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YOU ROLLED YOUR EYES AT ME:  
THE EFFECTS OF STEREOTYPES AND IMPLICIT BIAS  
ON BLACK GIRLS AND DISCIPLINE IN THE  
CLASSROOM

BY: AMBRIA MAHOMES\*

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## INTRODUCTION

In the first year of law school, students must fulfill an oral advocacy requirement. This meant that I had to write a brief, read several cases, and prepare an oral argument that I would deliver in front of a panel of judges. The judges were volunteer alumni from my school who enjoyed mentoring and giving back to the community. I prepared for weeks, and by the day of the argument itself, I thought that I could pretty much anticipate any questions the judges might have or any comments they might make about my oral advocacy—for example, that I look down at my notes when I'm nervous. I entered the room, delivered my oral argument, and waited for the judges to deliberate. After the deliberation period, they gave much of the feedback that I was anticipating. There was one comment, however, that I have yet to forget—**“you rolled your eyes at me.”**

Throughout history, Black women have been stereotyped, judged, and misunderstood.<sup>1</sup> After I had this experience my first-year of law school, I was determined to dive deeper into why Black women are only perceived as eye rolling, attitude-having, sexual beings. Specifically, I was interested in exploring the effects that society's disdain for the Black woman has on Black girls in the classroom.

In Part I, this paper explores the stereotypes that underlie the treatment of Black women in America. This is necessary to understand the place that young Black girls have in society and the way that history has shaped this position. Part II gives a detailed analysis of current disciplinary trends and statistics. After quantifying Black girls' negative experiences, Part III examines case law and seeks to address potential relief through the judicial system. Specifically, it gives examples of claims against schools for discriminating or for failing to correct discriminatory issues. Lastly, the paper provides suggestions for combatting some of the issues that affect Black girls at school.

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1. See Lucretia P. Murphy, *Black Women: Organizing to Lift . . . to Climb . . . to Rise*, 4 TEX. J. WOMEN & L. 267, 268 (1995).

## I. Stereotypes and Implicit Bias

Before exploring the effects of race and gender on Black girls in the classroom, it is important to address the social constructs and historical context that underlie the disproportionate treatment.

### A. Stereotypes – Womanhood as Defined by Whiteness

The constructions of race and gender as we know them today emerged, in large part, during American slavery.<sup>2</sup> The construction of “womanhood” was created with a particular race of women in mind – white women.<sup>3</sup> During slavery, white women prided themselves on their role in society as mothers, daughters, wives, and sisters.<sup>4</sup> Through these roles the values of purity, submissiveness, piety and domesticity became idealized images of “true womanhood” or traditional femininity.<sup>5</sup> White motherhood was glorified, which justified Black women’s role in society as slave breeders.<sup>6</sup> Their societal value was directly tied to sexual reproduction.<sup>7</sup> Black women were economic assets deemed more efficient as breeders than as laborers.<sup>8</sup> Since this time period, Black women have been the antithesis of “womanhood” – embodying everything that a “woman” is not.<sup>9</sup>

Black women have been frequently categorized into one of three groups: (1) the Mammy; (2) the Jezebel; and (3) the Sapphire.<sup>10</sup> The Jezebel stereotype stands for the myth that all Black women are promiscuous.<sup>11</sup> Like many stereotypes of Black women,

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2. Cheryl I. Harris, *Finding Sojourner’s Truth: Race, Gender, and the Institution of Property*, 18 CARDOZO L. REV. 309, 313 (1996).

3. *Id.* at 313.

4. *Id.* at 339.

5. *Id.*

6. *Id.* at 340.

7. *Id.* at 338.

8. Cheryl I. Harris, *Whiteness As Property*, 106 HARV. L. REV. 1709, 1720 (1993).

9. *Id.* at 314.

10. See generally Dr. Carolyn M. West, *Mammy, Jezebel, Sapphire, and Their Homegirls: Developing an “Oppositional Gaze” Toward the Images of Black Women*, in LECTURES ON THE PSYCHOLOGY OF WOMEN, THIRD EDITION, 237-13 (2008).

11. MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* 55 (2011).

the promiscuity myth has its root in the slaveholding era.<sup>12</sup> The Victorian social code, as expressed above, made white men the sole authorities in their homes, stripped white women of their property and personhood, and advanced the beliefs in innocence and weakness.<sup>13</sup> Black women held a completely different position. During slave auctions, Black women were subjected to forced nudity, worked in the fields in scorching heat making it likely that their skirts were hiked up, were punished while nude, and were banned from legal marriage.<sup>14</sup> These facts gave white women room to project their assumed moral superiority over Black women.<sup>15</sup> Southern white men's brutality and rape was justified by the notion that Black women were sexually wanton and in essence asking to be sexually engaged.<sup>16</sup> They were described as animalistic, aggressive, and cast as seductresses hoping to lure white men away from their innocent, perfect wives.<sup>17</sup> Raping Black women was no crime,<sup>18</sup> and therefore further embodied the control that white men had over Black women's bodies.<sup>19</sup>

The Black woman's anatomy was also used to justify her inferior treatment.<sup>20</sup> Saartjie "Sarah" Baartman, a Khoikhoi woman from South Africa, was added to London's Piccadilly Circus as a result of her "abnormal sexual organs."<sup>21</sup> This exhibit was used in America to solidify the claim that Black women were anatomically and physiologically different – their rampant sexuality was certain because of their misshapen and exaggerated sexual organs.<sup>22</sup> This was used as "scientific evidence" that on the scale of humanity,

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12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 56.

