schools run at juvenile detention facilities may help a judge determine the most appropriate disposition.
- Service Recommendations
  - Information that the youth is already receiving specialized services in the community which are designed to prevent future incidents

# Post Dispositional Practice

- If a youth has been incarcerated and is ready for discharge, social workers can help ensure that appropriate evaluations are conducted to determine the youth's needs.
- Inform the school district of the returning youth's needs. Explore appropriate educational programs and settings, and advocate for the development of an appropriate IEP.
- Assist the youth and family in securing community supports, in the form of mental health services, community activities (mentoring programs, recreational programming – sports, arts, and performance, skill building, and vocational services).

# **Needed Reforms**

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## Needed Reform

“For too long, we’ve been presented with a false choice between accountability and compassion when responding to our children when they misbehave, disrupt class or defy us.

We can have both. We must have both. Some kids, particularly those that have experienced trauma, need more support in order to flourish in a school setting. Public schools cannot push these kids out, and as such, we need to ensure schools have positive alternatives and discipline strategies that build reflection and impulse control as well as a strong sense of community. To use words of Frederick Douglass, we know that ‘It’s better to build strong children than fix broken men (and women).’”

Former Chief Judge Judith Kaye, Chair of the Permanent Judicial Commission on Justice for Children.

Quoted in the Queens Gazette “Nolan Targets School Discipline” October 14, 2015





## Steps to Encourage Reform

- Collaborate with advocates and community groups
- Consider class action lawsuits to challenge systemic problems where appropriate
- Challenge the over policing of schools
- Support curriculums to teach social/emotional learning in schools
- Improve training of education and law enforcement personnel around disabilities
- Work with medical professionals to improve access to mental health services in the community and in schools
- Encourage restorative justice approaches



# Restorative Justice as a Tool for Building Community, Teaching Accountability and Maintaining Safe Spaces

- Restorative Justice is a process whereby parties with a stake in a specific incident collectively resolve how to deal with the aftermath of the offense and its implications for the future.
- Restorative practices are integrated with social and emotional learning, as students are encouraged to acknowledge and manage their emotions, develop empathy for others, and establish positive relationships. Research has found that restorative practices are effective in reducing suspensions and improving school climate.



# Restorative Justice as a Tool for Building Community, Teaching Accountability and Maintaining Safe Spaces

- Elements of Restorative Justice
  - Community Building
  - Proactive
  - Relationship building
  - Reintegration
  - Non-Adversarial
  - Not about establishing “guilt”
  - Focuses on repairing damage and restoring relationships
  - Addresses needs of people responsible for the incident as well as the people affected
  - What is needed to make things right and move forward?



# New York State Education Department Safe Schools Task Force

- “RECOMMENDATIONS FOR REDUCING DISPARITIES IN AND REFORMING SCHOOL DISCIPLINE IN NEW YORK STATE”
- <https://www.regents.nysed.gov/sites/regents/files/P-12-%20-%20Recommendations%20for%20ATT%20-%20Recommendations%20for%20Reducing%20Disparities%20in%20and%20Reforming%20School%20Discipline%20in%20New%20York%20State.pdf>

# NYSED Recommendations and SNS Provisions

## NYSED Safe & Supportive Schools Task Force Recommendations

- Suspensions should be prohibited for pre-K through third grade students
- Limit suspensions so that it is only used for serious infractions and after a variety of supportive interventions have been exhausted
- Cap the maximum length of suspensions to 20 days, except where required by federal law
- Ensure suspended students continue to receive academic instruction, are able to take exams, and have a plan for safe reentry to the classroom
- Charter Schools must adopt SED guidance on discipline

## Solutions Not Suspensions Act (S1040 & A5691)

- Limit the use of suspensions for children in pre-K through 3d grade
- Prohibit the use of suspensions for minor infractions, such as dress code violations or talking back
- Cap the maximum length of suspensions to 20 days, except where required by federal law
- Guarantee suspended students can keep up with instruction through instruction and work in a detailed plan
- Applies to all schools that receive public money, including Charter Schools
- Strengthen due process for students to ensure they have a fair suspension hearing and adult representation

