

# Stereotype and School Pushout: Race, Gender, and Discipline Disparities

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*As in a family that can never discuss its fundamental secrets, our deeply held and often unconscious beliefs, stereotypes, and biases are too rarely brought to the surface, examined, and finally expunged. Yet as much as we seek to lock them from view, race and racism continue to color our interactions, including our disciplinary actions, on a daily, even moment-by-moment basis.<sup>1</sup>*

## I. INTRODUCTION

Loud, disruptive, confrontational, aggressive, unlady-like, ratchet,<sup>2</sup> ghetto<sup>3</sup>—these are all disparaging adjectives commonly used to describe the behavior of African American<sup>4</sup> women and girls. These adjectives, rooted in race and gender stereotypes

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\* Education Policy Counsel, NAACP Legal Defense and Education Fund, Inc. I wish to thank the young African American women who, with their courage, awakened the world to their power and changed the civil rights landscape in this nation, including Barbara Rose Johns, Linda Brown, Claudette Colvin, and countless others.

1. PRUDENCE CARTER ET AL., YOU CAN'T FIX WHAT YOU DON'T LOOK AT: ACKNOWLEDGING RACE IN ADDRESSING RACIAL DISCIPLINE DISPARITIES 7 (2014), available at [http://www.atlanticphilanthropies.org/sites/default/files/uploads/Acknowledging-Race\\_121514.pdf](http://www.atlanticphilanthropies.org/sites/default/files/uploads/Acknowledging-Race_121514.pdf).

2. "Ratchet" is a disparaging slang term used to negatively describe behavior perceived as ignorant, unsophisticated, or "ghetto." See *Definition of Ratchet*, ONLINE SLANG DICTIONARY, <http://209.197.79.194/meaning-definition-of/ratchet> (last visited Jan. 19, 2015).

3. See NIKKI JONES, BETWEEN GOOD AND GHETTO: AFRICAN AMERICAN GIRLS AND INNER-CITY VIOLENCE 9 (2010) ("Among urban and suburban adolescents, 'ghetto' is a popular slang term that is commonly used to categorize a person or behavior as ignorant, stupid, or otherwise morally deficient.").

4. The terms "African American" and "black" are used interchangeably throughout this article to refer to those of African descent living in the United States, and not immigrants from the African continent or throughout the African diaspora (although they are subject to similar discrimination in United States public schools). Recognizing that African Americans do not have homogenous experiences, this article focuses particularly on the effects of race and gender stereotypes rooted in American slavery that impact the educational experiences of African American girls in United States public schools.

from the days of slavery,<sup>5</sup> serve to reproduce social hierarchies and social constructions of race and gender. In the classroom, which itself is a reflection of social structures and systems, these stereotypes function to reflect and reinforce cultural beliefs.<sup>6</sup>

[S]chools have always played a very important role in preparing children for proper and successful participation in civic life and in inculcating in its youth the values society considers most important. But the very civic life for which students are being prepared is one that has always been dominated by white interests, preferences, values, and norms.<sup>7</sup>

In the context of school discipline, race and gender stereotypes particularly function to criminalize African American youth and to reinforce cultural beliefs about perceived inherent behavioral deficiencies and African American cultural norms in need of “social correction.” School discipline practices are a particularly salient lens through which to view how stereotypes impact educational outcomes. Because it is an area in which broad discretion is traditionally granted to school administrators, little justification is required for arbitrary decision making, and limited accountability is imposed upon decision makers. The exercise of broad discretion infused with race and gender bias results in discipline that disproportionately impacts African American students,<sup>8</sup> particularly African American girls. In fact, “[r]acial discipline disparities are a consequence of U.S. history [and] of the biases and stereotypes created by that history.”<sup>9</sup> Courts have traditionally been reluctant to intervene in local school disciplinary decisions and have been hesitant to overturn

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5. CARTER ET AL., *supra* note 1, at 2 (“In the United States, the origins of inequality began with slavery and gave us many of the racial stereotypes that retain much of their power today in schools and society.”).

6. See MONIQUE W. MORRIS, AFRICAN AM. POLICY FORUM, RACE, GENDER AND THE SCHOOL-TO-PRISON PIPELINE: EXPANDING OUR DISCUSSION TO INCLUDE BLACK GIRLS 8 (2014), available at <http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/5422efe3e4b040cd1f255c1a/1411575779338/Morris-Race-Gender-and-the-School-to-Prison-Pipeline+FINAL.pdf> (“According to the theory of social reproduction, educational institutions in their pedagogy, design, structure and practice, serve to reproduce social hierarchies.”).

7. David Simson, *Exclusion, Punishment, Racism, and Our Schools: A Critical Race Theory Perspective on School Discipline*, 61 UCLA L. REV. 506, 551 (2014) (footnote omitted).

8. See generally CARTER ET AL., *supra* note 1 (discussing the disproportionality in detail).

9. *Id.* at 1-2.

them.<sup>10</sup> In this environment, implicit and explicit biases are able to manifest themselves and thrive unabated with little oversight or intervention from the courts or the federal government.

While research has highlighted disparities related to race in the administration of school discipline for decades, only within the last few years have racial disparities in discipline garnered national attention. Most significantly, joint guidance issued by the United States Departments of Justice and Education,<sup>11</sup> data released on discipline by the Department of Education Office for Civil Rights,<sup>12</sup> a report on school discipline by the Council of State Governments Justice Center,<sup>13</sup> and recent national news reports<sup>14</sup> put schools on notice of their obligations and responsibilities in the administration of school discipline. While national attention and data acknowledge the disparate impact discriminatory discipline practices have on African American youth, the focus has, until recently, largely been on African American males. Little attention has been paid to the impact of discriminatory discipline on the educational experiences and outcomes of African American girls, despite the ongoing work of scholars like Dr. Monique W. Morris, Dr. Jamilia Blake, and Kimberlé Crenshaw that highlights the unique ways that African American girls are impacted.<sup>15</sup>

However, attention must be paid to how African American girls uniquely experience discriminatory discipline influenced by race and gender bias; otherwise, African American girls will

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10. Russell J. Skiba et al., *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y.L. SCH. L. REV. 1071, 1080 (2010).

11. See U.S. DEP'T OF JUSTICE & U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER ON THE NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE (2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

12. See U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION, DATA SNAPSHOT: SCHOOL DISCIPLINE (2014), available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

13. COUNCIL OF STATE GOV'TS JUSTICE CTR., THE SCHOOL DISCIPLINE CONSENSUS REPORT (2014), available at <http://csgjusticecenter.org/youth/school-discipline-consensus-report/>.

14. See Tanzina Vega, *Disciplining of Girls Differs Among and Within Races*, N.Y. TIMES, Dec. 10, 2014, at A21; Leticia Smith-Evans & Russell Skiba, *Race Debate Should Include School Discipline*, USA TODAY (Dec. 21, 2014, 1:14 PM), <http://www.usatoday.com/story/opinion/2014/12/20/racism-school-discipline-evans-skiba/20494903/>.

