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https://www.naacpldf.org/wp-content/uploads/Baltimore_Girls_Report_FINAL_6_26_18.pdf
- NAACP LDF and the National Women’s Law Center. “Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity.” *NAACP Legal Defense and Education Fund*. 2014
https://www.naacpldf.org/wp-content/uploads/Unlocking-Opportunity-for-African-American_Girls_0_Education.pdf
- Brief of NAACP LDF as Amici Curiae in Support of Respondent in *Gloucester County School Board v. Gavin Grimm*. Supreme Court of the United States, 16-273. Filed 3/2/2017.
- Press Release – “NAACP LDF Files Amicus Brief in Ninth Circuit Tracing Bigoted Roots of Transgender Military Ban.” *NAACP Legal Defense and Education Fund*. July 3, 2018.

OPTIONAL:

- Brief of NAACP LDF as Amici Curiae in Support of Appellees and Affirmance in *Jane Doe 2 et al. v. Donald J. Trump*. US Court of Appeals for the DC Circuit, 18-5257. Filed 10/29/2018.



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OUR GIRLS, OUR FUTURE

Investing in Opportunity & Reducing
Reliance on the Criminal Justice System
in Baltimore



OUR GIRLS, OUR FUTURE:

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Reliance on the Criminal Justice System
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NAACP Legal Defense & Educational Fund, Inc. (LDF)

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The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is the first and foremost civil and human rights law firm in the United States. Founded in 1940 under the leadership of Thurgood Marshall, LDF’s mission has always been transformative—to achieve racial justice, equality, and an inclusive society. LDF’s victories established the foundations for the civil rights that all Americans enjoy today. In its first two decades, LDF undertook a coordinated legal assault against officially-enforced, public school segregation. This campaign culminated in *Brown v. Board of Education*, the case that led to the unanimous landmark Supreme Court decision in 1954 that outlawed legalized racial segregation nationwide. Today, through litigation, advocacy, and public education, LDF continues to advance issues of education, voter protection, economic justice, and criminal justice. LDF has been a separate organization from the NAACP since 1957.

This report was produced in collaboration with LDF’s Thurgood Marshall Institute. Launched in 2015, the Institute is a multidisciplinary center within LDF. The Institute complements LDF’s traditional litigation strengths, arming LDF with dedicated support for three critical capabilities in the fight for racial justice: research, targeted advocacy campaigns, and organizing.

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EXECUTIVE SUMMARY

“It is impossible to talk about the criminal justice system, mass incarceration, without talking about education.”¹

—Sherrilyn Ifill, President & Director-Counsel of LDF

Across the country, large numbers of Black students are pushed out of the classroom and into the juvenile or criminal justice system through the school-to-prison pipeline. One reason is that the number of police in schools has increased dramatically in recent decades,² expanding juvenile or criminal justice involvement for youth. National data on school-based arrests and referrals to law enforcement reveals that Black and Latinx students are disproportionately targeted for harsh punishment. Moreover, national data shows that Black girls are the fastest growing demographic affected by school discipline, arrests, and referrals to the juvenile justice system. For Black girls, the pathways to the juvenile justice system disproportionately involve unaddressed social-emotional needs at school. Despite this reality, students’ educational experiences are often left out of conversations about juvenile or criminal justice reform—in particular, the experiences of Black girls in schools. Baltimore is at the beginning of a substantial effort to reform policing and its criminal justice system, but the experiences of Black girls in Baltimore City Public School System (“BCPSS”)—and the pathways that lead to their involvement with the justice systems—have been largely overlooked in this process.

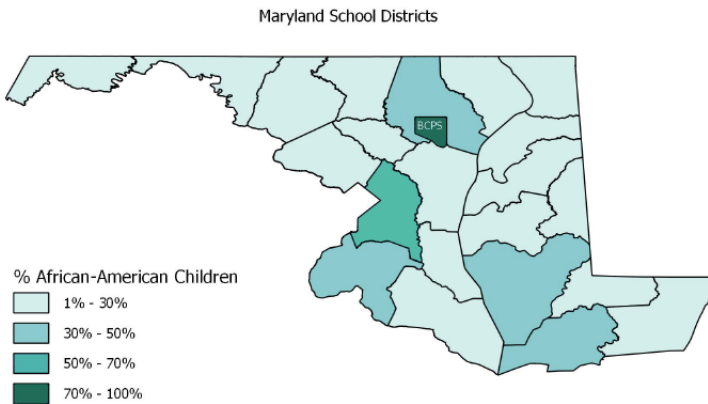
METHODOLOGY

This report is based on statistical data, surveys, and interviews with students and adult stakeholders. Unless otherwise indicated, statistical data is based on information provided by BCPSS and the Maryland Department of Juvenile Services (“DJS”) to LDF in response to a Maryland Public Information Act request.³ Qualitative data is based on interviews and surveys that were conducted with over thirty individuals, including students, justice-involved girls, parents, teachers, attorneys, service providers, and a member of the Maryland Juvenile Justice Monitoring Unit—an independent state agency housed in the Office of the Maryland Attorney General and responsible for reporting on DJS operated and licensed programs across the state. To ensure confidentiality, the names and identifying information of all participants under the age of eighteen have been omitted.

FINDINGS

Limited Investment in Educational Opportunities

BCPSS remains one of the most racially and economically isolated school districts in Maryland and in the country. The School District is approximately 81% Black. The map below shows the stark racial isolation of Black students in BCPSS, while surrounding school districts offer greater racial and economic diversity. As a result of this isolation, the challenges correlated with poverty and racial segregation are concentrated in BCPSS schools. Despite the social, emotional, and educational needs of students in BCPSS schools, many of the girls and young women interviewed for this report indicated that their schools failed to provide reasonable conditions for learning, including heat and secure bathrooms. Black girls have limited access to experienced teachers and challenging curricula, as well as to guidance and school counseling.