17. *Id.*

18. *Id.*

19. See Iman Cooper, *Commodification of the Black Body, Sexual Objectification and Social Hierarchies during Slavery*, *EARLHAM HISTORICAL JOURNAL* 37 (2015).

20. *Id.* at 57.

21. *Id.*; See also CAROLE BOYCE DAVIES, *ENCYCLOPEDIA OF THE AFRICAN DIASPORA: ORIGINS, EXPERIENCES, AND CULTURE* 137 (2008).

22. *Id.* at 58.

Black women were closer to savagery.<sup>23</sup> This theoretical scale ascended from apeline to human, African to European, black to white, male to female, and savage to civilized.<sup>24</sup>

After slavery, the sexual wanton image of Black women no longer suited the white family because it presented a challenge to the perfection that the families sought to embody.<sup>25</sup> The Mammy represents what came next. After slavery, many Black women continued to labor in white households.<sup>26</sup> The asexual, devoted servant became the expectation of the Black woman.<sup>27</sup> The Mammy stereotype was used to pretend that slavery was “not that bad.”<sup>28</sup> This painted the picture that Black women had not been mistreated during slavery – that they were treated so well that they chose to continue working in the white households.<sup>29</sup> It depicted Black women as content with being servants, and therefore justified the segregation policies that would follow like, for example, Jim Crow.

The Sapphire paradigm represents the modern stereotype of a Black woman with an attitude.<sup>30</sup> Traditional femininity, as discussed above, encourages women to mask their emotions, avoid voicing their opinions, and conform.<sup>31</sup> It urges inauthenticity in order to uphold an image that is nice, pleasant, and respectable.<sup>32</sup> Like the other stereotypes, the Sapphire saw its inception at American slavery. During slavery, Black women were seen as aggressive, dominant, and strong because they were expected to carry out the same physical tasks that men performed.<sup>33</sup> In order to justify Black women being able to complete these tasks, the slave owners claimed to be of the mindset that Black women were

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23. *Id.*

24. *Id.*

25. *Id.*; See Dr. Carolyn M. West, *Mammy Jezebel, Sapphire, and Their Homegirls: Developing an “Oppositional Gaze” Toward the Images of Black Women*, in LECTURES ON THE PSYCHOLOGY OF WOMEN, THIRD EDITION, 287-99 (2008).

26. *Id.* at 71.

27. *Id.*

28. *Id.* at 72.

29. *Id.*

30. West, *supra* note 10, at 296.

31. Jamilia J. Blake et al., *Unmasking the Inequitable Discipline Experiences of Urban Black Girls: Implications for Urban Educational Stakeholders*, 43 URB. REV. 90, 93 (2011).

32. *Id.*

33. West, *supra* note 10, at 295.

masculine sub-humans.<sup>34</sup> This image gave rise to the depiction of Black women as driving their families away because of their abrasive, controlling personalities.<sup>35</sup> In reality, the slave trade divided Black families, but this image placed the blame on Black women.<sup>36</sup> In modern times, this image is called the Matriarch image—it stands for the contention that Black women’s unwillingness to be silent, stay-at-home mothers led to poverty, single-parenthood, and the emasculation of the Black man.<sup>37</sup> Under this standard, it was the Black woman’s inability to conform to traditional womanhood<sup>38</sup> that was the root cause of all issues that would plague the Black community.

Today, however, the Black woman’s voice in many ways represents her unwillingness to adhere to the social constructions that have held her hostage throughout history. Black women finally have the ability to speak up.<sup>39</sup> Being seen as independent, assertive, and emotionally resilient may contribute to Black women’s personal or professional achievement, but American culture still deems these characteristics to be “unladylike.”<sup>40</sup>

Because Black women are frequently portrayed as the Jezebel, the Mammy, and the Sapphire, these images make up society’s general understanding of the Black woman and what is to be expected of her. The recurrence of these images cause people to instantaneously and subconsciously categorize Black women as falling into one of the three categories.<sup>41</sup> As a result, social cues frequently dictate an individual’s response to a Black woman, as opposed to the true nature of her character.<sup>42</sup>

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. Patricia A. Broussard, *Black Women’s Post-Slavery Silence Syndrome: A Twenty-First Century Remnant of Slavery, Jim Crow, and Systemic Racism*, FLORIDA A&M SCHOLARLY COMMONS 42 (2013); BELL HOOKS, *TALKING BACK: THINKING FEMINIST, THINKING BLACK* 29 (1989).

40. Blake, *supra* note 31, at 94.

41. See Rachel D. Godsil & Brianna Goodale, *Telling Our Own Story: The Role of Narrative in Racial Healing* 6 (2013), <https://perception.org/wp-content/uploads/2014/11/Telling-Our-Own-Story.pdf>.