15. See MORRIS, *supra* note 6, at 1 (“[T]his Report addresses dimensions of girls’ vulnerability that are frequently obscured by their relative absence from this conversation.”).

continue to experience compromised educational outcomes. A recent report issued by the NAACP Legal Defense and Educational Fund, Inc. and the National Women's Law Center examined data on African American girls and education, including school discipline disparities, and called for increased attention to how these girls are uniquely impacted by race and gender bias in school discipline decisions.<sup>16</sup> For instance, African American girls are suspended at "six times the rate of white girls and more than any other group of girls and several groups of boys."<sup>17</sup> These suspensions are often for innocuous offenses, such as "willful defiance," or even for wearing natural hairstyles.<sup>18</sup>

By failing to acknowledge the unique ways that African American girls' educational experiences are impacted by explicit and implicit bias and the underlying racial and gender stereotypes which fuel them, we enable the phenomena known as "school pushout"<sup>19</sup> and the "school-to-prison pipeline,"<sup>20</sup> which are currently operating to make African American girls the fastest-growing segment of the juvenile justice system.<sup>21</sup> The term "school pushout" refers to:

[N]umerous and systemic factors that prevent or discourage young people from remaining on track to complete their education and has severe and lasting consequences . . . . These factors include . . . over-reliance on zero-tolerance practices and punitive measures such as suspensions and expulsions, over-reliance on law enforcement tactics and ceding of disciplinary authority to law enforcement personnel, and a history of systemic racism and inequality.<sup>22</sup>

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16. See LETICIA SMITH-EVANS ET AL., NAACP LEGAL DEF. & EDUC. FUND, INC. & NAT'L WOMEN'S LAW CTR., UNLOCKING OPPORTUNITY FOR AFRICAN AMERICAN GIRLS: A CALL TO ACTION FOR EDUCATIONAL EQUITY (2014), available at [http://www.naacpldf.org/files/publications/Unlocking%20Opportunity%20for%20African%20American%20Girls\\_0.pdf](http://www.naacpldf.org/files/publications/Unlocking%20Opportunity%20for%20African%20American%20Girls_0.pdf).

17. *Id.* at 15.

18. *See id.* at 19.

19. *See Mission*, DIGNITY SCH., <http://dignityinschools.org/about-us/mission> (last visited Jan. 19, 2015).

20. MORRIS, *supra* note 6, at 2.

21. *See* Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584, 1617 (2012) ("[B]lack girls have been the swiftest growing group of girls referred to the juvenile courts and entering detention. . . . [B]y 2008, referrals of black girls had increased 72 percent from their 1992 level, making up 35 percent of all girls' referrals.").

22. *Mission*, *supra* note 19.

The phrase “school-to-prison pipeline” refers to “the school-based policies, practices, conditions, and prevailing consciousness that facilitate criminalization within educational environments and the processes by which this criminalization results in the incarceration of youth and young adults.”<sup>23</sup> The school-to-prison pipeline “disproportionately affects youth of color—both female and male.”<sup>24</sup> While both African American males and females are negatively and disproportionality impacted by discriminatory discipline practices, African American girls are uniquely impacted by both race and gender bias. For instance, only African American girls have been suspended for wearing natural hairstyles, which school dress code policies apparently find to be “not presentable” or “a distraction.”<sup>25</sup>

Underlying these disciplinary actions is race and gender bias which engender perceptions of African American women’s hair as fundamentally unacceptable or inappropriate—a unique manifestation of bias that impacts African American females both because they are black and because they are women. Bias in discretionary discipline decisions has resulted in higher rates of exclusionary discipline practices, which are disciplinary sanctions that remove students from school, such as out-of-school suspensions and expulsions.<sup>26</sup> These discriminatory practices operate to push African American girls out of school and into the juvenile justice system or onto the streets, essentially undermining their outcomes and contributing to academic disengagement, high dropout rates, increased criminal activity and involvement with the juvenile justice system, and long-term economic consequences such as unemployment and reduced lifetime earnings.<sup>27</sup>

This article examines how race and gender bias, manifested through discriminatory discipline practices, uniquely impact and undermine the educational experiences and outcomes of African American girls. Part II examines the origins of race and gender stereotypes of African American women, which are rooted in our

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23. Monique W. Morris, *Searching for Black Girls in the School-to-Prison Pipeline*, NAT’L COUNCIL ON CRIME & DELINQ. (Mar. 18, 2013), <http://www.nccdglobal.org/blog/searching-for-black-girls-in-the-school-to-prison-pipeline>.

24. *Id.*

25. See SMITH-EVANS ET AL., *supra* note 16, at 19.

26. DANIEL J. LOSEN, DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS, AND RACIAL JUSTICE 2 (2011), available at <http://nepc.colorado.edu/files/NEPC-SchoolDiscipline.pdf>.

27. See SMITH-EVANS ET AL., *supra* note 16, at 18.

nation's ugly history of slavery. Part II also details how these race and gender stereotypes survived to manifest themselves today in our nation's schools, how they underlie perceptions of African American girls, and how they influence discipline-related decision making by teachers and administrators. Part III highlights the role of implicit bias, its effects on decision making and perception, and its role in disciplinary decisions. Part IV takes a closer look at discriminatory discipline practices in the classroom, examines the evolution of exclusionary discipline practices through the proliferation of zero-tolerance policies, and highlights current data on discipline disparities impacting African American girls. Part IV also explores the educational, economic, and psychological consequences of discriminatory discipline on the lives of African American girls. Part V provides a legal examination of discriminatory discipline, an overview of how the courts and Congress have historically addressed discriminatory discipline practices, and an analysis of the efficacy of current attempts to address discriminatory discipline practices. This article concludes with an urgent call to confront race and gender stereotypes that disproportionately push African American girls out of school and for the implementation of appropriate alternatives to discriminatory discipline practices.

## II. GOOD GIRLS OR GHETTO GIRLS?: RACE AND GENDER STEREOTYPES AND AFRICAN AMERICAN GIRLS IN SCHOOL<sup>28</sup>

African American girls are subjected to race and gender stereotypes that influence teachers' and school administrators' responses to their behavior and trigger "social correction" when such behavior is interpreted to deviate from social norms. This country's history of racism, which once justified enslavement of blacks on socially constructed beliefs of black inferiority, impacts the current perceptions of African Americans as inherently inferior and perpetuates social norms consistent with beliefs of white superiority. Education is a lens through which these social

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28. See MORRIS, *supra* note 6, at 5 ("Black females are affected by the stigma of having to participate in identity politics that marginalize them or place them into polarizing categories—'good' girls or girls that behave in a 'ghetto' fashion—which exacerbate stereotypes about Black femininity, particularly in the context of socioeconomic status, crime and punishment.").

norms are reflected and reproduced.<sup>29</sup> African American students are subsequently impacted in the educational setting by systems and beliefs that perpetuate social order and norms undergirded by institutionalized racism.<sup>30</sup> For African American girls, institutionalized racism not only perpetuates ideas of racial inferiority, but also their deviance from gender norms and their failure to meet expectations of “feminine” behavior, which are both equated with white womanhood.<sup>31</sup> In fact, “gender reflects widely held beliefs, or normative expectations, about the ‘attitudes and activities appropriate for one’s sex category.’”<sup>32</sup>

Race and gender stereotypes about African American women are rooted in our nation’s history and legacy of slavery. During slavery, African American women were subjected to horrific conditions of sexual abuse and exploitation, excruciating forced manual labor, and daily humiliation.<sup>33</sup> In order to justify the sexual abuse and exploitation of black women, stereotypes emerged depicting them as seductive, hypersexual, and immoral.<sup>34</sup> As one commentator noted, the “[s]exual myth about Blackwomen functions as a tool for controlling Blackwomen’s and white women’s behavior, and it is foundational to the social, economic, and political hierarchical ordering of Blackwomen.”<sup>35</sup> The resulting “devaluation of Black womanhood [still] permeates the psyches of all Americans.”<sup>36</sup> The prevailing hierarchy which places African American women below white women in terms of ideals of womanhood and femininity is manifested in stereotypes of African American women as sexually available and

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29. See *id.* at 8 (“According to the theory of social reproduction, educational institutions in their pedagogy, design, structure and practice, serve to reproduce social hierarchies.”).