Exclusionary Discipline

Although overall rates of suspensions and expulsions have decreased in Baltimore since 2004, the racial disparity between students who are suspended and expelled has not. In BCPSS during the 2016-2017 school year, Black youth made up 81% of enrollment, but 93.5% of all suspensions and 96% of all expulsions. Black girls made up 80.6% of girls enrolled in BCPSS, but approximately 95% of all suspensions of girls and 92% of all expulsions of girls. In other words, in 2016-2017, Black girls were approximately four times more likely than white girls to get suspended, and Black girls were over twice as likely as white girls to get expelled. The Black girls interviewed

for this report described how they were punished with exclusionary discipline for school disturbances and defiance, including speaking out or challenging the conditions at school. Although Maryland law strictly limits the offenses for which students can be suspended, Black girls report that they continue to be pushed out of school illegally for dress code violations and for infractions that occur outside of school, through undocumented “send homes” and other tactics designed to exclude students. Even when suspensions are officially administered, Black girls have limited access to an attorney during the suspension and expulsion process to ensure protection of their due process rights.

Overreliance on School Police

Baltimore City is the only school district in Maryland with its own school police force—the Baltimore School Police Force (“BSPF”).⁴ Spending for BSPF represents a significant proportion of BCPSS’s budget: \$12,848,800 in 2016 and \$7,181,015 in 2017.⁵ In contrast, the guidance and school counseling expenditure for these years was \$345,984 and \$217,226 respectively.⁶ When schools are heavily policed, students are more at risk for arrest, referral to law enforcement, and excessive force.⁷ While the overall rates of school-based arrests and referrals have decreased in recent years, the racial disparity has not. In 2016-2017, the only students arrested in BCPSS were Black students, and Black girls were 20% of students arrested. Of the 156 school-based referrals occurring that year in BCPSS, 80 involved Black males, and 76 involved Black females. The Black girls interviewed for this report described examples of excessive force against Black female students that caused them to feel unsafe.

Overreliance on Confinement

Black girls are nearly five times more likely than white girls to be referred to DJS, Maryland’s juvenile justice agency, and are detained for longer periods of time.⁸ Approximately 33% of female youth in Maryland are Black, but they represent nearly 60% of the female intakes and nearly 65% of the female placements at DJS. The majority of Black girls in detention or committed placements are held for misdemeanors and property offenses: of the 497 total offenses reported at intake for Black females in



Baltimore, over half (268) were misdemeanors and over a quarter (127) were property offenses. The population of young women involved with DJS are more likely to have experienced trauma than similarly-situated youth. Nearly half of the girls in a committed, out-of-home placement in 2017 had been either physically or sexually abused, compared to 18% of boys.⁹ Paradoxically, a history of trauma, in particular a history of sexual abuse and exploitation, is sometimes used by judges as a justification for detaining girls for longer periods of time “for their own protection.”

Recommendations

Improve the school environment, curriculum, and resources.

- BCPSS and Maryland State Department of Education (“MSDE”) should improve access to racially and economically diverse schools.
- BCPSS should provide heat and access to safe bathrooms throughout the day.
- BCPSS should increase access to critical-thinking and inquiry-based curricula that include the voices of LGBTQ individuals and women of color.
- BCPSS should provide diversity and inclusion programming and counseling to support LGBTQ students.
- BCPSS should ensure comprehensive in-school support for students who are victims and survivors of sexual violence.
- BCPSS should provide more opportunities for girls to have a voice in the classroom and in decision-making at the school and district-level.

Reduce disparities in punishment and reliance on exclusionary discipline.

- BCPSS should systematically incorporate trauma-informed education and restorative practices school-wide at every school in the district.
- BCPSS should train school staff about intersectional implicit bias to reduce disparate punishment of Black girls for subjective offenses.
- BCPSS should audit schools to ensure that undocumented, illegal suspensions are not occurring.
- BCPSS should provide alternative transportation for those students who are denied access to Maryland Transportation Authority (“MDTA”) for misconduct.
- BCPSS should educate students and families about school discipline rights so that they can better identify when their rights have been violated.
- BCPSS should utilize appropriate referral to school-based services, such as special education, including for students whose behavior manifests untreated complex trauma.



Reduce reliance on, and misconduct and bias by, school police.

- BCPSS should improve access to social-emotional and mental health support by investing more in counselors, therapists, and social workers in school.
- BCPSS should inform students about the risks of sharing information with police officers.
- BCPSS and BSPF should prohibit officers from arresting students for non-violent misdemeanors and other offenses that are subject to diversion.
- BSPF should adopt constitutional, gender-responsive, and trauma-informed search and seizure policies.
- BSPF should adopt a transparent complaint process that holds BSPF officers accountable to communities for police misconduct and excessive use of force.

Reduce reliance on, and misconduct and bias in, juvenile facilities.

- DJS should provide in-home support for youth who have experienced sexual abuse, sexual assault, and sexual exploitation.
- DJS should provide gender and racial bias training to judges who hear child welfare and delinquency cases.
- DJS should implement non-punitive, gender-responsive, and trauma-informed behavior management in DJS facilities.
- DJS should expand gender-specific community-based programming.
- MSDE should provide quality educational programming in DJS facilities.

PREFACE Why Black Girls?