42. *Id.* at 7.

## B. Implicit Bias

The discrimination that arises from society's white-normative understanding of womanhood affects Black women and girls typically in the form of implicit bias and micro-aggressions. Now that being "woke" or aware is trendy, explicit racism is no longer socially acceptable. With the election of Donald Trump as President of the United States, overt racism has reemerged and "turned America's clock back," but in the years leading up to his election, the social acceptability of overt racism had been on the decline.<sup>43</sup>

Post-Jim Crow, integration and social acceptance became the country's focus—thus discouraging public discourse around racial relations and encouraging discourse behind closed doors.<sup>44</sup> Discriminating in public became socially unacceptable. The underlying sentiments of anti-blackness, however, did not disappear when the country decided that it would be inclusive. Because of this reality, Black women, and other marginalized groups, experience micro-aggressions rooted in implicit bias. Micro-aggressions are indirect, subtle, or unintentional statements that target a marginalized group.<sup>45</sup> In essence, it is sly racism. A person's actions or words might not be explicitly anti-black, but it is typically apparent to the receiver that aggressor possesses anti-black sentiments.

Implicit bias, also known as implicit social cognition, refers to attitudes or stereotypes that unconsciously effect our actions, decisions, and understanding.<sup>46</sup> It involves beliefs and attitudes that are automatically triggered without awareness.<sup>47</sup> "Based upon visual and aural cues, we make automatic assumptions about which category a particular person fits within, and how we

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43. See Maudlyne Ihejirika, *Civil Rights Leaders: MLK Died Fighting Racism, Classism That is Trump Hallmark* (2018), <https://chicago.suntimes.com/chicago-news/martin-luther-king-civil-rights-leaders-trump-racism-classism/>.

44. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 40 (2011).

45. Derald Wing Sue, *Microaggressions: More Than Just Race* (2010), <https://www.psychologytoday.com/us/blog/microaggressions-in-everyday-life/201011/microaggressions-more-just-race>.

46. The Ohio State University, Kirwan Institute for the Study of Race and Ethnicity, *Understanding Implicit Bias*, <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>.

47. Justice Michael B. Hyman, *Reining in Implicit Bias*, 105 ILL. B.J. 26, 27 (2017).



should respond to them.”<sup>48</sup> Black people, for example, are often associated with criminality.<sup>49</sup> Negative associations may cause individuals to misjudge and unnecessarily activate an acute stress response.<sup>50</sup> Because of the negative associations of Black women, as discussed earlier, Black girls are likely to be misjudged or reacted to in a way that is inappropriate in relation to their actions. The classroom is not exempt from this common practice. When teachers possess biases against their students, they are more likely to treat them in alignment with those biases.<sup>51</sup> For Black girls, this means that they will likely fall victim to disproportionate discipline, even if the teacher is not conscious of it.

## II. Discriminatory Discipline in the Classroom

In the classroom, where Black girls are at the mercy of teachers and administrators, the negative perceptions and stereotypes of African Americans detrimentally effect their experiences.<sup>52</sup> Both, general anti-blackness and prejudice against Black women specifically, play a role.

### A. Behavior Infractions

*“In schools, black girls are suspected of worse behavior even when they aren’t out of line — and they’re often wrongly punished for it.”*<sup>53</sup>

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48. Rachel D. Godsil & Brianna Goodale, *Telling Our Own Story: The Role of Narrative in Racial Healing* at 6 (2013).

49. Perception Institute, *Implicit Bias*, <https://perception.org/research/implicit-bias/>.

50. Godsil, *supra* note 48, at 6.

51. Emma Brown, *Yale Study Suggests Racial Bias among Preschool Teachers*, WASHINGTON POST (2016).

52. Letitia 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 Equality* (2014), [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) [hereinafter *Unlocking Opportunity for African American Girls*] (last visited Dec. 26, 2018).

53. Georgina Lawton, *7 Unconscious Biases That Still Effect Black Women Today* (2017), <https://www.bustle.com/p/7-unconscious-biases-that-still-affect-black-women-today-36379> (last visited Dec. 26, 2018).

Black students generally are suspended and expelled three times more often than white students.<sup>54</sup> Black girls specifically are suspended at higher rates (12%) than girls of any other race or ethnicity.<sup>55</sup> Black students represent only 16% of student enrollment but make up 27% of students referred to law enforcement and 31% of students subjected to school related arrests.<sup>56</sup>

White, middle-class understanding of femininity works to the detriment of Black girls in the classroom. In the education arena, certain words are used to imply that a student is misbehaving—phrases like “disruptive behavior,” and “disobedience.”<sup>57</sup> These kinds of phrases imply that, by refusing to conform to dominant gender or racial stereotypes, a student is behaving improperly.<sup>58</sup> Not only are disciplinary phrases defined loosely and subjectively, they are also typically defined by the majority’s definition of femininity and class—as defined opposite the Black woman.<sup>59</sup> Obedience is defined in relation to white normative values like, for example, submissiveness and noiselessness.<sup>60</sup> Negative perceptions of Black girls’ behavior also cause teachers to assume that they require more extensive social correction.<sup>61</sup> Teachers automatically assume that Black girls are troubled or in need of correction which parallels the Sapphire stereotype and encourages more extensive supervision—which ultimately leads to discipline.

