

## Exclusionary School Discipline Legislative Trends

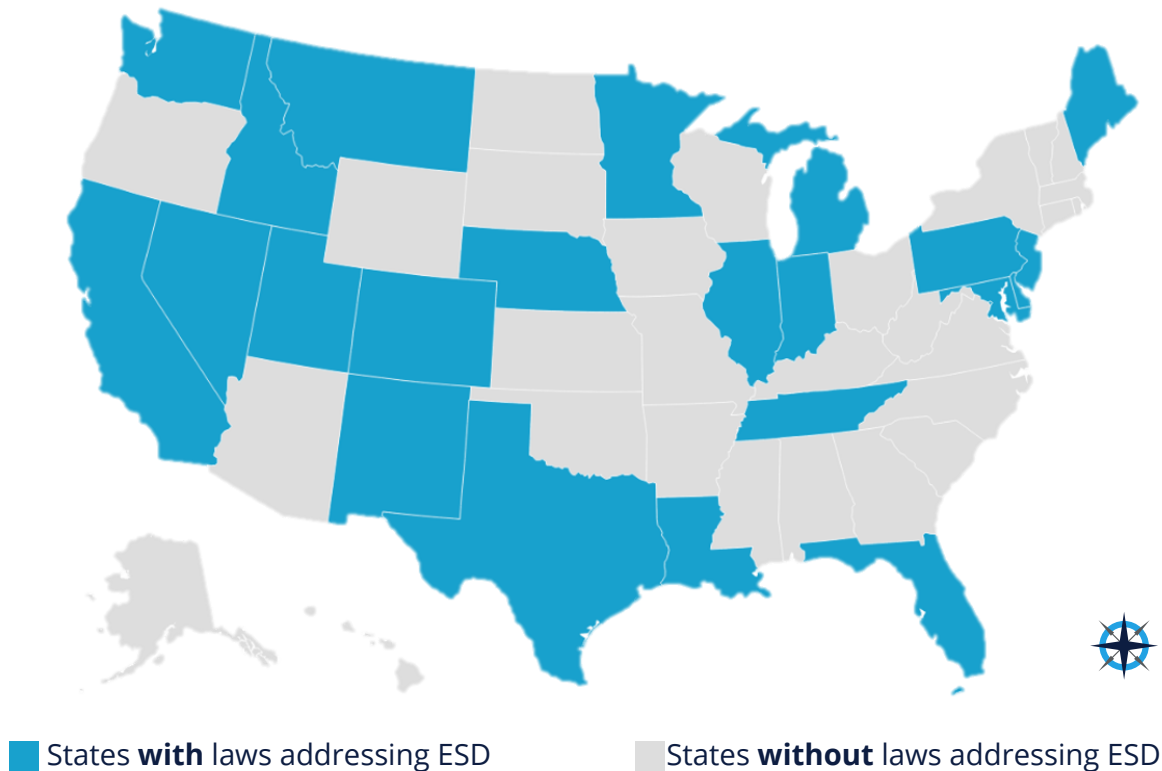
Our state-by-state survey reveals that 32 states and the District of Columbia have amended their laws in efforts to reduce the inequalities and disparities created by Exclusionary School Discipline (ESD) and zero-tolerance policies (see Figure 1).<sup>1</sup>

ESD, which includes suspension and expulsion, removes students from their regular educational environment. It is associated with various harms, including “school avoidance and diminished educational engagement, decreased academic achievement, increased behavior problems, and involvement with juvenile justice systems.”

And ESD is experienced inequitably. According to the Government Accountability Office, race is a persistent driver of discipline disproportionality as early as preschool, when Black three-year-olds are 3.6 times as likely as white preschoolers to be suspended at least once. Black girls, in particular, experience high rates of ESD, often in response to violations that are considered minor or subjectively determined, such as dress code violations and defiance. This, too, begins in early childhood (see **Figure 2**).

Increasingly, states are taking steps to limit or prohibit the use of ESD. Some states have focused on restricting the use of ESD based on grade level, while others mandate the use of alternative discipline models. Laws also set forth provisions for data collection.<sup>2</sup> Categories of reform are summarized in **Table 1**.

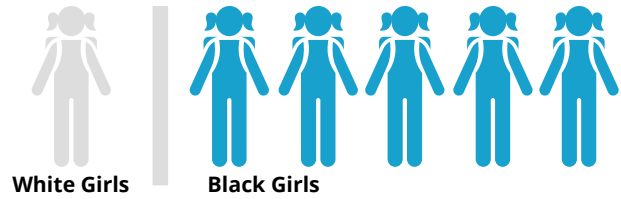
**Figure 1: 32 States and the District of Columbia Have Legislation Addressing ESD.**



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Data from the US Department of Education’s Office for Civil Rights indicates that in the 2015-2016 school year, Black girls represented 48.2% of all girls with multiple out-of-school suspensions, yet comprised only 15.5% of female enrollment. In the same year, Black girls were over 5 times as likely as white girls to receive an out-of-school suspension.