In October 2014, three Black girls at Vanguard Middle School were hospitalized after an altercation with a school security officer.¹⁰ The students were later arrested, suspended, and referred to an alternative school for allegedly attacking the officer.¹¹ However, subsequently released footage from the school's security tape showed a different story: the recording depicts the officer striking one of the girls repeatedly with her baton and pepper spraying the other two.¹²

While the disproportionate discipline of Black boys is well-documented, Black girls are often overlooked. In 2014, LDF and the National Women's Law Center ("NWLC") released a report entitled *Unlocking Opportunity for African American Girls*, highlighting disparate treatment of Black girls in schools and calling for advocacy to address the barriers to equal educational opportunity.¹³ The report found that Black girls represent the fastest growing population experiencing exclusionary discipline at school—a reality that limits their academic success.¹⁴ Moreover, Black girls are disproportionately referred to law enforcement and subjected to school-related arrests.¹⁵ Black girls are disproportionately disciplined for more subjective offenses,¹⁶ including defiance, disobedience, disrespect, and threatening others.¹⁷ These disparities result from—and perpetuate—false stereotypes that Black girls are inherently aggressive, threatening, and dangerous. Moreover, these disparities potentially violate school districts' obligations to treat students equally and avoid policies that have a disparate impact based on race and gender in violation of federal law.¹⁸



The 2014 *Unlocking Opportunity* report also found that Black girls experience high rates of exposure to trauma, which correlates with reduced school engagement and performance. Nonetheless, Black girls are disproportionately excluded from school rather than provided support. In her book, *Pushout*, Dr. Monique Morris documents how educators tend to interpret Black girls' behavior to require discipline instead of support.¹⁹ She describes how Black girls are more likely to experience schools as a hostile environment, rather than a safe haven for students facing neglect, abuse, and sexual exploitation. More recently, researchers at Georgetown's Center on Poverty and Inequality found that, compared to white girls of the same age, adults perceive Black girls as needing less nurturing, protection, and support, and knowing more about adult topics, including sex.²⁰ They hypothesize that these disparate perceptions lead adults to view Black girls as more culpable for their actions and more deserving of harsher punishment. When viewed through the lens of false stereotypes (such as "the angry Black woman"), behavior that should be identified as a cry for help is instead interpreted as defiant, and even threatening, for Black girls.

Baltimore: In Need of Reform & Poised for Change

This report focuses on Baltimore in order to understand how to improve outcomes for Black girls on a local level. Since 2015, Baltimore has been in the spotlight of a national conversation about policing and criminal justice reform, but the needs of Black girls have been largely left out of this conversation.

On April 12, 2015, several Baltimore City police officers arrested Freddie Gray, an unarmed 25-year-old Black man, for making eye contact with the police and "looking suspicious" when he began to run away from them.²¹ While in police custody, Mr. Gray sustained fatal spinal injuries as a result of a "rough ride," rolling around the back of a police truck, because he was handcuffed and not buckled in. Mr. Gray died one week later on April 19, 2017.²² Although the State's Attorney for Baltimore City brought charges against each of the six officers involved with causing his death, none were convicted.²³

This tragic incident and the public protest that followed prompted the U.S. Department of Justice ("DOJ") to

investigate the Baltimore Police Department ("BPD") and to produce a report.²⁴ The report documented systematic excessive force and racially discriminatory policing by the BPD.²⁵ The DOJ report also investigated the relationship between BPD and BSPF, noting that the former uses the BSPF as an auxiliary force by giving it authority to patrol city streets.²⁶ For many, the DOJ report was simply an affirmation of the mistreatment that communities of color had decried for decades. On January 12, 2017, the federal government filed a complaint against BPD, the Mayor, and the City Council of Baltimore City ("the City"), alleging that police officers engaged in a pattern or practice of conduct that deprived Baltimore residents of their federal constitutional and statutory rights.²⁷ On April 7, 2017, DOJ and Baltimore City officials entered into a consent decree in federal court to address the constitutional and statutory violations detailed in DOJ's August 2016 investigative report.²⁸ The City began implementing the Consent Decree this year in 2018. With unprecedented resources, attention, and the commitment of diverse community stakeholders, Baltimore has an opportunity for change.

Ending the School-to-Prison Pipeline

Importantly, the Consent Decree provides for a comprehensive assessment of how to prevent youth involvement with the juvenile justice system in Baltimore through pathways, such as the school-to-prison pipeline.²⁹ The school-to-prison pipeline refers to the phenomenon through which some students are pushed out of elementary and secondary school—and into the juvenile or criminal justice system—through policy decisions, including the increased presence of police in schools and insufficient investment in education, social services, and mental health. Research shows that regular police presence in schools leads to more arrests for non-violent offenses that would otherwise be addressed by school staff.³⁰ Research also shows that exclusionary discipline does not deter students from future misbehavior, but rather increases the likelihood that a student will be disciplined at school in the future,³¹ struggle academically,³² drop out of school,³³ fail to graduate from high school,³⁴ not attend college,³⁵ and become involved in the justice system.³⁶ Although Black students do not misbehave more than white students,



Black students bear the brunt of harsh punishments and criminal sanctions in school.³⁷ Nationwide, Black students accounted for 15% of the student body, but 31% of school-related arrests during the 2015-2016 school year.³⁸