African American young women are more likely to receive citations for talking back and defying authority.<sup>62</sup> Ironically, outspokenness and defiance contribute to society’s positive perception of Black women as “go-getters,” “powerful,” and “badass.”<sup>63</sup> In the classroom, however, these qualities threaten authority and often

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54. 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>.

55. *Id.* at 1.

56. *Id.*

57. Smith-Evans, *supra* note 52, at 6.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. Smith-Evans, *supra* note 52, at 6.

result in disciplinary action. Even insignificant actions like chewing gum result in discipline for Black girls.<sup>64</sup> Sadly, life in the classroom for Black girls often looks like either (a) complying and being passive; or (b) defying and being disciplined for speaking up.<sup>65</sup>

### B. Sexualization & Adultification

The Jezebel myth of promiscuity continues to affect Black girls today who are more likely to receive citations for failure to adhere to dress codes than girls of other races.<sup>66</sup> Often times these citations stem from the adultification or sexualization of the Black girl's body—Black girls' bodies are often perceived as more mature than their true age.

Nicole Martin, an African American young woman, attended a majority white middle school in Houston, Texas.<sup>67</sup> One day, she and her group of friends decided that they would wear matching shirts and shorts to school the next day. They would wear a maroon school t-shirt with black athletic shorts as bottoms. They were in seventh grade at the time. The girls followed through with their plan and arrived to school matching. Nicole, while walking in the hallway, was approached by the Assistant Principal who told Nicole that her shorts were inappropriate. The Assistant Principal made Nicole call her mother to ask her to bring a change of shorts so that she would be in compliance with school policy. However, Nicole's mother could not bring her a change of clothes because she was working. As a result, Nicole was required to wear basketball shorts for the remainder of the school day. No other girl from the group of friends that went to school matching was punished. The other girls in the group were white.<sup>68</sup>

The effect that dress codes have on Black girls in the classroom speaks to the continued sexualization of the Black woman's physique—even at a young age. As addressed earlier, Black women

64. *Id.*

65. *Id.*

66. *Id.* at 10.

67. Telephone Interview with Nicole Martin, Campus Recruiter and Diversity Consultant, Allstate (April 6, 2018).

68. *Id.*

have been perceived as hypersexual throughout history and continue to be portrayed as such in modern media.<sup>69</sup> Adulthood or characterizing Black girls as older than their White peers, may be traced back to chattel slavery where Black girls were compelled to work at young ages.<sup>70</sup> They were not afforded years to develop into adults or exude childlike behavior – they were expected to act as mature, working adults would.<sup>71</sup> Our society frequently responds to Black girls as if they are fully developed adults.<sup>72</sup> Adulthood sometimes comes in the form of sexualizing Black girls at young ages, but it also exists in the form of punishment that is not fitting for an adolescent. Black girls are sometimes punished in a way that would be more fitting for an adult.

In 2015, a viral video showed a white school police officer grabbing an African American young woman by the neck, flipping her backwards onto the floor, and then dragging her across the classroom floor in front of her peers.<sup>73</sup> The incident allegedly began because the student refused to surrender her cell phone.<sup>74</sup> Despite the alleged circumstances that led up to the violence, it was clear from the video that the officer treated the student as if she was an adult. The officer wrapped his forearm around the high school student's neck before flipping and dragging her – these actions were not appropriate for disciplining a teen who allegedly refused to give up her cell phone. The officer was fired from the Sheriff's Department, but ultimately faced no charges for his behavior.<sup>75</sup> Solicitor Dan Johnson found no probable cause to charge the officer<sup>76</sup>—because flipping a high school student and dragging

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69. SISTER CITIZEN, *supra* note 11.

70. Rebecca Epstein, Jamilia J Blake, and Thalia Gonzalez, *Girlhood Interrupted: The Erasure of Black Girls' Childhood*, CENTER ON POVERTY AND INEQUALITY AT GEORGETOWN LAW 4 (2017).

71. *See id.*

72. *Id.*

73. Richard Fausset and Ashley Southall, *Video Shows Officer Flipping Student in South Carolina, Prompting Inquiry*, N.Y. TIMES, (Oct. 26, 2015), <https://www.nytimes.com/2015/10/27/us/officers-classroom-fight-with-student-is-caught-on-video.html>.

74. The Associated Press, *Deputy Who Tossed S.C. High School Student Won't Be Charged*, N.Y. TIMES, (Oct. 26, 2016), <https://www.nytimes.com/2016/09/03/afternoonupdate/deputy-who-tossed-a-sc-high-school-student-wont-be-charged.html>.