**Figure 2: Black girls were 5X as likely as white girls to receive an out-of-school suspension.**



US Department of Education. Office for Civil Rights. 2015-16 Civil Rights Data Collection (CRDC).

**Table 1: Types of ESD Restrictions Across US Jurisdictions.**

| Types of Restrictions                       | Jurisdictions  | Examples   |
|---|--|--|
| <b>Behavior-based Restrictions</b>          | AR, AZ, CA, DC, FL, LA, MD, NC, NM, NV, OH, OR, PA, RI, SC, TN, VA, WI, WV <sup>3</sup>      |  |
| Truancy & Absenteeism                       | AR, AZ, CA, DC, FL, MD, NC, NE, NM, NV, OH, OR, PA, RI, TN, VA, WI, WV <sup>4</sup>          | Limits or prohibits ESD response for truancy, tardiness, or absenteeism <sup>5</sup> or requires alternatives to ESD for truancy and absenteeism. <sup>6</sup>   |
| Bullying                                    | RI <sup>7</sup>  | Limits suspensions for bullying. <sup>8</sup>  |
| Substance Abuse                             | CA <sup>9</sup>  | Prohibits expulsion for possession of over-the-counter or prescription medicine and first possession of marijuana. <sup>10</sup>   |
| Disruptive Classroom Behavior & Defiance    | CA, DC, LA, SC <sup>11</sup>   | Limits ESD response for disruption of school activities, failure to address school employees with respectful titles and courtesies, <sup>12</sup> and limits or prohibits ESD response for “willful defiance.” <sup>13</sup>     |
| Dress Code Violations                       | DC <sup>14</sup>   | Prohibits ESD response for violations of “local education agency or school dress code or uniform rules.” <sup>15</sup>   |
| <b>Grade-based Restrictions</b>             | AR, CO, CT, DC, GA, MD, MN, NJ, NV, OH, OR, TX, VA <sup>16</sup>                             | Limits or prohibits ESD response for young children, ranging from preschool to fifth grade in most circumstances. <sup>17</sup>  |
| <b>Consideration of Alternatives to ESD</b> | CA, CO, DC, FL, ID, IL, ME, MD, MI, MN, NE, NV, NJ, OK, OR, TN, TX, UT, VA, WA <sup>18</sup> | Requires consideration of alternative disciplinary strategies to ESD, including one or more of the following: restorative justice; positive behavior interventions and supports; mediation; and community service. <sup>19</sup> |
| <b>Data Collection</b>                      | CO, CT, DC, DE, GA, IL, KY, LA, MD, NC, RI, TX, UT, VA <sup>20</sup>                         | Requires data collection, analysis, and publication of discipline data. <sup>21</sup>  |

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## Next Steps

State legislation is part of a key strategy to pursue more equitable practices and policies to promote safe and healthy school communities and alleviate the negative effects of ESD and the patterns of racial and gender biases that have emerged in its use.

### New policy reform efforts should focus on the following areas:

- **Expand behavior-based restrictions** on the use of ESD across all jurisdictions.
- **Restrict ESD use for students in all grades.** Currently, most grade-based ESD restrictions apply to students in fifth grade and below. Only two jurisdictions have enacted expanded restrictions that include middle and high school students (Connecticut and the District of Columbia).
- **Promote or require alternatives to exclusionary discipline**, such as restorative justice, positive behavior supports and conflict resolution.
- **Increase school resources** to identify and address underlying causes of students' behavioral challenges, including trauma.
- **Require data collection** on the use of ESD disaggregated by race/ethnicity, gender, ability, sexual orientation, and gender identity and including reason for discipline, and require regular review of collected data to determine possible harmful patterns or other misuse of ESD.



### Sample Provision Promoting Consideration of Restorative Justice as an Alternative to ESD: Maine

“Focus on positive and restorative interventions that are consistent with evidence-based practices rather than set punishments for specific behavior and avoid so-called zero-tolerance practices unless specifically required by federal or state laws, rules or regulations.”

ME. REV. STAT. 20-A § 1001(15)(B) (2019).



### Sample Prohibition on Use of ESD for Certain Behaviors: Washington, DC

“[N]o student... may be subject to an out-of-school suspension or disciplinary unenrollment for: (A) Violating local education agency or school dress code or uniform rules; (B) Willful defiance; or (C) Behavior that happens off school grounds and not as part of a school-sponsored activity...”

D.C. CODE § 38-236.04(a)(2)(A)-(C) (2020).

For a full list of laws and citations included in this fact sheet, please visit:  
<https://bit.ly/gtowngenderjust-esdtrends>

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