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

IN THE HOUSE OF REPRESENTATIVES

Mrs. McCarthy of New York introduced the following bill; which was referred to the Committee on ______

A BILL

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

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Ending Corporal Punishment in Schools Act of 2011”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) Behavioral interventions for children must promote the right of all children to be treated with
dignity. All children have the right to be free from any corporal punishment.

(2) Safe, effective, evidence-based strategies are available to support children who display challenging behaviors in school settings.

(3) School personnel have the right to work in a safe environment and should be provided training and support to prevent injury and trauma to themselves and others.

(4) According to the Department of Education’s Technical Assistance Center on School-Wide Positive Behavior Interventions and Support, outcomes associated with school-wide positive behavior support are decreased office discipline referrals, increased instructional time, decreased administrator time spent on discipline issues, efficient and effective use of scarce resources, and increased perception of school safety and sustainability through a team approach.

(5) Nineteen States continue to permit corporal punishment in public schools.

(6) According to Department of Education statistics, each year in the United States, hundreds of thousands of school children are subjected to corporal punishment in public schools. School corporal punishment is usually executed in the form of “pad-
dling”, or striking students with a wooden paddle on their buttocks or legs, which can result in abrasions, bruising, severe muscle injury, hematomas, whiplash damage, life-threatening hemorrhages, and other medical complications that may require hospitalization.

(7) Gross racial disparity exists in the execution of corporal punishment of public school children, and African-American schoolchildren are disproportionately corporally punished. The most recent available statistics show that African-American students make up 17.1 percent of the national student population, but 35.6 percent of all students subjected to physical punishment at school.

(8) Public school children with disabilities are subjected to corporal punishment at disproportionately high rates, approximately twice the rate of the general student population in some States.

(9) Corporal punishment is used in many instances for minor disciplinary infractions, such as being tardy or violating the dress code.

(10) Corporal punishment has resulted in physical injury and psychological trauma to children in public and private schools. Social skills development after the use of corporal punishment may be severely
altered, leading to aggressive behaviors. National re-
search shows students have been subjected to cor-
poral punishment in schools as a means of discipline,
to force compliance, or as a substitute for appro-
priate educational support.

(11) Children are protected from corporal pun-
ishment in other settings, such as hospitals, health
facilities, Head Start programs, and nonmedical
community-based facilities. Similar protections are
needed in schools.

(12) Prisoners in Federal prison are protected
from corporal punishment.

SEC. 3. PURPOSES.
The purposes of this Act are to—

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

(2) ensure the safety of all students and school
personnel in schools and promote a positive school
culture and climate;

(3) assist States, local educational agencies,
and schools in identifying and implementing effective
evidence-based models to prevent and reduce—

(A) corporal punishment in schools;

(B) aversive behavior interventions that

compromise health and safety; and
(C) physical, emotional, or psychological abuse.

SEC. 4. PROHIBITION AGAINST CORPORAL PUNISHMENT.

Subpart 4 of part C of the General Education Provisions Act (20 U.S.C. 1232f et seq.) is amended by adding at the end the following:

“SEC. 448. PROHIBITION AGAINST CORPORAL PUNISHMENT.

“(a) General Prohibition.—No funds shall be made available under any applicable program to any educational agency or institution, including a local educational agency or State educational agency, that has a policy or practice which allows school personnel to inflict corporal punishment upon a student—

“(1) as a form of punishment; or

“(2) for the purpose of modifying undesirable behavior.

“(b) Local Educational Agencies.—

“(1) In General.—In the case of an applicable program under which a local educational agency may only receive funds through a State educational agency that is prohibited under subsection (a) from receiving funds under any applicable program, a local educational agency that is not prohibited under subsection (a) from receiving such funds may apply di-
directly to the Secretary to receive funds under the program.

“(2) Certification.—Each local educational agency applying directly to the Secretary under paragraph (1) shall certify in such application that the agency is not prohibited under subsection (a) from receiving funds under any applicable program.

“(c) Rule of Construction.—Nothing in this section shall be construed to preclude school personnel from using, within the scope of employment, reasonable restraint to the lightest possible degree upon a student, if—

“(1) the student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others;

“(2) less restrictive interventions would be ineffective in stopping such imminent danger of physical injury; and

“(3) the reasonable restraint ends immediately upon the cessation of the conditions described in paragraphs (1) and (2).

“(d) Definitions.—For purposes of this section—

“(1) the term ‘corporal punishment’ has the meaning given such term in section 12 of the Ending Corporal Punishment in Schools Act of 2011;
“(2) the term ‘educational agency or institution’ means any public or private agency or institution which is the recipient, or serves students who are recipients of, funds under any applicable program;

“(3) the terms ‘local educational agency’ and ‘State educational agency’ have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965;

“(4) the term ‘school personnel’ has the meaning given such term in section 12 of the Ending Corporal Punishment in Schools Act of 2011; and

“(5) the term ‘student’ includes any person who is in attendance at an educational agency or institution.”.