75. *Id.*

76. *Id.*

her across the room doesn't suffice. The American Civil Liberties Union ("ACLU") sued South Carolina for criminalizing normal adolescent misbehavior where the state could punish students for "disturbing school," or "disorderly conduct."<sup>77</sup> The ACLU argues that these charges are unconstitutionally vague. Unfortunately, turning to the court system does not usually fair in the favor of the Black student who experienced some form of disparate treatment.

### *III. The Law*

The law does not provide redress for Black adult women. Unfortunately, Black girls in the classroom do not have it any easier. In *Rogers*, the court failed to acknowledge that a Black woman wearing dreadlocks was entitled to relief because she could not prove that the discrimination was because she was Black or because she was a woman.<sup>78</sup> The Plaintiff argued that American Airlines' policy prohibiting dreadlocks discriminated against Black women.<sup>79</sup> The court did not agree that it was possible for both pieces of the plaintiff's identity—that she was Black *and* a woman—to be of equal relevance.<sup>80</sup> The court reasoned that because white women were prohibited from wearing the hairstyle, just as Black men were, Black women had no claim.

Regarding common customs, practices, and culture, Black women are outliers in that any claim will be compared to either White women or Black men. The court is not prepared to address intersectionality by only allowing claims of one kind at a time. Regarding situations arising in the classroom, there is no more protection for Black girls than there is for Black women. In-school incidents arise and, as seen in *Rogers*, Black girls' actions are compared to those of other races, genders, and backgrounds—arguably those equipped differently for such situations. These differences between Black girls and other students often lead to treatment and discipline that is not equal. These inequalities may be in the form of verbal treatment by individual teachers, but it may also exist in the form of institutional discipline where student

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77. *Id.*; See *Kenny v. Wilson*, 885 F.3d 280 (4th Cir. 2018).

78. See *Rogers v. American Airlines*, 527 F. Supp. 229 (S.D.N.Y. 1981).

79. *Id.*

80. *Id.*

rules and guidelines are interpreted in ways that disparately impact Black girls.

### A. Policy Implications

Students rarely succeed on disciplinary school actions because, although one might assume that inconsistent application of disciplinary measures is actionable, the court often defers to the judgment of school officials.<sup>81</sup> An educator's action on a disciplinary matter, for example, is generally found constitutional if the policy is considered to be rationally related to a legitimate government interest.<sup>82</sup> Because the courts are reluctant to overturn disciplinary decisions, school districts maintain significant control over the outcomes of discipline-related disputes.<sup>83</sup> The court generally weighs a school's interest in maintaining order as more significant than an individual student's needs or complaints.

### B. Case Law

Black girls in an educational setting have brought claims under a variety of causes of action, for example, racial discrimination, a racially hostile environment, deliberate indifference, and unconstitutionally vague rules. Typically, the students don't succeed, but it is important to understand the facts that warrant such inaction by the court.

#### *i. Racial Discrimination Claims*

Students have brought claims for discrimination on the basis of race. To prove discrimination, on the basis of race, a student must show (1) discriminatory impact/treatment and (2) discriminatory intent.<sup>84</sup>

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81. Russell J. Skiba, Suzanne E. Eckes & Kevin Brown, *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y.L. SCH. L. REV. 1071, 1079 (2010).

82. *Id.* at 1072.

83. *Id.* at 1080.

84. 42 U.S.C.A. § 1981 (West 1981).

In *Parker*, defendant Trinity High School, a women-only private high school, expelled two Black girls for getting into a physical altercation with a white student.<sup>85</sup> Both African American students engaged in the fight, sisters Carmeletta and Misty Parker, had clean disciplinary records at the school prior to the altercation. The school policies that governed the issues were as follows:

#### BEHAVIOR

Students are expected to treat faculty, staff and other students with courtesy and respect at all times. Therefore, fighting, stealing, loud or abusive language in school, on school property, or on the bus will not be tolerated.

#### DISCIPLINARY ACTION

If a student departs in a serious way from Trinity's student directives, her actions are subject to review by the Trinity Discipline Advisory Committee. The four forms of disciplinary action which the Committee may recommend are suspension, removal from a class, probation and dismissal. *Id.*

According to school discipline implementation guidelines:

Working with students on matters of discipline may include individual discussion and counseling; involvement of students in defining acceptable behavioral standards; involvement of the student and the parent in cases where the student has repeatedly exhibited lack of responsibility or of self-discipline and/or if the matter under consideration is of a serious nature.<sup>86</sup>

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85. *Parker by Parker v. Trinity High Sch.*, 823 F. Supp. 511, 512 (N.D. Ill. 1993).

86. *Id.* at 515.

Plaintiffs filed suit under 42 U.S.C. §1981, the Civil Rights Act.<sup>87</sup> The Act outlaws discrimination on the basis of race.<sup>88</sup> However, only intentional and purposeful discrimination constitute a §1981 violation.<sup>89</sup> Plaintiffs argued that although the school had not intended to discipline the students in a discriminatory manner, race subconsciously affected the school's decision to expel the students.<sup>90</sup> Plaintiffs further argued that the stereotype of Black students as more violent than white students motivated the harsh disciplinary decision.<sup>91</sup> The defendant successfully argued that allowing the students to return to the school would "seriously jeopardize the atmosphere of discipline and security," and undermine the school's authority to properly discipline its students, thus encouraging others to partake in similar behavior.<sup>92</sup> The court ultimately deferred to the school's judgment and weighed the interest of maintaining teacher and administrative authority as more important than Plaintiffs' interests.<sup>93</sup> Here, the court showed that it was unwilling to challenge the school's judgment.