30. See RUSSELL SKIBA ET AL., THE COLOR OF DISCIPLINE: SOURCES OF RACIAL AND GENDER DISPROPORTIONALITY IN SCHOOL PUNISHMENT 18 (2000), available at <http://www.indiana.edu/~equity/docs/ColorOfDiscipline.pdf> (“Racial bias in the practice of school discipline is also part of a broader discourse concerning the continuing presence of institutional racism or structural inequity in education.”).

31. See MORRIS, *supra* note 6, at 5.

32. JONES, *supra* note 3, at 7.

33. CARTER ET AL., *supra* note 1, at 2 (“[S]lave owners often denigrated their bodies through rape, forced procreation or ‘breeding’ with other slaves, and sold their children into slavery.”).

34. *Id.*

35. Joan R. Tarpley, *Blackwomen, Sexual Myth, and Jurisprudence*, 69 TEMP. L. REV. 1343, 1345 (1996) (footnote omitted).

36. *Id.* at 1347.

promiscuous and of white women as sexually pure and moral.<sup>37</sup> For African American girls, expectations in schools mirror the prevailing ideals of womanhood, which leads to social correction by teachers inculcated with these social norms and stereotypes.<sup>38</sup>

Some note:

[W]omen and girls who are able to mirror normative expectations of femininity during their interactions with others—for example, by assuming a passive demeanor and presenting an appearance that does not significantly deviate from the standards of mainstream culture or local preferences—are evaluated by adults . . . and by peers as appropriately feminine girls or *good girls*.<sup>39</sup>

But women and girls who are not perceived as fitting within normative expectations of femininity—interpreted as white womanhood—are subjected to harsh consequences. For African American girls, who are already perceived via racial stereotype as not conforming to the ideals of womanhood, the consequences of falling short are particularly punitive.<sup>40</sup>

In schools, these “criminalizing responses” are demonstrated by increased suspensions and expulsions of African American girls, and “the behaviors for which Black females routinely experience disciplinary response are related to their nonconformity with notions of white-middle class femininity, for example, by their dress, their profanity, or by having tantrums in the classroom.”<sup>41</sup> Further, “girls or women who seem to violate perceived gender boundaries by embracing stereotypically masculine behavior (e.g., strength, independence, and an outwardly aggressive demeanor) often are disparagingly categorized as ‘unnaturally strong.’”<sup>42</sup> Being “unnaturally strong” is a common perception of African American girls and women and is code for their nonconformance with passive gender-based expectations.<sup>43</sup>

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37. *See id.* at 1365.

38. *See MORRIS, supra* note 6, at 5.

39. JONES, *supra* note 3, at 8.

40. MORRIS, *supra* note 6, at 5 (“When Black girls do engage in acts that are deemed ‘ghetto’ or a deviation from the social norms that define female behavior according to a narrow, White middle-class definition of femininity, they are deemed nonconformative and thereby subject to criminalizing responses.”).

41. *Id.* at 6.

42. JONES, *supra* note 3, at 8.

43. *See SMITH-EVANS ET AL., supra* note 16, at 6.



Other “code words” associated with African American girls include “assertive,” “loud,” “aggressive,” and “confrontational,” all of which are incongruent with adjectives associated with positively perceived passive feminine behavior.<sup>44</sup> Ironically, these adjectives also describe behaviors that have helped African American women navigate the complexities of racism and sexism, both inside and outside of their communities.<sup>45</sup> But instead of being perceived positively in school environments, stereotypes of African American girls are used to justify the overly punitive sanctions imposed on them.<sup>46</sup> In fact, scholars like Dr. Morris and Dr. Blake note that in school settings African American girls are often “criminalized for qualities that have been associated with their survival as Black females.”<sup>47</sup> This criminalization of nonconformance with prevalent notions of femininity and the undervaluing of qualities developed by African American women to negotiate complicated social circumstances causes their struggles with racial and gender expectations that are incongruous and impossible to overcome. African American girls are essentially “in a no-win situation”:

[T]hey either conform to white, middle class notions of how girls should act and be quiet and passive, which ultimately does not serve girls well in their pursuit of an education; or they speak up and get disciplined for defying those expectations and conforming to educators’ stereotyped expectations for African American girls.<sup>48</sup>

### III. THE IMPLICATIONS OF IMPLICIT BIAS: DISCIPLINE DISPARITIES AND AFRICAN AMERICAN GIRLS

Responses by educators to the perceived nonconformity of African American girls to race and gender expectations has resulted in the disproportionate criminalization and punishment of African American girls through overly punitive disciplinary sanctions. Recent research indicated “that Black girls were disproportionately suspended from middle school for behaviors

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44. *See id.* at 5-6.

45. MORRIS, *supra* note 6, at 9 (“For example, to be ‘loud’ or ‘defiant’—two ‘infractions’ that lead to the use of exclusionary discipline in schools—are qualities that have historically underscored Black female resilience to the combined effects of racism, sexism, and classism.”).

46. *See id.*

47. *Id.*

48. SMITH-EVANS ET AL., *supra* note 16, at 6.

that [were] *subjectively* determined worthy of reprimand.”<sup>49</sup> Data from 2012 showed that African American girls were disproportionately suspended at rates higher than all other races of girls and most groups of boys.<sup>50</sup> One statistic is particularly sobering: “[A]lthough African American girls represented less than 17 percent of all female students [in 2009–10], they comprised 31 percent of all girls referred to law enforcement and approximately 43 percent of girls who had experienced a school-related arrest.”<sup>51</sup>

The broad room for subjectivity in disciplinary decisions allows race and gender bias, both explicit and implicit, to influence disciplinary decision making. This is further supported by data and research showing that racial discipline disparities cannot be attributed to higher rates of misbehavior among African American students.<sup>52</sup> In fact, contrary to the misperceptions about higher rates of misbehavior among black students, which are also rooted in stereotypes of inherently deviant or “uncontrollable” black children, research has shown “African American students are punished more severely for less serious or more subjective infractions.”<sup>53</sup> Whether educators admit it or not, they—like everyone else—are vulnerable to harboring bias, and when the opportunity to exercise discretion in decision making arises, it usually plays out against African American students, including African American girls. Findings show that “large and consistent disparities in the discipline of black and white students. . . . indicate a systematic and prevalent bias in the practice of school discipline.”<sup>54</sup> Implicit racial bias has been identified by scholars as a primary influence in discretionary discipline decisions that create significant disparities for African

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49. MORRIS, *supra* note 6, at 5.

50. U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, *supra* note 12, at 1.

51. SMITH-EVANS ET AL., *supra* note 16, at 16.

52. Skiba et al., *supra* note 10, at 1088 (“[I]nvestigations of student behavior, race, and discipline have yielded no evidence that African American over-representation in school suspension is due to higher rates of misbehavior, regardless of whether the data are self-reported, or based on analysis of disciplinary records.”).

53. *Id.*; see also SKIBA ET AL., *supra* note 30, at 19 (“[W]e were struck during the preparation of this manuscript by the virtual absence of empirical support for the popular hypothesis that African American students are disciplined more because they act out more.”).