SEC. 5. STATE PLAN AND ENFORCEMENT.

(a) STATE PLAN.—Not later than 18 months after the date of enactment of this Act and every third year thereafter, each State educational agency shall submit to the Secretary a State plan that provides—

(1) assurances to the Secretary that the State has in effect policies and procedures that eliminate the use of corporal punishment in schools;

(2) a description of the State’s policies and procedures; and
(3) a description of the State plans to ensure school personnel and parents, including private school personnel and parents, are aware of the State’s policies and procedures.

(b) Enforcement.—

(1) IN GENERAL.—

(A) USE OF REMEDIES.—If a State educational agency fails to comply with subsection (a), the Secretary shall—

(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)) in accordance with section 455 of such Act (20 U.S.C. 1234d);

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

(iii) issue a complaint to compel compliance 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

(B) Cessation of Withholding of Funds.—Whenever the Secretary determines (whether by certification or other appropriate evidence) that a State educational agency that is subject to the withholding of payments under subparagraph (A)(i) has cured the failure providing the basis for the withholding of payments, the Secretary shall cease the withholding of payments with respect to the State educational agency under such subparagraph.

(2) 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.).

(c) Rule of Construction.—Nothing in this section shall be construed to preclude school personnel from using, within the scope of employment, reasonable restraint to the lightest possible degree upon a student, if—

(1) the student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others;
(2) less restrictive interventions would be ineffective in stopping such imminent danger of physical injury; and

(3) the reasonable restraint ends immediately upon the cessation of the conditions described in paragraphs (1) and (2).

SEC. 6. GRANT AUTHORITY.

(a) In General.—From the amount appropriated under section 11, the Secretary may award grants to State educational agencies to assist the agencies in improving school climate and culture by implementing school-wide positive behavior support approaches.

(b) Duration of Grant.—A grant under this section shall be awarded to a State educational agency for a 3-year period.

(c) Application.—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 information on how the State educational agency—

(1) will develop State training programs on school wide-positive behavior support approaches, such as training programs developed with the assistance of the Secretary (acting through the Office of
Special Education Programs Technical Assistance Center on Positive Behavioral Interventions and Supports of the Department of Education); and

(2) will target resources to schools and local educational agencies in need of assistance related to improving school culture and climate through positive behavior supports.

(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, 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.

(e) PRIVATE SCHOOL PARTICIPATION.—

(1) IN GENERAL.—A local educational agency receiving subgrant funds under this section shall, after timely and meaningful consultation with appropriate private school officials, ensure that private school personnel can participate, on an equitable
basis, in activities supported by funds under this section.

(2) **Public Control of Funds.**—The control of funds provided under this section, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property.

(f) **Required Activities.**—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:

(1) Developing and implementing high-quality professional development and training programs, such as training programs developed with the assistance of the Secretary (acting through the Office of Special Education Programs Technical Assistance Center on Positive Behavioral Interventions and Supports of the Department of Education), to implement evidence-based systematic approaches to school-wide positive behavior supports, including improving coaching, facilitation, and training capacity for principals and other administrators, teachers, specialized instructional support personnel, and other staff.
(2) Providing technical assistance to develop and implement evidence-based systematic approaches to school-wide positive behavior supports, including technical assistance for data-driven decision making related to behavioral supports and interventions in the classroom and throughout common areas.

(3) Researching, evaluating, and disseminating high-quality evidence-based programs and activities that implement school-wide positive behavior supports with fidelity.

(4) Supporting other local positive behavior support implementation activities consistent with this subsection, including outreach to families and community agencies and providers, such as mental health authorities.

(g) **Evaluation and Report.**—Each State educational agency receiving a grant under this section shall, at the end of the 3-year grant period for such grant, prepare and submit to the Secretary, a report that—

(1) evaluates the State’s progress toward developing and implementing evidence-based systematic approaches to school-wide positive behavior supports; and

(2) includes such information as the Secretary may require.
(h) DEPARTMENT OF THE INTERIOR.—From the amount appropriated under section 11, the Secretary may allocate funds to the Secretary of the Interior for activities under this section with respect to schools operated or funded by the Department of the Interior, under such terms as the Secretary of Education may prescribe.

SEC. 7. NATIONAL ASSESSMENT.