Case law also exists regarding the disparate treatment of Black girls after-school programs. In *Boykins*, a Black girl filed suit against her school for dismissing her from the school's drill team for racially motivated reasons.<sup>94</sup> The Defendant school district and drill team coach alleged that Plaintiff Boykins was dismissed from the team because she missed six practices, which was grounds for dismissal according to the team's rules.<sup>95</sup> Boykins argued, however, that the real reason that she was removed from the team was because of her race.<sup>96</sup> She therefore alleged discrimination on the basis of race and based this contention on the team's inconsistent application of its rules.<sup>97</sup> The final practice that Boykins missed was scheduled last minute—giving her only a few hours of notice—and she was unable to attend because she was

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87. *Id.* at 512.

88. 42 U.S.C.A. § 1981 (West 1981).

89. *Parker*, 823 F. Supp. at 519.

90. *Id.*

91. *Id.* at 520.

92. *Id.*

93. *See id.*

94. *Boykins v. Ambridge Area Sch. Dist.*, 621 F.2d 75, 76 (3d Cir. 1980).

95. *Id.* at 77.

96. *Id.*

97. *Id.*



scheduled to work at her part-time job.<sup>98</sup> Regardless of her circumstances, she was dismissed from the team. The drill team coach was not willing to bend the rules for those who had work scheduled, but she did allow excused absences for vacation.<sup>99</sup> This difference in application automatically gives preferential treatment to students who go on vacations with their families who are likely economically privileged—and more likely white<sup>100</sup>—and puts students with part-time jobs at a disadvantage. Rules like this could have the effect of discouraging participation if students feel like they will be penalized for their schedule not being as flexible as those who did not work while attending school. Boykins also pointed out that a white student was permitted to rejoin the team after being dismissed for missed practices.<sup>101</sup> The district court granted the School District's motion for summary judgment because the incident Boykins complained of was not racially motivated.<sup>102</sup> Although an appeal followed, no further arguments were heard regarding whether the drill team coach's conduct was racially motivated.<sup>103</sup>

The facts of this case neither present a dramatic display of disparate treatment based on race nor do they present the traditional understanding of overt racism. Perhaps this also contributes to the court's unwillingness to find in a student's favor—maybe the court does not understand the effects of implicit bias. The court might be accustomed to cases where the issue is objectively visible, but a Black girl's experience with racism in the classroom often appears in the minute details. In other words, one might not be able to appreciate the discrimination if it is not jolting or overt.

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98. *Id.*

99. *Id.*

100. Tom Jacobs, *Black-White Wage Gap Grows as Americans Remain in Denial* (2017), <https://psmag.com/economics/black-white-wage-gap-grows-as-americans-remain-in-denial> (last visited Dec. 26, 2018).

101. *Id.*

102. *Id.* at 70.

103. *See id.*

*ii. Racially Hostile Environment & Deliberate Indifference*

Students have brought claims of a racially hostile environment caused by other students and have challenged the school district for deliberate indifference. To prove this cause of action, a student must show that: (1) the harassment was “so severe, pervasive, and objectively offensive that it could be said to deprive the victims of access to educational opportunities or benefits provided by the school” (a racially hostile environment); and that the school or district (2) had actual knowledge; (3) had control over the harasser and the environment in which the harassment occurred; and (4) was deliberately indifferent.<sup>104</sup>

The following case demonstrates the extreme conditions under which students may be expected to learn, and how even under those circumstances the court may not find in the student’s favor. In *Fennell v Marion Independent School District*, an African American young woman, Kyana Fennell, experienced discriminatory treatment by her classmates and the administrators at her predominantly white school for several years.<sup>105</sup> After a disturbing incident on school property, she finally pursued action alongside her siblings, Kavin and Kyrianna (“Kyra”).<sup>106</sup>

Kyana Fennell was eighteen years old at the time she and her sisters filed suit.<sup>107</sup> However, she recalled being called a “nigger” on the school bus by a white boy in kindergarten in the same school district.<sup>108</sup> As a result of the inflammatory comment, she punched the boy and was disciplined.<sup>109</sup> It is unclear whether the student himself received any further punishment after his parents were notified.<sup>110</sup> During the 2009-2010 school year, a student called Kyana a “stupid nigger.”<sup>111</sup> The student was told not to use such language, but the court was not aware of any additional punishment.<sup>112</sup>

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104. *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 408 (5th Cir. 2015).

105. *Id.* at 402.

106. *Id.*

107. *Id.*

108. *Fennell*, 804 F.3d, at 403.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

Kyana's younger sister, Kyra, was fifteen years old in 2012 when the sisters filed suit.<sup>113</sup> In 2008, after the election of President Barack Obama, she received a text message calling her a "stupid nigger."<sup>114</sup> The student who sent the message was suspended.