54. SKIBA ET AL., *supra* note 30, at 18-19.

American students, especially African American girls.<sup>55</sup> One commentator defined implicit bias as the following:

[T]he mental process that causes us to have negative feelings and attitudes about people based on characteristics like race, ethnicity, age and appearance. Because this cognitive process functions in our unconscious mind, we are typically not consciously aware of the negative racial biases that we develop over the course of our lifetime. In the general population, implicit racial bias often supports the stereotypical caricature of Black youth . . . as irresponsible, dishonest, and dangerous.<sup>56</sup>

Like everyone else, educators and school administrators hold implicit biases based upon race or gender stereotypes. These “biases do not necessarily lead to explicitly biased decisions or behaviors in schools, but they can undergird discriminatory behaviors—especially when such biases remain unstated and unexamined.”<sup>57</sup> Pretending that such biases do not exist does not make it so. In fact, one study revealed that educators “perceived Black girls as being ‘loud, defiant, and precocious’ and that Black girls were more likely than their white or Latina peers to be reprimanded for being ‘unladylike.’”<sup>58</sup> One scholar of critical race theory described the problem in the following way:

Racial schemas influence what we pay attention to, how we interpret what we pay attention to, and what we remember about a person. The fact that this occurs in ways that are often not consciously controlled and even outside of our awareness forms the basis of the concept of implicit bias.<sup>59</sup>

This explains how educators interpret the actions of African American students differently than those of white students and mete out different sanctions, even when the students commit the same infraction. When discretion plays a large role in discipline decisions, bias functions in the favor of white students with whom more favorable characteristics are associated, and against black

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55. See TOM RUDD, KIRWAN INST., RACIAL DISPROPORTIONALITY IN SCHOOL DISCIPLINE: IMPLICIT BIAS IS HEAVILY IMPLICATED 3 (2014), available at <http://www.antiracistalliance.com/racial-disproportionality-schools-02.pdf>.

56. *Id.*

57. CARTER ET AL., *supra* note 1, at 4.

58. MORRIS, *supra* note 6, at 5.

59. Simson, *supra* note 7, at 543 (footnote omitted).

students, to whom society attributes more negative characteristics based on their race.

Subjective discipline categories like “willful defiance” and “disrespect” allow for biased decision making to wreak havoc, and most of these discipline decisions go unquestioned. Specifically, “social psychology research suggests that implicit racial biases are most likely to affect decision making when the decision involves an ambiguous situation and provides the biased decisionmaker some ground to justify the biased decision on nonracial grounds.”<sup>60</sup> Broad discretion in subjective disciplinary decisions provides fertile ground for the exercise of implicit racial bias.<sup>61</sup> In fact, “[r]acially disproportionate suspension numbers represent a microcosm of racial stigmatization in the United States and illustrate the real negative effects of implicit bias on the lives of African American schoolchildren.”<sup>62</sup>

Bias is also reflected in the racially stereotypical words used to justify disciplinary sanctions against African American girls. Words such as “irate,” “insubordinate,” “disrespectful,” “uncooperative,” and “uncontrollable” frequently accompany arrest reports and disciplinary summonses of black girls.<sup>63</sup> A review of discipline data in Ohio showed that African American girls were disproportionately disciplined for subjective and vague offenses such as disobedience and disruptive behavior.<sup>64</sup> Implicit biases may even manifest themselves in such trivial descriptions by educators of students having “black walking style[s].”<sup>65</sup>

African American girls are subjected not only to implicit racial bias, but also to implicit biases rooted in the gender stereotypes described above.<sup>66</sup> In fact, one study showed that the

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60. *Id.* at 545.

61. RUDD, *supra* note 55, at 3 (“Research suggests that when given an opportunity to choose among several disciplinary options for a relatively minor offense, teachers and school administrators often choose more severe punishment for Black students than for White students for the same offense.”).

62. Simson, *supra* note 7, at 546.

63. MORRIS, *supra* note 6, at 5.

64. See SMITH-EVANS ET AL., *supra* note 16, at 15-16.

65. RUDD, *supra* note 55, at 3 (“A 2003 study found that students who displayed a ‘black walking style’ were perceived by their teachers as lower in academic achievement, highly aggressive and more likely to be in need of special education services.”).

66. See JONES, *supra* note 3, at 8 (“Black women and adolescent girls whose shade of skin color, body size, attitude, or demeanor deviate even slightly from mainstream expectations of femininity or Black female respectability are especially vulnerable to the formal and informal sanctions that accompany such gender violations.”).

odds of suspension were about three times greater for young African American women with darker skin tones versus African American women with lighter skin.<sup>67</sup> Therefore, the race and gender biases impacting African American girls in the discipline context are complex and multi-layered.

#### IV. “THEY HAVE DIFFERENT RULES FOR US”<sup>68</sup>: ZERO TOLERANCE AND THE IMPACT OF RACE AND GENDER BIAS ON DISCIPLINE DISPARITIES

While racial disparities in school discipline may have recently become a hot national news topic, minority overrepresentation in school punishment has been the subject of research and debate for decades.<sup>69</sup> A 1975 study by the Children’s Defense Fund of national data provided by the Department of Education Office for Civil Rights found black students were suspended two times more often than their white counterparts at the elementary school, middle school, and high school levels.<sup>70</sup> According to a 2014 report, national data demonstrated that blacks were suspended or expelled three times more often than their white peers.<sup>71</sup> This same report indicated that African American girls accounted for 12% of all suspensions, the highest suspension rate of all races and ethnicities among females.<sup>72</sup> While African American students comprised only 16% of nationwide public school enrollment, “they represent[ed] 27% of students referred to law enforcement and 31% of students subjected to a school-related arrest.”<sup>73</sup> Racial disparities in school discipline begin as early as preschool, with African American

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67. LANCE HANNON ET AL., THE RELATIONSHIP BETWEEN SKIN TONE AND SCHOOL SUSPENSION FOR AFRICAN AMERICANS 18 (2013), *available at* <http://www88.homepage.villanova.edu/lance.hannon/ColorismSuspension.pdf>.

68. SMITH-EVANS ET AL., *supra* note 16, at 16 (quoting Diane A. M. Archer-Banks & Linda S. Behar-Horenstein, *Ogbu Revisited: Unpacking High Achieving African American Girls’ High School Experiences*, 47 URB. EDUC. 198, 208 (2012)) (internal quotation marks omitted).

69. *See* SKIBA ET AL., *supra* note 30, at 1 (“Minority overrepresentation in school punishment is by no means a new issue. Extensive investigations of school punishments over the past 25 years have been consistent in raising questions concerning socioeconomic and racial disproportionality in the administration of school discipline.”).

70. CHILDREN’S DEF. FUND OF THE WASHINGTON RESEARCH PROJECT, INC., SCHOOL SUSPENSIONS: ARE THEY HELPING CHILDREN? 9 (1975).

71. U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, *supra* note 12, at 1.

72. *Id.*

73. *Id.*

children making up 48% of the preschool children suspended more than once, despite comprising only 18% of total preschool enrollment.<sup>74</sup> Because data shows that African American students do not misbehave more frequently than their white peers,<sup>75</sup> researchers have dedicated considerable time and resources toward examining other factors, such as socioeconomic status, that could account for racial disparities in school discipline. However, findings point to institutionalized racial discrimination as a primary factor for the racial disparities.<sup>76</sup> For African American girls, these disparities can be attributed to both race and gender bias.<sup>77</sup> When accompanied by more punitive practices, disparities in school discipline continue to compound over time for African American girls.

Another factor contributing to increased discipline disparities and the severity of discipline sanctions is the proliferation of zero-tolerance policies during the 1990s. States and school districts began adopting these policies in response to perceived increases in violence in America's schools.<sup>78</sup> Zero-tolerance policies "generally appl[y] a prescribed, mandatory sanction—typically expulsion or suspension—for an infraction with minimal, if any, consideration given to the circumstances or consequences of the offense."<sup>79</sup> Known as "exclusionary" discipline because it removes students from the school setting, expulsions and suspensions were historically reserved as a last resort for the most egregious or disruptive behaviors.<sup>80</sup> Following the expansion of zero-tolerance policies, however, exclusionary discipline began to be used for common minor offenses.<sup>81</sup> Today, most exclusionary discipline is not used to address guns or

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74. *Id.*

75. SKIBA ET AL., *supra* note 30, at 16 ("Neither these nor any previous results we are aware of provide any evidence that racial discrepancies in school punishment can be accounted for by disproportionate rates of misbehavior.").