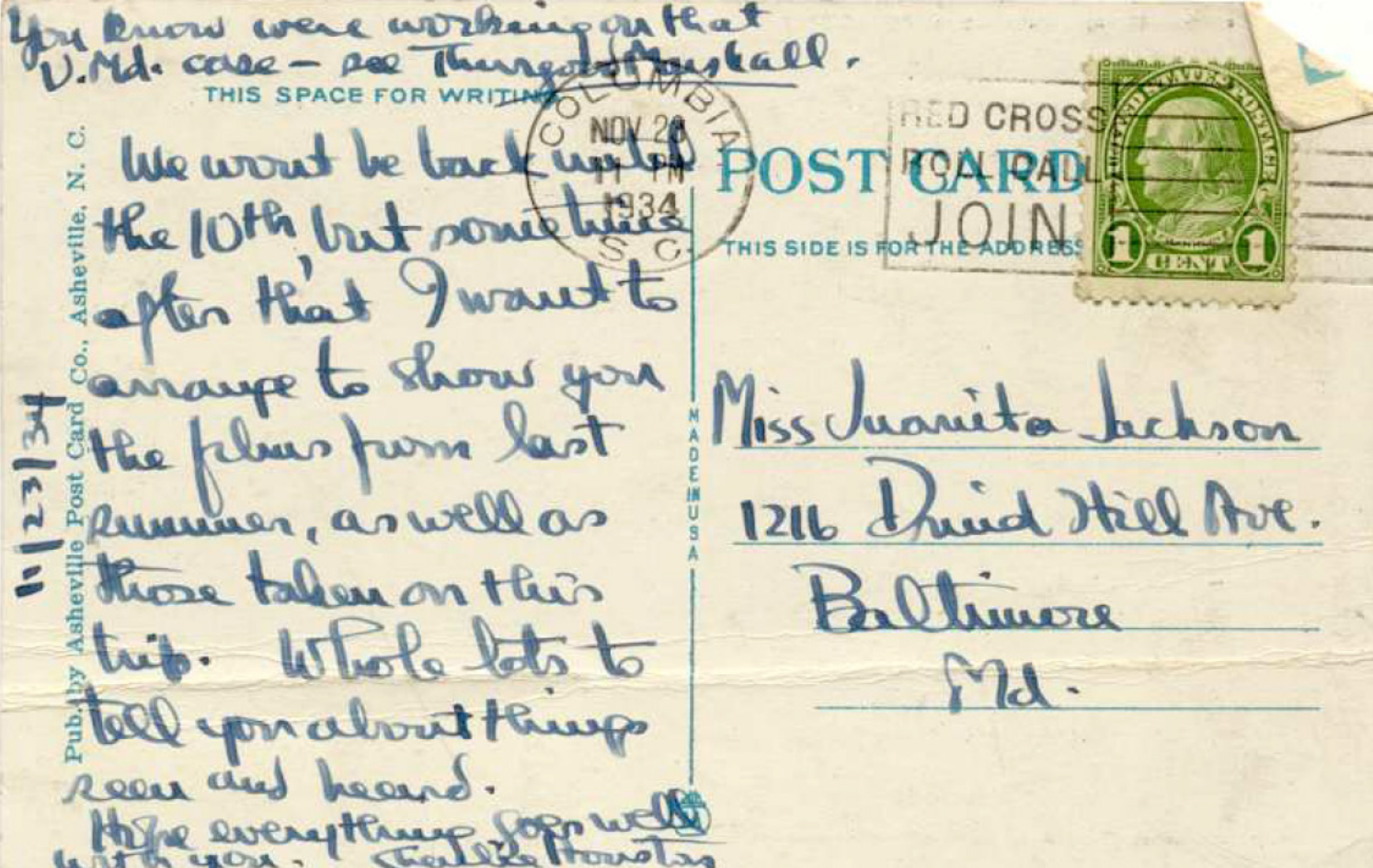
The Need for Black Girls at the Center of Reform

The DOJ report on the BPD detailed stories of Black women who were called derogatory terms based on race and gender,³⁹ subjected to excessive force,⁴⁰ unnecessarily strip-searched,⁴¹ fondled,⁴² and prostituted by BPD officers.⁴³ The investigation also found that BPD's treatment of female victims of sexual assault reflected gender-based stereotypes and assumptions that compromised effectiveness of investigations and possibly discouraged Black women, particularly Black trans women, from engaging with law enforcement.⁴⁴ Yet despite the pervasive evidence that Black women are deeply impacted by policing and their involvement with the criminal justice system, they have been largely overlooked in Baltimore's reform efforts. This disregard and devaluing of the lives of Black women and girls is consistent with what advocates have brought to light through national campaigns, including the "Say Her Name" movement, which demand recognition of the police killing and abuse of Black women.⁴⁵

Black girls are harshly disciplined, overpoliced, and the fastest growing population in the juvenile justice system. This dramatic increase is at least partly because justice-involved girls have needs that are unique from their male peers—needs that are understudied and unaddressed. Justice-involved girls are a hyper-marginalized population, unique in terms of the risk factors that they face: 45% have experienced five or more adverse childhood events ("ACEs"),⁴⁶ almost double the rate of justice-involved boys.⁴⁷ Thus, real and enduring change in Baltimore will only happen with an approach that focuses on Black girls and the specific challenges they face as central, rather than ancillary, to systematic reform.

Black Women Leading Activism in Baltimore

Despite systematic and institutional barriers, Black Baltimorean women have been at the forefront of the fight for justice and equality for generations. Noted civil rights advocate, Dr. Lillie May Carroll Jackson, was born and raised in Baltimore. Jackson's commitment to addressing social injustice developed after two of her children were denied admission to local all-white colleges and were forced to attend school outside of Maryland. In 1935, she was asked to become president of the Baltimore branch of the NAACP. While Jackson was president, the



Postcard from Charles Hamilton Houston to Juanita Jackson. Provided by the NAACP Legal Defense and Educational Fund archives.

Baltimore NAACP helped win a historic legal victory permitting the admission of Black students to the University of Maryland.⁴⁸ She also supported efforts to desegregate public schools and equalize the salaries of Black and white teachers in Maryland. Jackson held voting-registration drives, greatly increasing the number of Black voters in Baltimore.⁴⁹ In 1958, Jackson was awarded an honorary doctorate of laws degree from Morgan State College for her efforts in civil rights.