The youngest sister, Kavin, was thirteen years old when the sisters filed suit.<sup>115</sup> One year prior, a Caucasian student hit her and called her a "nigger." She punched him in response, and both students were suspended for three days as a result. One week later, another student called her a "nigger."<sup>116</sup> Although she reported the incident to the principal, it is unclear whether any additional punishment took place.<sup>117</sup> On another occasion, a student made a joke in class using the word "nigger."<sup>118</sup> The teacher remedied the situation by telling Kavin that the other student "didn't mean it like that."<sup>119</sup>

The sisters finally filed suit in February of 2012, after a noose was found outside of Kyana's car.<sup>120</sup> The noose was accompanied by a note that said:

Die Fuckin "nigger sisters" . . . Bitches!!!!You can never bring our families down . . . Whites will always rule this town and school!!!! Damn Spooks!!!! So go ahead and file your stupid damn complaints and grievances . . . NIGGERS . . . and that "Nigger Lover" you have a baby with . . ."

The Fennell siblings pursued charges and a local investigation as a result.<sup>121</sup> After extensive backlash, Kyana indicated that she no longer wanted to pursue the investigation because it was

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113. Fennell, 804 F.3d, at 402.

114. *Id.* at 403.

115. *Id.* at 402.

116. *Id.* at 403.

117. *Id.*

118. Fennell, 804 F.3d, at 403.

119. *Id.*

120. *Id.* at 404.

121. *Id.* at 402.

causing her stress and she also did not trust the police department.<sup>122</sup> The local police department suspended the investigation, but the Federal Bureau of Investigation (“FBI”) took it over.<sup>123</sup> Plaintiffs continued to seek relief through the school district’s Board of Trustees, as well as through the court system.<sup>124</sup>

In court, the Plaintiffs alleged Title VI violations, which required them to argue the following elements, as previously discussed: (1) the harassment was “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to educational opportunities or benefits provided by the school” (a racially hostile environment); and that the district (2) had actual knowledge; (3) had “control over the harasser and the environment in which the harassment occurs,” and (4) was deliberately indifferent.<sup>125</sup>

The court acknowledged that the racially offensive remarks and actions taken against the plaintiffs constituted, “severe, pervasive, and objectively offensive” harassment and that they deprived plaintiffs of access to educational opportunities or benefits provided by the school.<sup>126</sup> However, the court found that the school district was not deliberately indifferent to the harassment.<sup>127</sup> In order to have been deliberately indifferent, the school district would have had to act “unreasonably in light of the given circumstances.”<sup>128</sup> Officials avoid liability under this standard by “responding reasonably” to a risk of harm—even if the harm is not ultimately averted.<sup>129</sup> Here, where the school allowed the sisters to park in the teacher parking lot after a noose was placed near their car and gave the students an alternative location to do school work, the court found that the school had acted reasonably. It, therefore, affirmed the lower court’s granting of summary judgment on the school district’s behalf.

Plaintiffs also pursued equal protection claims under §1983, as many students do when bringing actions of this sort.<sup>130</sup> Section

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122. *Id.*

123. Fennell, 804 F.3d, at 402.

124. *Id.* at 407.

125. *Id.* at 408.

126. *Id.*

127. *Id.*

128. Fennell, 804 F.3d, at 408.

129. *Id.*

130. *Id.* at 411.

1983 provides protection for any person deprived of federally guaranteed rights under color of the law.<sup>131</sup> Plaintiffs must have proved that: (1) they received treatment different from that received by similarly situated individuals; and (2) the unequal treatment stemmed from a discriminatory intent.<sup>132</sup> Discriminatory intent is shown when the decision maker singles out a particular group for disparate treatment and selects that course of action to cause an adverse effect on that particular group.<sup>133</sup> Without reference to facts, allegations of discriminatory intent are merely conclusory.<sup>134</sup> The court held that the lower court had not erred in granting the motion for summary judgment on this cause of action. The court based its ruling on the fact that the school district's board did not have knowledge of a discriminatory custom – defined by the board as knowing and condoning of the behavior.<sup>135</sup>

*Fennell* is full of facts in support of a finding that the students were being discriminated against quite severely. Even in a situation where the sisters were called “nigger” several times over the course of many years and were faced with a noose outside of their car, they had no legal redress. The court still gave deference to the school district even in a situation as severe as the one in *Fennell* still left the court giving much deference to the school district. It begs the question, how much more discrimination should students have to undergo before the Court is willing to step in.

### *iii. Unconstitutionally Vague Rules*

Even when students challenge the validity of the school's rules, they are left with no redress. A rule or law will be deemed unconstitutionally vague where its prohibitions are not clearly defined. A clear and precise enactment may be ‘overbroad’ if in its reach it prohibits constitutionally protected conduct.<sup>136</sup> In other words, if it is unclear what actions or behavior are being punished by a law, it may be considered unconstitutionally vague.

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131. *Id.*

132. *Id.* at 412.

133. *Fennell*, 804 F.3d, at 412.