76. *See id.* ("Absent support for any plausible alternative explanation, these data lend support to the conclusion that racial disproportionality in school discipline, originating at the classroom level, is an indicator of systematic racial discrimination.").

77. *See* MORRIS, *supra* note 6, at 5.

78. Skiba et al., *supra* note 10, at 1083 ("In the late 1980s and early 1990s, public schools began to move away from a rehabilitative model of discipline to a stricter approach. This movement was likely in reaction to the public perception that American schools were becoming more violent. The result was a move by school districts to adopt zero tolerance policies.").

79. *Id.*

80. *See id.* at 1076-77.

81. Simson, *supra* note 7, at 515.

violence in schools: “[O]ut-of-school suspensions are not predominantly used to punish the most dangerous student behavior but rather to punish relatively trivial acts such as disrespect toward a school authority or classroom disruption.”<sup>82</sup> Data supports this conclusion—a recent study found that only 5% of out-of-school suspensions in one state were imposed for serious or dangerous disciplinary incidents.<sup>83</sup> The other 95% were levied for disruptive behavior or were categorized simply as “other.”<sup>84</sup> Concerns about school safety inspired Congress to pass the Gun-Free Schools Act<sup>85</sup> in 2002, which directed states to enact policies that require administrators to expel students found in possession of a firearm on school grounds.

However, most zero-tolerance policies extend beyond gun control. For example, Colorado passed a law allowing for expulsion of students “for willful disobedience, persistent defiance of authority, or the destruction or defacement of school property.”<sup>86</sup> The effect of expanding zero-tolerance policies, rather than deterring and preventing acts of violence like school shootings, has been to “appl[y] punitive discipline often to students who are not really dangerous but rather in need of support to counteract family problems, detachment from school, or learning disabilities.”<sup>87</sup> Instead of receiving needed services, these students are subjected to exclusionary discipline, which has increased in use under zero tolerance. In fact, the number of students suspended annually nearly doubled from 1974 to 2006, to a point where 7% of students across the country can now expect to be suspended at least once during a given school year.<sup>88</sup>

Along with the expansion of zero-tolerance policies, many schools also increased the number of school police, commonly known as school resource officers (SROs), to address perceived safety concerns.<sup>89</sup> Many SROs are often used to handle routine

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82. *Id.*

83. LOSEN, *supra* note 26, at 8.

84. *Id.*

85. Gun-Free Schools Act, Pub. L. No. 89-10, 115 Stat. 1762 (2002).

86. Skiba et al., *supra* note 10, at 1083-84.

87. Simson, *supra* note 7, at 516.

88. *Id.* at 515.

89. ADVANCEMENT PROJECT ET AL., POLICE IN SCHOOLS ARE NOT THE ANSWER TO THE NEWTOWN SHOOTING 1, 5 (2013), available at <http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting%20-%20Jan.%202013.pdf>.

discipline matters, which results more student arrests, particularly for students of color, for minor misbehavior.<sup>90</sup> Further, the proliferation of SROs contributes to the school-to-prison pipeline, as “offenders” are charged into the justice system following “subjective offenses such as disorderly conduct,”<sup>91</sup> or even minor, and often non-criminal, offenses such as “refusing to present identification” or using profane language.<sup>92</sup>

For African American girls and other students of color, the increased police presence has also resulted in increased security through security screenings, video cameras, metal detectors, and other “instruments of surveillance” in schools predominantly attended by African American or Latino students.<sup>93</sup> In this environment, “daily exchanges and interactions with law enforcement expand the surveillance of youth of color and normalize prison terminology (and culture) in the school setting.”<sup>94</sup> Given these conditions, it is no surprise that African American girls comprise one of the fastest-growing segments of the juvenile justice population, even though the overall population is decreasing.<sup>95</sup>

The types of behaviors for which African American girls are penalized and criminalized demonstrate how race and gender stereotypes undergird disciplinary decisions. For instance, the NAACP Legal Defense and Educational Fund, Inc. and the National Women’s Law Center recently detailed the story of Tiana Parker, a seven-year-old student at a charter school in Tulsa, Oklahoma, who was sanctioned for wearing her natural hair in a locked hairstyle—a perceived violation of the school’s dress code.<sup>96</sup> Administrators sent Tiana home and told to change her hair.<sup>97</sup> Instead of cutting off Tiana’s locks (the only way to

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90. *See id.* at 6; *see also* MORRIS, *supra* note 6, at 6 (“[T]he presence of law enforcement in the schools (e.g., school resource officers, school-based probation officers, security officers, etc.) has been cited as one of the largest contributing factors to the increased rates of student arrests in schools.”).

91. CARTER ET AL., *supra* note 1, at 3.

92. MORRIS, *supra* note 6, at 7.

93. *Id.*

94. *Id.*

95. *See* SMITH-EVANS ET AL., *supra* note 16, at 16 (“African American girls’ share of [juvenile justice] cases increased from 28 percent to 33 percent—an increase of 18 percent—while white girls’ share of cases declined from 68 percent to 64 percent—a decrease of 7 percent.”).

96. *Id.* at 19.

97. *Id.*



alter the hairstyle), Tiana's parents removed her from the school and enrolled her in another school.<sup>98</sup> The incident not only disrupted Tiana's education, she also experienced the psychological trauma of being told that her natural hairstyle was "unacceptable" and "not presentable"—messages that carry harmful race and gender bias that can damage self-esteem. Tiana's school was a predominately black charter school,<sup>99</sup> which demonstrates that implicit race and gender bias can be held even by those of the same race and sex who project their own internalized oppression and biases upon others.<sup>100</sup> Indeed, white teachers are not "the only bearers of stereotypes."<sup>101</sup> Studies have shown as much.<sup>102</sup> Widespread stereotyping and subjective decision making has resulted in the proliferation of sanctions for minor offenses rooted in these harmful stereotypes.<sup>103</sup> One report recently detailed the stories of African American girls penalized for dress or hairstyles, all minor offenses for which African American girls were subjected to overly punitive discipline,<sup>104</sup> again showing that the use of punitive disciplinary practices against African American girls is all too common.

The consequences of exclusionary discipline can be profound for the educational and life outcomes of African American girls. One of the weightiest consequences of exclusionary discipline practices is the loss of instruction time, which leads to disengagement with the learning environment.<sup>105</sup> Especially "[g]iven that the amount of instructional time a student receives is an important predictor of achievement outcomes, the loss of instructional time by millions of students to out-of-school suspensions hampers the academic development of many youth and diminishes their prospects of becoming productive and

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98. *Id.*

99. *Id.*

100. See Monique Morris, *Dr. Monique Morris Describes Disturbing Trends of School-to-Confinement for Black Girls*, YOUR BLACK WORLD, <http://yourblackworld.net/2013/09/dr-monique-morris-describes-disturbing-trends-of-school-to-confinement-for-black-girls/> (last visited Jan. 19, 2015).

101. CARTER ET AL., *supra* note 1, at 4.

102. *Id.* ("Middle class teachers of color are no less likely to evaluate students subjectively than their White middle class counterparts . . . . These findings point to the complex dynamics of race and class: Controlling images and narratives about different groups of individuals can affect us all across racial lines.")