Jackson's daughter, Juanita Jackson Mitchell, was also a renowned civil rights leader in her own right. Born in 1913, Mitchell continued the family legacy by dedicating her life to battling racism and segregation.⁵⁰ She attended Frederick Douglass High School and, when she was denied admission to Johns Hopkins University due to their discriminatory admissions process, she attended the University of Pennsylvania, where she graduated cum laude. Mitchell later became the first Black woman to graduate from the University of Maryland Law School—thanks in part to her mother's desegregation efforts—and became the first Black woman to practice law in Maryland.⁵¹

Mitchell began her legal career as counsel for the Baltimore NAACP, where she worked with LDF's founder and the first

African American justice of the Supreme Court of the United States, Thurgood Marshall (another Baltimore native). In her role as a Baltimore NAACP attorney, Mitchell successfully advocated for the City of Baltimore to hire more Black social workers, librarians, and police officers.⁵² Mitchell helped file a lawsuit that led to the acceptance of two Black teenagers into a Baltimore City school, Mergenthaler (Mervo) School of Printing. She also filed a suit that integrated Baltimore's Western High School.⁵³ She was counsel in *Bell v. Maryland*,⁵⁴ which concerned the efforts of students to desegregate Maryland's restaurants, and lawsuits that resulted in the 1955 decision by the Supreme Court to integrate Sandy Point State Park, Fort Smallwood Municipal Park Beach, and Baltimore City swimming pools.⁵⁵ Mitchell worked with the NAACP national organization, serving as National Youth Director and special assistant to Walter White. While there, she led voter registration drives in the 1940-1960s, resulting in tens of thousands of new Black voters, and oversaw the rollout of NAACP youth initiatives. Mitchell was appointed to advisory positions by President Franklin D. Roosevelt, President John F. Kennedy, and President Lyndon B. Johnson.⁵⁶ Through it all, Mitchell always maintained her roots, and never left the West Baltimore neighborhood where she was born. She and her mother were each inducted into the Maryland Women's Hall of fame.

FINDINGS

Past As Prologue: A Racially-Isolated School District

A look at Baltimore's history makes clear that the segregation of Baltimore and BCPSS is no accident; it is the logical outcome of a sustained, government-backed effort to isolate Black citizens. In 1910, Baltimore adopted the nation's first ordinance establishing block-by-block segregation. Barry Mahool, Baltimore's mayor at that time, attempted to justify the City's new policy by arguing that "Blacks should be quarantined in isolated slums in order to reduce the incidence of civil disturbance, to prevent the spread of communicable disease into the nearby White neighborhoods, and to protect property values among the White majority." Over the next 50 years, subsequent administrations took up Mayor Mahool's mantle by instituting explicitly segregationist policies, including an official Committee on Segregation led by the City Solicitor, encouraging restrictive covenants, and punishing citizens that attempted to challenge Baltimore's *de jure* segregation.