134. *Id.*

135. *Id.*

136. *Grayned v. City of Rockford*, 408 U.S. 104, 114 (1972).

In *Murray v. W. Baton Rouge Parish School Board*, students brought an action challenging the constitutionality of school district disciplinary statutes.<sup>137</sup> The case was dismissed at the trial court level and affirmed on appeal.<sup>138</sup> The students brought an action alleging that the state disciplinary statute was unconstitutional under the First and Fourteenth Amendments.<sup>139</sup> The students further alleged that the disciplinary statute was unconstitutionally vague because it included phrases like, "intentional disruption," "immoral or vicious practices," "disturbs the school," and "willful disobedience."<sup>140</sup> Now that we are familiar with the unequal ways that disciplinary statutes impact Black students, it is clear that a class of students would challenge them for vagueness. The statutes can be interpreted in a way that disparately impacts Black students. The court, however, did not agree. It held that the constitutional claim for vagueness was "insubstantial."<sup>141</sup> It acknowledged that the statutes were imprecise, but suggested that the statutes could not be drawn with so much precision that it would strip schools of their discretion.<sup>142</sup> On the issue of the particular school's rules, not the general state statute, the court held that it would not interfere with high school regulations regarding hair, dress, and other similar matters.<sup>143</sup> Again, in this case, the court deferred to the school's judgment.

The aforementioned cases show that for Black students, and for black girls in particular, bringing an action against a school will not likely prevail. The court gives great deference to school officials in order to maintain structure and reinforce power dynamics. The court should consider the impact that school rules have on marginalized students in comparison to other students. If the court took an approach that gave deference to students' experiences as opposed to maintaining power structures, more students might receive a fair chance in court.

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137. *Murray v. W. Baton Rouge Par. Sch. Bd.*, 472 F.2d 438, 439 (5th Cir. 1973).

138. *Id.* at 440.

139. *Id.* at 441.

140. *Id.*

141. *Id.* at 442.

142. *See id.*

143. *Id.* at 443.

*IV. Suggestions*

The justice system is where individuals go to seek equality and fairness. Unfortunately, as discussed above, the court system does not provide Black girls with an opportunity for redress in situations involving race. The court has yet to tackle intersectionality, therefore, no claim exists at this time that acknowledges the specific prejudice that one might experience while straddling the line across two marginalized identities. Legal standards to prove claims like disparate treatment on the basis of race or deliberate indifference require a factual scenario that is even more extreme than those discussed above. The severity of the claims brought, and their outcomes, are discouraging for those hoping to find justice in the legal. In other words, the court is not the place to go for a Black girl being discriminated against. For this reason, I present a few other suggestions:

*A. Educator/Administrator Accountability Efforts*

In order to ensure that disciplinary measures are taken in a fair and equitable manner, it would be helpful if schools would implement an administrator, educator accountability program. This program would require teachers to complete a detailed form each time a student is punished. Issues arise when teachers are allowed to punish students for broad infractions like "disturbing the classroom." Requiring detail in these kinds of documents would encourage teachers to act with as little bias as possible, but it would also give those teachers' supervisors a way to monitor teacher conduct. Meetings could be held surrounding the monthly or bimonthly disciplinary trends for each teacher. This allows the school to step in when a teacher is disproportionately disciplining a particular group of students. Teachers might argue that this form of discipline tallying is overbearing or interrupts the flow of a day in the classroom. However, a teacher being required to explain why he or she gives out discipline should be the bare minimum. A system like this one would hold teachers accountable while simultaneously tracking growth and the need for intervention.

### B. Student Disciplinary Committees

Student disciplinary committees are an entity that schools might also consider when trying to reduce discriminatory discipline practices. Allowing a student to appear before a jury of her peers allows her to explain the cause of the disciplinary action without the opinions of adults in positions of power. Not only are school officials subject to implicit bias, but the students that they consistently discipline might also resent them. A student disciplinary committee would not necessarily face these same issues. A committee might ask each grade to elect a board of representatives that it feels can effectively speak for the class and conduct hearings when major disciplinary decisions are handed out by the school. Students relate to one another in a way that teachers often do not. This would create a check on the powerful entity that is an educational institution.

### C. Legislation

State legislators can draw their policies with more specificity. Education committees can suggest changes to the state's laws as they exist. Because the court system cannot be relied upon, the legislature can give the courts more specific laws from which to draw. It can be sure to exclude broad definitions of conduct that include words like "disruptive," but instead provide examples of what might constitute grounds to discipline students. Although statutes relating to education are not drawn with extreme specificity, in order to allow schools some room to determine their own structure, the legislature should at least provide a blueprint for a safe, fair, and equitable school experience.

## CONCLUSION

Black girls' experiences in the classroom are distinct and largely sculpted by society's biases and stereotypes against Black women. This paper outlined the connection between history and the present, gave statistical evidence of the disparate treatment of Black girls in the classroom, addressed case law on this subject, and provided suggestions for improving the discipline gap regarding African American young women. Although the legal system does not provide a promising course of action, schools should avoid



the need for litigation by implementing systems that address and combat implicit biases and stereotyping in the classroom.