103. See SMITH-EVANS ET AL., *supra* note 16, at 19 (providing illustrations).

104. *See id.*

105. Simson, *supra* note 7, at 516-17.

successful members of society.”<sup>106</sup> This is especially true for African American girls, who are more likely to experience exclusionary discipline than their female peers and of whom four out of ten will not graduate from high school.<sup>107</sup> Further, studies demonstrate the link between exclusionary discipline and dropout rates.<sup>108</sup> A similar correlation exists between dropping out of school and future incarceration.<sup>109</sup>

It is nearly impossible for expelled or suspended students to maintain academic involvement, as quality alternatives to education are either completely absent or “gravely deficient.”<sup>110</sup> Alternative schools for excluded students are usually woefully deficient academically, and their students are far less likely to graduate or reintegrate into the general learning environment after their sanction expires.<sup>111</sup> Again, the school-to-prison pipeline is enabled as students subjected to exclusionary discipline find themselves in unsupervised, and often academically inferior, settings poorly suited for a return to school.<sup>112</sup> As of 2000, only twenty-six states required schools to provide work to suspended or expelled students, which is one of the ways such a student may stay on track to graduate.<sup>113</sup> Once a student is suspended or expelled more than once, his or her situation may become dire, leaving the student in a situation in which he or she will likely drop out before ultimately being arrested.<sup>114</sup> Thus, African American girls who are disproportionately subjected to overly punitive exclusionary discipline are highly vulnerable to school pushout.

African American girls who are pushed out of school and fail to secure a high school diploma are also more likely to experience income insecurity and poverty.<sup>115</sup> Recent data showed that African American women age twenty-five and older without a

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106. *Id.* at 516 (footnote omitted).

107. Morris, *supra* note 100.

108. RUDD, *supra* note 55, at 4.

109. *See id.* at 4-5 (“[S]tudents who have been suspended are three times more likely to drop out by the 10th grade than students who have never been suspended.”).

110. *See* Simson, *supra* note 7, at 517.

111. *See* Jalise Burt, Note, *From Zero-Tolerance to Compassion: Addressing the Needs of Girls Caught in the School-to-Prison Pipeline Through School-Based Mental Health Services*, 6 GEO. J.L. & MODERN CRITICAL RACE PERSP. 97, 101 (2014).

112. *See* RUDD, *supra* note 55, at 4.

113. Burt, *supra* note 111, at 101.

114. *Id.*

115. *See* SMITH-EVANS ET AL., *supra* note 16, at 36.

high school diploma were roughly one-and-a-half times more likely to live in poverty than those with a high school diploma and almost five times more likely to live in poverty than those with a college degree.<sup>116</sup>

In addition, African American girls are vulnerable to the psychological consequences of exclusionary discipline, including impaired relationships with authority figures, “which intensifies conflicts rather than mediating them,” and disengagement from the learning environment.<sup>117</sup> Psychological consequences also include feelings of stigmatization and inferiority.<sup>118</sup>

African American girls subjected to overly punitive discipline also experience consequences distinct from African American males because of their gender, including an increased risk of teenage pregnancy, financial dependence on males who engage in criminal activity, and child sex trafficking.<sup>119</sup> Instead of providing them with needed services and interventions, schools instead push them out and compromise their futures.

The irony of exclusionary discipline is that it has been shown to neither increase school safety nor improve educational outcomes. An American Psychological Association task force charged with evaluating the effectiveness of zero-tolerance policies found “zero tolerance policies as implemented have failed to achieve the goals of an effective system of school discipline.”<sup>120</sup> Other studies that reached the same conclusion stressed the negative effects of the policies on students, families, and local communities.<sup>121</sup> If the negative effects on students of color are not compelling, then the lack of a positive impact or improvement should be.

Some districts have been responsive to the harms of exclusionary discipline practices and zero-tolerance policies. In fact, the public school district in Denver, near the site of the 1999 shooting at Columbine High School, abandoned its zero-tolerance policy in response to community-based advocacy by

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116. *Id.*

117. Simson, *supra* note 7, at 516-17.

118. *See* MORRIS, *supra* note 6, at 5.

119. *See id.* at 10.

120. AM. PSYCHOLOGICAL ASS'N ZERO TOLERANCE TASK FORCE, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS?: AN EVIDENTIARY REVIEW AND RECOMMENDATIONS 113 (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.

121. *See* Skiba et al., *supra* note 10, at 1079.

organizations such as Padres y Jóvenes Unidos and recently limited the role of police in schools, which has reduced the number of student referrals to law enforcement.<sup>122</sup> For African American girls, a group particularly vulnerable to school-based referrals to the juvenile justice system, a shift away from overly punitive exclusionary discipline practices is essential to improving educational and life outcomes.

## V. AVAILABLE LEGAL REMEDIES AND RESPONSES TO SCHOOL DISCIPLINE DISPARITIES

While the discipline disparities related to race are widely known, available legal remedies and responses remain limited, and responses to disparities based on gender discrimination are even more inadequate. Historically, courts have granted deference to administrators and districts in discipline decisions, recognizing that in order to operate effectively, schools must have discretion in disciplinary matters.<sup>123</sup> Schools need only articulate a reasonable basis to defend disciplinary decisions against claims brought under the Fourteenth Amendment Due Process Clause.<sup>124</sup> Also, because the power to suspend or expel a student varies from state to state (and even between jurisdictions within a state), local decision making, informed by local circumstances and considerations, is usually given deference by the courts.<sup>125</sup> Courts only apply a higher, “strict scrutiny” standard when racial animus is shown, and a justification narrowly tailored to achieve a compelling government interest is then required.<sup>126</sup> Demonstration of racial disproportionality in the application of discipline by itself is not enough to prove racial discrimination in the school discipline context.<sup>127</sup>

The Due Process Clause of the Fourteenth Amendment provides for procedural fairness and safeguards, and substantive due process requires that government actions must be reasonable, non-arbitrary, and related to a legitimate government purpose.<sup>128</sup>

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122. ADVANCEMENT PROJECT ET AL., *supra* note 89, at 5.

123. Skiba et al., *supra* note 10, at 1079-80.

124. *See id.* at 1080.

125. *See id.* at 1079.

126. *Id.* at 1090.

127. *See id.* (“If black students are disciplined at much higher rates than white students, but these disparities are shown to be based on racially neutral decision making by school officials, then the disparity is not considered unconstitutional racial discrimination.”).

128. *See* U.S. CONST. amend. XIV.

Many courts rely on *Goss v. Lopez*<sup>129</sup> to determine what constitutes appropriate due process in the school discipline context. In *Goss*, the United States Supreme Court ruled that students must receive oral or written notice of the charges against them and an opportunity to present evidence if they object to a suspension of ten days or less.<sup>130</sup> In determining the process due, the Court established that a student's right to an education was a property right to be evaluated in the totality of the circumstances.<sup>131</sup> Factors considered in evaluating due process in the school discipline context include: (1) whether administrators provided adequate notice of the charges; (2) whether the student had a reasonable opportunity to prepare for and meet them; (3) whether an orderly hearing properly suited for the nature of the case was conducted; and (4) whether a fair and objective decision maker heard the case.<sup>132</sup> However, many schools fulfill these fairness requirements through minimal, informal processes.<sup>133</sup>

Like due process and equal protection claims, claims brought under Title VI of the Civil Rights Act of 1964<sup>134</sup> have also had difficulty succeeding. Title VI prohibits racial discrimination by recipients of federal funding, including public schools.<sup>135</sup> Title VI complainants alleging disparate treatment must prove discriminatory intent in order to succeed on the merits.<sup>136</sup> Because intent is so difficult to prove, many have tried instead to bring claims under the "disparate impact" theory, which "occurs when students demonstrate that a facially neutral policy has a negative impact on a protected class of students."<sup>137</sup>

Unfortunately, in *Alexander v. Sandoval*,<sup>138</sup> the United States Supreme Court foreclosed the ability to bring private claims under the disparate impact theory, holding that there is no private right to bring an action to enforce the disparate impact

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129. 419 U.S. 565 (1975).