(a) NATIONAL ASSESSMENT.—The Secretary shall carry out a national assessment to—

(1) determine compliance with the requirements of this Act; and

(2) identify best practices with respect to professional development and training programs carried out under section 6, which shall include identifying evidence-based school personnel training models with demonstrated success (including models that emphasize positive behavior supports and de-escalation techniques over physical intervention).

(b) REPORT.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate—

(1) an interim report that summarizes the preliminary findings of the assessment described in sub-
section (a) not later than 3 years after the date of
enactment of this Act; and

(2) a final report of the findings of the assess-
ment not later than 5 years after the date of the en-
actment of this Act.

**SEC. 8. PROTECTION AND ADVOCACY SYSTEMS.**

Protection and Advocacy Systems shall have the au-
thority provided under section 143 of the Developmental
Disabilities Assistance and Bill of Rights Act of 2000 (42
U.S.C. 15043) to investigate, monitor, and enforce protec-
tions provided for students under this Act and the amend-
ments made by this Act.

**SEC. 9. LIMITATION OF AUTHORITY.**

(a) In General.—Nothing in this Act shall be con-
strued 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.

(b) Applicability.—

(1) Private Schools.—Nothing in this Act
shall be construed to affect any private school that
does not receive, or does not serve students who re-
ceive, support in any form from any program sup-
ported, in whole or in part, with funds appropriated
to the Department of Education.
(2) HOME SCHOOLS.—Nothing in this Act shall be construed to—

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

(B) consider parents who are schooling a child at home as school personnel.

SEC. 10. RULE OF CONSTRUCTION ON DATA COLLECTION.


SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal year 2012 and each of the 4 succeeding fiscal years.

SEC. 12. DEFINITIONS.

In this Act:

(1) CORPORAL PUNISHMENT.—The term “corporal punishment” means paddling, spanking, or
other forms of physical punishment, however light, imposed upon a student.

(2) Educational Service Agency.—The term “educational service agency” has the meaning given such term in section 9101(17) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(17)).

(3) Elementary School.—The term “elementary school” has the meaning given the term in section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(4) Local Educational Agency.—The term “local educational agency” has the meaning given the term in section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26)).

(5) Parent.—The term “parent” has the meaning given the term in section 9101(31) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(31)).

(6) Positive Behavior Supports.—The term “positive behavior supports” means a systematic approach to embed evidence-based practices and data-driven decision making to improve school climate and culture, including a range of systemic and indi-
vidualized strategies to reinforce desired behaviors and diminish reoccurrence of problem behaviors, in order to achieve improved academic and social outcomes and increase learning for all students, including those with the most complex and intensive behavioral needs.

(7) 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).

(8) SCHOOL.—The term “school” means an entity—

(A) that—

(i) is a public or private—

(I) day or residential elementary school or secondary school; or

(II) early childhood, elementary school, or secondary school program that is under the jurisdiction of a school, local educational agency, educational service agency, or other educational institution or program; and
(ii) receives, or serves students who receive, support in any form from any program supported, in whole or in part, with funds appropriated to the Department of Education; or

(B) that is a school funded or operated by the Department of the Interior.

(9) SCHOOL PERSONNEL.—The term “school personnel” has the meaning—

(A) given the term in section 4151(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(10)); or

(B) given the term “school resource officer” in section 4151(11) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(11)).

(10) SPECIALIZED INSTRUCTIONAL SUPPORT PERSONNEL.—The term “specialized instructional support personnel” means school counselors, school social workers, school nurses, school psychologists, and other qualified professional personnel involved in providing assessment, diagnosis, counseling, educational, health, therapeutic, and other necessary corrective or supportive services.
(11) SECONDARY SCHOOL.—The term “secondary school” has the meaning given the term in section 9101(38) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(38)).

(12) SECRETARY.—The term “Secretary” means the Secretary of Education.

(13) STATE.—The term “State” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(14) STATE EDUCATIONAL AGENCY.—The term “State educational agency” has the meaning given the term in section 9101(41) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(41)).

(15) STUDENT.—The term “student” means a student enrolled in a school defined in paragraph (8).

SEC. 13. PRESUMPTION OF CONGRESS RELATING TO COMPETITIVE PROCEDURES.

(a) PRESUMPTION.—It is the presumption of Congress that grants awarded under this Act will be awarded using competitive procedures based on merit.

(b) REPORT TO CONGRESS.—If grants are awarded under this Act using procedures other than competitive
procedures, the Secretary shall submit to Congress a re-
port explaining why competitive procedures were not used.

SEC. 14. PROHIBITION ON EARMARKS.

None of the funds appropriated to carry out this Act
may be used for a congressional earmark as defined in
clause 9e of rule XXI of the Rules of the House of Rep-
resentatives of the 112th Congress.