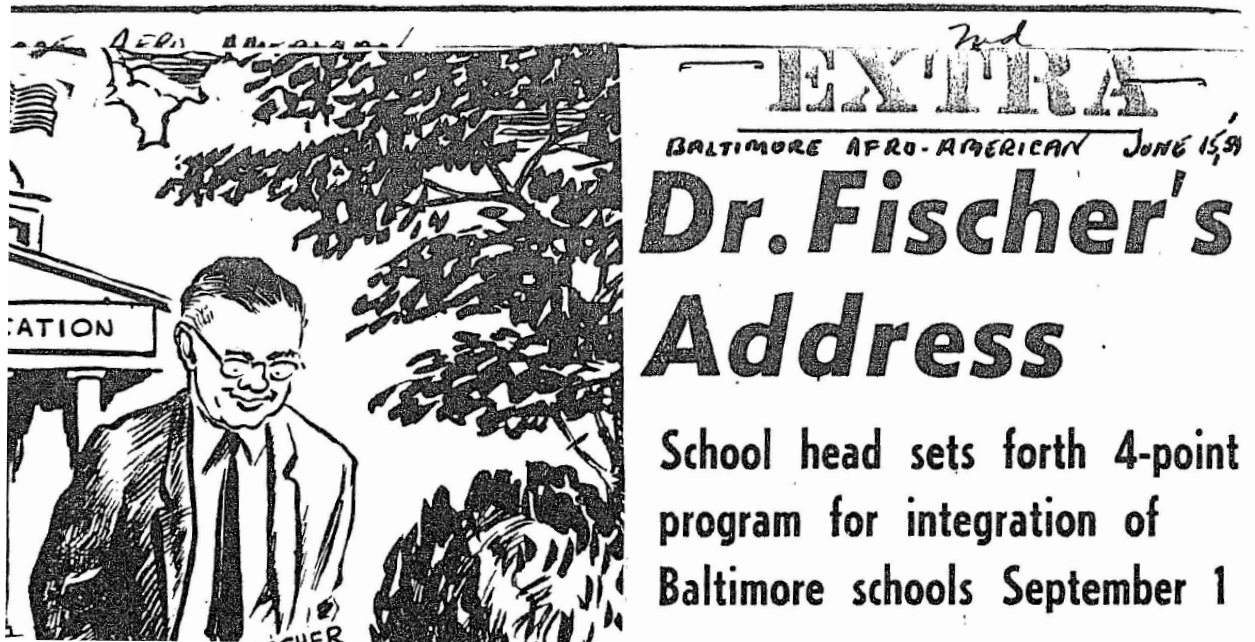
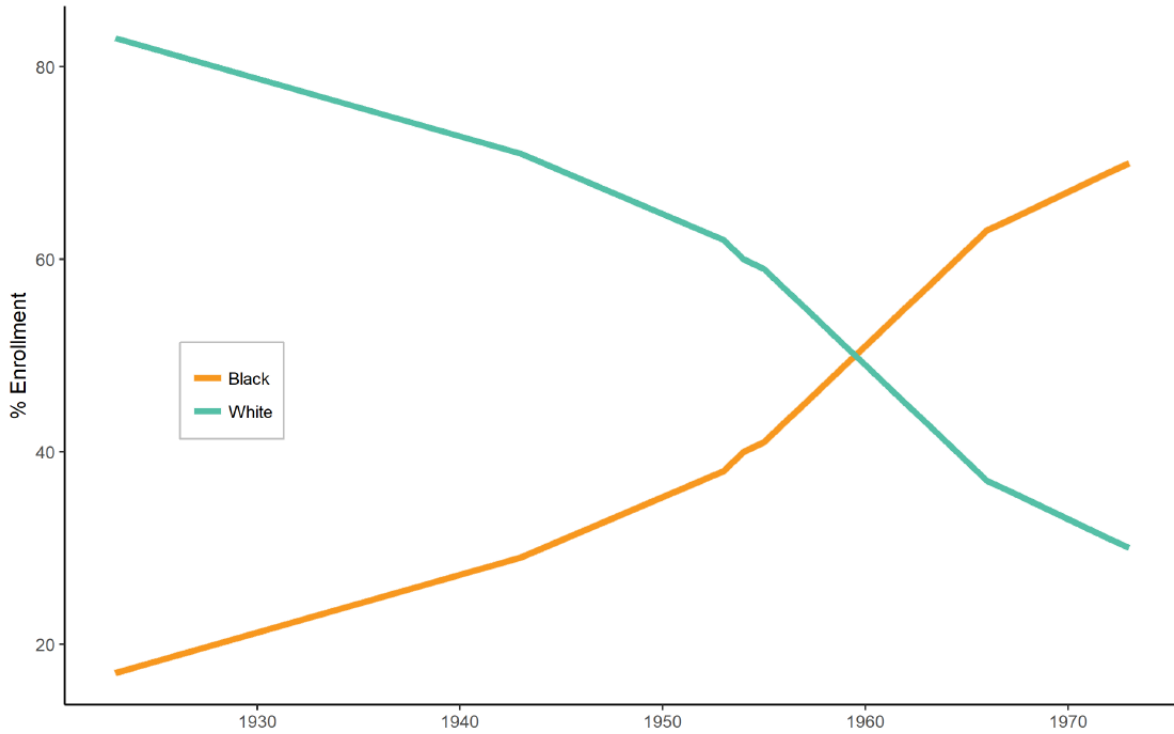
From 1867 until 1954, BCPSS schools were segregated by municipal ordinances. In 1952, LDF and the Baltimore NAACP led an effort to begin to desegregate BCPSS when sixteen Black male students petitioned the Board of School Commissioners ("the Board") to attend Baltimore Polytechnic Institute. This all-white high school offered an accelerated pre-engineering course not available in Baltimore's all Black high schools, which made it an ideal site to test the controlling "separate but equal" doctrine that permitted racial segregation so long as similar accommodations were available to both Black and white students. The Board ultimately voted 5-3 to admit the Black students to the course. Following their admittance, other Black students, often represented by Juanita Jackson Mitchell as discussed *supra*,

applied for admittance to other specialized programs given only in white high schools.⁶⁵ Lawsuits were pending in these cases in 1954 when the Supreme Court ruled in *Brown v. Board of Education* that racially segregated schools violated the Constitution because "[s]eparate educational facilities are inherently unequal."⁶⁶

In response to the *Brown* decision, BCPSS adopted a desegregation policy that allowed families free choice enrollment to schools within the district, regardless of race.⁶⁷ Protests soon followed. According to a report from the *Baltimore Sun*, on October 1, 1954, at Southern High School: "Hundreds of students participated in picketing, while others circled the building in automobiles, trucks and jeeps, shouting their objections to desegregation."⁶⁸ In some cases, the crowds turned violent, attacking Black students as they were escorted away by police, and resulting in at least six arrests.⁶⁹

When protests failed to change the new policy, white Baltimoreans resisted integration through their school choices. White enrollment in BCPSS began to decrease after 1956, and continued to do so at a rate of nearly 2,000 students per year, for the next twenty years.⁷⁰ By 1960, student enrollment in BCPSS was majority Black. During the same time frame, the city itself lost about 100,000 white residents to surrounding suburban counties,⁷¹ and Baltimore would eventually become a majority Black city.⁷² Government-crafted, inner-city Black ghettos, combined with the allure of federally-backed post-war mortgages in the suburbs, created a push-pull effect that accelerated the mass exodus of white Baltimoreans from the City.⁷³ The desegregation of BCPSS schools provided a key "push" behind white flight from inner-city Baltimore into the surrounding counties.⁷⁴

Historic Enrollment in Baltimore City Public Schools



Article from Baltimore Afro-American, June 19th, 1954. Reproduced from the Manuscript Division, Library of Congress.