130. *Id.* at 581.

131. *See id.* at 576.

132. *See id.* at 579, 582.

133. *See* Simson, *supra* note 7, at 511 ("Procedural due process claims are also unlikely to succeed, as the procedural protections that schools must provide to students who are suspended under a punitive disciplinary policy are minimal.").

134. *See* Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964).

135. 42 U.S.C. § 2000d (2012).

136. Skiba et al., *supra* note 10, at 1090.

137. *Id.* at 1091.

138. 532 U.S. 275 (2001).

regulations of Title VI.<sup>139</sup> This effectively leaves the ability to bring disparate impact claims solely to the federal government, not private actors. Private actors still have the option of bringing claims alleging discriminatory intent, but discriminatory intent is arguably much more difficult to prove.

Critics further note that it seems that the Office for Civil Rights, the enforcer of Title VI, seems to look only for discriminatory intent in its investigation process.<sup>140</sup> Again, since discriminatory intent is so difficult to prove, the likelihood of success of claims brought under Title VI is limited. However, some scholars still see the potential for the disparate impact theory to challenge facially neutral policies that may be based upon implicit bias. For instance, “[s]uch bias may affect the choice of a policy or practice resulting in disproportionate suspensions for children of color.”<sup>141</sup> Further, “disciplinary decisions made by individual teachers with unconscious racial bias may cumulatively add up to large racial disparities at the school or district level.”<sup>142</sup>

For African American girls, whose unique experience with school discipline has only recently been highlighted, available remedies may not adequately address discriminatory discipline practices. Since the disparities impacting African American girls are fueled by implicit race and gender stereotypes, intentional discrimination may be impossible to prove, both in court and in administrative complaints filed with the Office for Civil Rights. Joint guidance issued by the Departments of Justice and Education does highlight racial disproportionality and the federal role in enforcing Title VI, but it does not outline how the agencies can approach gender discrimination in addressing school discipline disparities.<sup>143</sup>

Perhaps extra-judicial responses and remedies hold the most promise for addressing the unique race and gender bias underlying discipline disparities for African American girls. The federal government should collect specific data on school

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139. *See id.* at 288-89.

140. Simson, *supra* note 7, at 512-13.

141. LOSEN, *supra* note 26, at 13.

142. *Id.*

143. *See* U.S. DEP’T OF JUSTICE & U.S. DEP’T OF EDUC., *supra* note 11, at 6; *see also* SMITH-EVANS ET AL., *supra* note 16, at 18 (“While the Guidance acknowledges in a footnote that sex discrimination can also play a role in discipline disparities, it did not engage in any analysis of . . . the intersection of sex and race discrimination.”).

discipline, disaggregated and cross-tabulated by race and gender, complete with detailed information on suspension length and the type of infraction. This will provide a more detailed picture of the discipline disparities impacting African American girls. Unpacking this data could help pinpoint key areas for intervention and reform in discipline practices. More data on educators' and school administrators' attitudes and perceptions of African American girls is also needed to help identify and address implicit race and gender bias and create training for school staff. The dearth of detailed data and research on the unique experiences of African American girls impacted by race and gender bias is perhaps the most urgent area to address. It is difficult to fashion responses with incomplete data.

Further, "qualitative research that investigates how Black girls' multiple identities shape the education-system's responses to them, as well as other research on the impact of implicit bias on the application of exclusionary discipline to Black females would help to advance the knowledge, research, and advocacy on this issue."<sup>144</sup> Quantitative and qualitative research can be supported and promoted through legislative vehicles, federal administrative action, and in the form of federal financial support to states and school districts.

Other extra-judicial remedies that could improve outcomes for African American girls include the dissemination of best practices, training for school administrators on implicit bias, and education for teachers and administrators on the role of race and gender stereotypes in disciplinary decision making. For African American girls, it is vital that efforts are not only culturally responsive, but also gender responsive. In fact, "many state and county agencies are still not structured to respond to females of color with appropriate, culturally-competent and gender responsive interventions."<sup>145</sup>

Including parents and community members in developing and implementing discipline alternatives and interventions is critical. For example, the work of *Padres y Jóvenes Unidos* in Denver was instrumental in reforming school discipline in the city's public schools.<sup>146</sup> Successfully integrating the viewpoints

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144. MORRIS, *supra* note 6, at 11.

145. *Id.*

146. See CARTER ET AL., *supra* note 1, at 7.

and concerns of parents shows that “schools with issues of disproportionate discipline benefit greatly.”<sup>147</sup>

Professional development that includes training on implicit bias and interventions that are culturally and community responsive, gender informed, and trauma responsive is critical. In fact, cultural responsiveness has been identified as a key element for successful discipline reform.<sup>148</sup> Specifically, “[c]ase studies have shown that specific attention to cultural responsiveness—that is, connecting respectfully to students’ lives—is beneficial for classroom process and student outcome.”<sup>149</sup>

It is also essential for discipline responses to be trauma sensitive. For instance, African American girls who have been victims of trauma are often mislabeled as aggressors<sup>150</sup> and sanctioned under overly punitive discipline practices. In reality, “[g]irls of color and girls who live in areas of concentrated poverty are disproportionately victims of physical, sexual, and emotional abuse.”<sup>151</sup> These responses to trauma play out in the school context—“[g]irls who are maltreated or exposed to violence are more likely to demonstrate ‘[a]ggression, increased sexualization, and other deviant social behaviors.’”<sup>152</sup>

Overly punitive discipline practices that punish African American girls for status offenses like truancy and tardiness do nothing to address the underlying trauma that may be contributing to the behavior. In fact, “[f]or both Black girls and boys, the impact of their victimization in shaping the school practices that governed them is less a subject of public or scholarly inquiry.”<sup>153</sup> However, this is a pressing issue because trauma-informed and trauma-responsive practices will help to address underlying issues contributing to perceived misbehavior. Further, the impact of trauma and victimization on African American girls’ behaviors must be addressed if effective behavioral interventions are to be properly implemented. Current responses to African American

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147. *Id.*

148. SMITH-EVANS ET AL., *supra* note 16, at 6.

149. CARTER ET AL., *supra* note 1, at 6.

150. SMITH-EVANS ET AL., *supra* note 16, at 20.

151. Burt, *supra* note 111, at 97.

152. *Id.* (second alteration in original) (quoting Frank W. Putnam, *The Impact of Trauma on Child Development*, 57 JUV. & FAM. CT. J. 1, 2 (2006)).

153. MORRIS, *supra* note 6, at 9.



girls victimized by trauma only “contribute[] to poor educational outcomes” and disengagement from the learning environment.<sup>154</sup>

Educators who mislabel African American female victims only further contribute to their victimization. In fact, implicit bias plays a role in misperceptions of African American girls as aggressors, rather than as victims.<sup>155</sup> Pushing black girls out of school and into the juvenile justice system, where data shows high rates of physical, substance, emotional, and sexual abuse,<sup>156</sup> only worsens outcomes and leaves the underlying trauma unaddressed. Only by better understanding the impact of trauma and its influence on behavior may educators more readily identify African American girls who are victims. Rather than mislabeling black girls as aggressors, teachers and administrators must ensure they have access to services, support, and, if needed, intervention.

In order to promote better educational outcomes for African American girls who are suspended or expelled, the implementation of academic reintegration programs is vital. For example, schools and districts could establish “transition centers,” involving collaboration between probation, mental health, child welfare, and school districts, [to] assist in the successful transition of excluded youth back into school.”<sup>157</sup> Interventions like this are needed to ensure that excluded students get back on track and finish school. For African American girls who experience disproportionate rates of school dropout because of exclusionary discipline, the prevailing programs could help reverse troubling trends and improve outcomes.