# New York is Falling Behind on School Safety

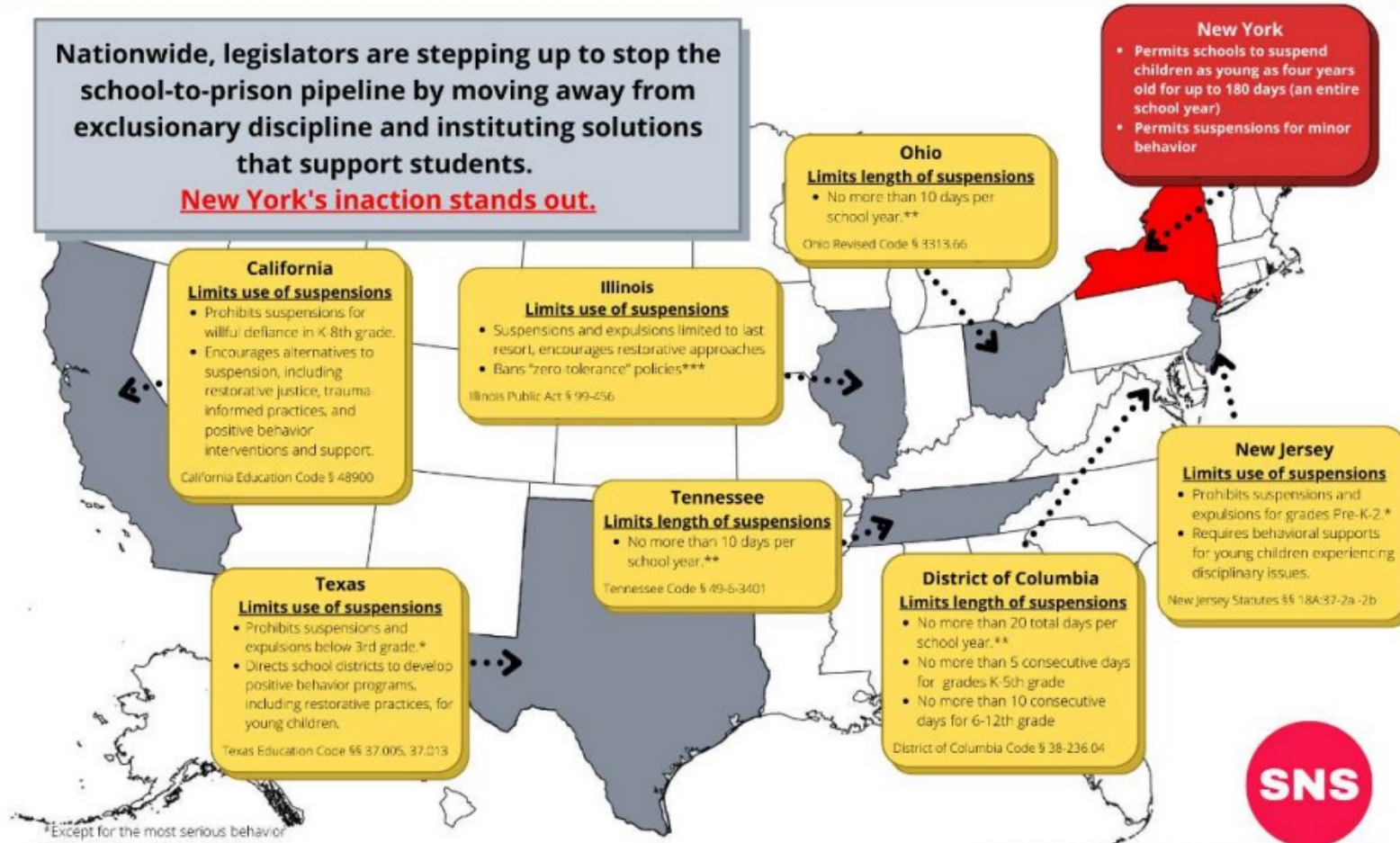
PASS THE SOLUTIONS NOT SUSPENSIONS ACT

End reliance on suspensions

Support all students

Nationwide, legislators are stepping up to stop the school-to-prison pipeline by moving away from exclusionary discipline and instituting solutions that support students.

**New York's inaction stands out.**



\*Except for the most serious behavior  
\*\*With very limited exceptions  
\*\*\*Except where required by federal law



[solutionsnotsuspensionsny.org](http://solutionsnotsuspensionsny.org)

# Recommendations

- Youth access to positive activities and mental health supports,
- Educate adults about the harms of exclusionary school discipline,
- Holistic representation to students who are excluded from school,
- Training school staff in restorative justice approaches; and
- Pass SNS (or advocate for similar legislation in your jurisdiction)!