Educational Opportunity for Black Girls in Baltimore

Educational Inequity in BCPSS Today

According to 2014 data from UCLA's Civil Rights Project, Maryland is the third-most-segregated state in the country for Black students,⁷⁵ and BCPSS remains racially and economically isolated from surrounding county school districts. While the overall student enrollment during the 2016-2017 school year in Maryland public schools was 34.1% Black; 16.5% Hispanic/Latinx; 38.2% white; 6.4% Asian; 4.4% two or more races; and 0.4% Other; BCPSS was 80.6% Black; 9.4% Hispanic/Latinx; 7.9% white; 1% Asian; 0.7% two or more races; and 0.4% Other.⁷⁶

BCPSS is also made up of racially isolated schools. In 2014, 75.8% of BCPSS schools were over 90% racial minority. There is no comparable racial isolation in the surrounding school districts. The percentage of schools that were over 90% minority in those counties were: 0% in Carroll, 0% in Harford, 1.3% in Howard, 4.2% in Anne Arundel, and 18.8% in Baltimore County.⁷⁷

Over sixty years of research documents the negative impact of racial isolation on educational opportunity, including the development of critical thinking skills, graduation rates, educational and career goals, and later earnings in the workforce.⁷⁸ Moreover, research shows that racially isolated schools tend to also be economically isolated schools, and that economically isolated schools tend to have inexperienced teachers, fewer high-rigor course offerings, substandard facilities, large class sizes, and less access to school materials and resources.⁷⁹ Thus, the educational inequity between BCPSS and surrounding school districts stems from the effects of isolating Baltimore students away from more diverse schools that offer the benefits of wealth, experienced and well-educated teachers, challenging curricula, higher levels of parent education, and high achieving peers—all of which are correlated with increased academic achievement.⁸⁰

First, racial isolation in BCPSS schools coincides with a wealth gap, as Black residents account for over 76%

of Baltimoreans living at or below the poverty line.⁸¹ In 2015, approximately 87.5% of students in BCPSS received free and reduced-price meals, compared to 19.6% in Carroll, 30.9% in Harford, 21% in Howard, 33.3% in Anne Arundel, and 46.9% in Baltimore County.⁸²

Second, racial isolation in BCPSS coincides with a less-qualified teaching force. Over 20% of BCPSS teachers lack certification, compared to 1.1% in Carroll County, 1.2% in Harford County, 1.2% in Howard, 0% in Anne Arundel, and 2.2% in Baltimore County.⁸³ BCPSS teachers are also less experienced and more likely to be absent from school: nearly 25% are in their first two years of teaching.⁸⁴ Over 69% of BCPSS teachers are absent more than ten days of the school year.⁸⁵

Third, racial isolation in BCPSS coincides with less access to rigorous course offerings. In the 2015-2016 school year, there were 180 BCPSS schools, but only 23 offered Advanced Placement ("AP") or an International Baccalaureate Diploma Program, and only ten offered a Gifted & Talented Education Program.⁸⁶ Only nine BCPSS schools offered calculus.⁸⁷ Based on a 2014 study, less than half of BCPSS schools offer an in-school Science Technology Engineering and Math ("STEM") program, and less than one third offer an after-school STEM program.⁸⁸

Finally, racial isolation in BCPSS coincides with lower academic achievement. Of the BCPSS high school students who participated in the Partnership for Assessment of Readiness for College and Careers ("PARCC") assessment, aligned to Maryland's College and Career-Ready Standards, only 11.4% met expectations in Algebra I (8.6% of Black students), and 17% met expectations in tenth grade English (13.7% of Black students).⁸⁹ This was 25% below the state average for Algebra, and 32% below the state average for tenth grade English.⁹⁰ According to a report by the Baltimore Project, 13 of 39 BCPSS high schools had zero students proficient in math.⁹¹ Approximately seven out of ten students in Baltimore go on to graduate from high school,⁹² compared to approximately 88% statewide,⁹³ and 53% of Baltimore students are enrolled in college two years after graduation,⁹⁴ compared to 71.1% statewide.⁹⁵

Because of the social and economic challenges that Baltimore neighborhoods face, BCPSS schools have a high proportion of high-need students. Nearly 30% of children in Baltimore, compared to 19% statewide, have ACE scores of two or more, meaning that they have experienced more than two incidences of events such as domestic violence, living with someone with an alcohol/drug problem, the death of a parent, or being a victim/witness of neighborhood violence.⁹⁶ According to Baltimore Behavioral Health Systems, approximately 16% of BCPSS students have seriously considered suicide.⁹⁷ During the 2012-2013 school year, BCPSS identified 2,716 homeless youth who attended the district's schools,⁹⁸ and over 30% of BCPSS students are chronically absent due to housing insecurity and other challenges.⁹⁹

In short, students in Baltimore experience limited educational opportunities that result from attending racially and economically isolated schools that lack the resources to meet the students' needs. BCPSS's per-pupil expenditure is slightly above most of the surrounding counties,¹⁰⁰ but is insufficient to address the impact of the economic and social isolation that BCPSS students experience. As one BCPSS teacher put it, "My students come of age in a separate and inferior system, surrounded by other disadvantaged kids. This is where they learn their place in the world."¹⁰¹ The limited investment in addressing the needs of BCPSS students constrains opportunity for all Baltimore youth, but as the findings of this report reveal, Black girls are impacted in especially harsh ways.