Properly implemented, culturally and community-responsive restorative practices also hold promise for addressing the overly punitive discipline experienced by African American girls. Restorative practices that “support healing, learning, and community building should also be an outgrowth of the developing consciousness around Black females.”<sup>158</sup> Properly implemented restorative justice programs focus on healing, community inclusiveness and dialogue, responsibility, accountability, and making amends in attempts to restore both

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154. SMITH-EVANS ET AL., *supra* note 16, at 20.

155. *See id.* at 25 (“[R]esearch suggests that responses from teachers and administrators to the reported harassment of African American girls are inadequate and steeped in harmful race and sex stereotypes.”).

156. *See* MORRIS, *supra* note 6, at 9 (discussing victimization research).

157. CARTER ET AL., *supra* note 1, at 7.

158. MORRIS, *supra* note 6, at 11.

victims and offenders and foster positive communities.<sup>159</sup> Restorative justice is promoted as an alternative to overly punitive practices in schools particularly because it “focus[es] on accountability, reintegration and inclusion (instead of exclusion and exiling), community building, and the development of problem solving skills . . . [and] allows for the development of a safe, collaborative, and positive environment in which students are more likely to succeed.”<sup>160</sup> Restorative practices can include peer mediation, discussion circles, whole-school involvement, or conferences between victims and offenders.<sup>161</sup>

In a West Oakland, California middle school, the implementation of restorative practices resulted in a drop in the school’s total suspension rate from 50% to 6% in only two years.<sup>162</sup> When public schools in Denver implemented restorative practices during the 2006–07 school year, they also saw significant reductions in out-of-school suspensions.<sup>163</sup>

Restorative practices present opportunities for African American girls to voice their viewpoints on the discrimination they experience. Creating a space to discuss race and express feelings of victimization help teachers and administrators see how their actions are perceived by students.<sup>164</sup> Specifically, “Restorative Justice, especially when it is implemented in schools on a broad and daily basis, encourages meaningful interaction and gives a voice to those who otherwise might not have a safe place to express their thoughts and emotions.”<sup>165</sup> Unlike punitive practices that do not incorporate or allow for input from alleged perpetrators, restorative practices invite all parties to speak and be heard. For African American girls mislabeled as aggressors, this will present an opportunity to voice frustrations or justifications for actions in reality in response to repeated harassment or untreated trauma. While likely challenging, “[t]his represents a productive approach to resolve difficult issues caused by the long history of racial bias in the United States.”<sup>166</sup> This approach also “humanizes the story behind a discipline violation

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159. Simson, *supra* note 7, at 553.

160. *Id.* at 554.

161. *See id.*

162. *Id.* at 554–55.

163. *Id.* at 555.

164. Simson, *supra* note 7, at 558.

165. *Id.*

166. *Id.* at 559.

by individualizing it and giving it a face, and thus makes it more likely that an integrative response takes place.”<sup>167</sup>

Critics claim the effects of restorative justice are shallow, it places undue emphasis on shaming offenders, and it represents a resource-intensive approach that requires extensive training of school administrators and staff.<sup>168</sup> While these concerns are valid, restorative practices hold great promise to promote dialogue and inclusion while simultaneously fostering positive and inclusive school climates.

Another promising alternative to address discipline disparities experienced by African American girls is the implementation of gender-responsive, trauma-sensitive, and culturally competent services, including school-based mental health services. While a one-size-fits-all approach certainly will not work, access to appropriate services will ensure African American girls victimized by trauma or in need of support can get proper help. Early screening will help identify the interventions necessary to address mental health and behavioral, social, or academic needs. The appropriateness of such services is critical, as some services that are not community-based or responsive to the needs of victims may not be effective.

For African American girls, these services must be targeted to address racial and gender discrimination in order to be effective. Services must also be age appropriate, as programs that are not appropriately targeted or developed for adolescents may not be effective in a middle school. Therefore, a good fit between the services provided and the needs of students is essential. This can be achieved by utilizing student and community input in developing services or formulating relationships with community organizations.

While implementing services is not always feasible due to school budget constraints or a lack of resources in the community,<sup>169</sup> soliciting feedback, input, and involvement from students and their parents will help to identify and implement appropriate services to meet student needs. Resource equity is also essential to ensure that all schools, especially those with

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167. *Id.* at 560.

168. *Id.* at 560-61.

169. *See* Burt, *supra* note 111, at 98 (“Faced with insufficient resources, schools are often forced to push out the students for whom they do not have adequate intervention programs and guidance counseling.”).

significant discipline disparities, are equipped with the staff, resources, and services to constructively reform school discipline practices. Ensuring an equitable distribution of federal funds to support the staffing of school counselors and qualified teachers based on individual school needs will help schools implement services and alternatives that replace overly punitive discipline practices.

State financial constraints may be addressed by federal programs that include incentives in the form of federal funds to schools that implement support services for students. The government could also reward schools that adopt best practices and show measureable improvement in discipline disparities, such as decreased suspension rates among African American girls. Instead of funneling federal funds to continue policies that have proven to worsen outcomes for African American girls, funding must help develop community-appropriate interventions.

In addition to training on implicit bias, ongoing training on classroom management would help educators better address behavioral concerns. Providing instruction in classroom management at the teacher training stage is critical. This training could begin before student teachers even obtain their certification and continue throughout their teaching careers. As commentators have noted, “[r]educing the discrepancy between black and white rates of suspension will likely require increased attention to teacher training in effective and culturally competent methods of classroom behavior management.”<sup>170</sup>

Cultural competency training could begin in early teacher training programs. As school enrollment becomes increasingly diverse, the majority of teachers in the United States “remain female, White, and middle class, creating a within-school boundary in itself.”<sup>171</sup> This can be addressed through the recruitment and training of diverse educators, but more importantly through teacher training programs that teach cultural competency and address implicit bias and stereotyping. Diverse educators alone cannot remedy cultural gaps between teachers and students, as educators of color may also harbor harmful biases and stereotypes that they may project into their interactions with students. Cultural competency training of all educators is key to

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170. SKIBA ET AL., *supra* note 30, at 338.

171. CARTER ET AL., *supra* note 1, at 3-4 (footnote omitted).

promoting positive interactions between students and teachers and closing the gaps of cultural misunderstanding that contribute to discipline disparities.

In addition to teachers, training principals and other administrators on leadership and classroom management will promote uniform approaches to discipline that are both informed and responsive to the school environment from the top-down. The federal government must collect detailed data on schools that decrease punitive discipline and reward teachers who reduce their use of exclusionary practices. Finally, dissemination of best practices is key to helping craft effective interventions, services, and solutions to remedy discipline disparities impacting African American girls.

## VI. CONCLUSION

If we are to improve educational outcomes for African American girls, we must speak frankly about the implicit race and gender bias created by harmful stereotypes. This bias threatens the futures of many girls of color and pushes them out of school through overly punitive discipline practices. Our society must honestly understand the role of implicit bias in order to remediate the ills it creates. Admitting the existence of implicit bias is not about placing blame or culpability, it is about problem solving and creating positive, nurturing, and safe learning environments where African American girls can thrive. In these environments, African American girls are free to be themselves and free to express themselves. The role of discipline is to nurture and to teach, and it should be a component of learning within schools, not a mechanism for pushing African American girls out. Since the courts have been reluctant to intervene in the area of local school discipline, it is incumbent upon schools to reverse troubling trends that compromise the education and futures of African American girls. By taking up the charge to change discipline practices and policies, schools will send the message to African American girls that they belong in schools that care about their welfare and success.