Limited Investment in Needed Resources for Black Girls to Learn

Black girls in Baltimore are less likely to have exposure to more challenging curricula, including Advanced Placement and "gifted and talented" classes, than their white peers. During the 2016-2017 school year, white girls were nearly five times as likely to be in gifted programs as Black girls. During the same year, white girls were more than twice as likely as Black girls to be in advanced placement.¹⁰²





One mother described how she felt her daughter began acting out, in part, because her school did not provide challenging programming and an engaging environment:

“She was always a high academic student. She played chess. She was always active in school. Then things just kinda fell off task. The school system starts cutting stuff out, like, not having as much activities as they had in school. I thought that might’ve played a part of it because them not having things for her to interact with in school, and she just fell out of place. It just started going worse, you know. Like months to weeks, you know, started getting into miscellaneous trouble and stuff like that, and it’s just like turned for worst. I figured she probably just needed to be more challenged.” ¹⁰³

The limited investment in engaging and challenging curriculum for Black girls is reflected in the achievement gap. Of the BCPSS high school female students who participated in the PARCC in 2017, 15.7% of Black female students met expectations in tenth grade English, compared to 35.7% of white female students.¹⁰⁴ The results were even more dismal for Algebra I: 9.8% of Black female students met expectations, compared to 32.4% of white female students.¹⁰⁵

Many of the young women interviewed for this report indicated that their schools failed to even provide reasonable conditions for learning. For example, girls described the lack of a reliable heating system in Baltimore public schools. Approximately one-third of Baltimore public schools went without sufficient heat for over a week in January 2018, causing the school system to close for at least two days.¹⁰⁶ As one student described her experience:

“It affected my school a lot ‘cause we were still open and you had kids that was in the classroom with their jackets on. And then at my school they’ll be like ‘oh you can’t wear outerwear, you can’t wear outerwear in school,’ so sometimes they’ll make you take ‘em off. So when it got really cold, it was like why the school not closed if y’all don’t have no heat?”

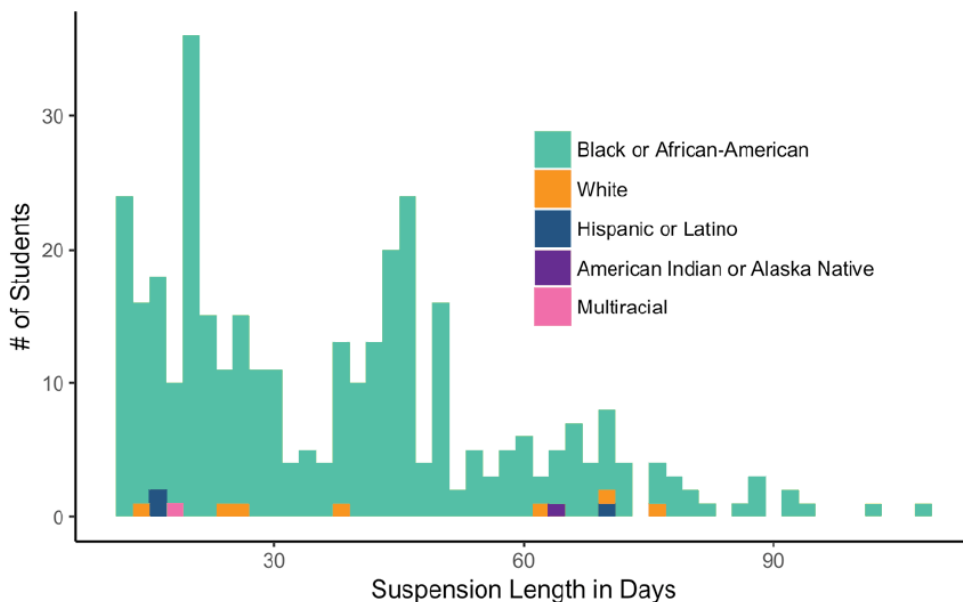
Students also identified access to bathrooms as a major challenge at school. They stated that the girls’ bathrooms are locked during much of the day due to what administrators described as “safety concerns.” As a result, they had to hold their urine for long periods of time until they were permitted to use the bathroom. Girls were not even permitted to use the bathroom to change their sanitary pads and tampons when they were menstruating.

Overreliance on Exclusionary Discipline

Black Girls Are Suspended and Expelled at Higher Rates and for Longer Periods of Time than Their Peers in Baltimore

Despite the evidence that exclusion is not an effective disciplinary tool, Black girls in BCPSS continue to be disproportionately suspended and expelled. For the 2016-2017 school year, Black girls made up approximately 95% of all suspensions of girls and 92% of all expulsions of girls, despite constituting 80.6% of girls enrolled. In concrete numbers, there were 2,920 short, long, or extended suspensions that involved girls. Of those, 2,772 involved Black girls, 78 involved white girls, and 71 involved girls from other races or ethnicities. Of the girls expelled in 2016-2017, 22 were Black girls, one was white, and two were Latina. While Black boys constitute the majority of suspensions and expulsions overall, Black girls make up 33% of total suspensions and 27.5% of total expulsions; white girls make up 0.09% of total suspensions and 0.1% of total expulsions. The disparity is greatest for long-term suspensions. The chart below shows the length of suspensions in days by race for all females in BCPSS, demonstrating the disproportionate impact on Black girls.

Suspensions Longer Than Ten Days (Females): 2016-2017



Black Girls Are More Likely to be Punished for Subjective Offenses

Maryland law makes clear that students cannot be suspended for more than ten days unless the school proves that keeping the student in school would create an “imminent threat or harm” or that the student caused a “chronic and extreme disruption.”¹⁰⁷ The terms “threat,” “harm,” and “disruption” are subjective terms that are more often applied to the behavior of Black girls. At least one in four suspensions of Black girls was for subjective offenses, including: disruptions, disturbance, threatening behavior, or disrespect.



Yasmene Mumby, a former BCPSS middle school teacher and community organizer, described the problem of how Black girls are perceived:

“I think it goes back to the subjective interpretation of Black girls being defiant, disrespectful, disruptive. Before you act on your interpretation of a Black girl and her being, you have to ask yourself: ‘Is this my bias at work? Am I about to act on it and impact a child and a scholar and a full being?’ I think that is the first start, because there is no school-to-prison pipeline, there is no criminalization of Black girls, there is no pattern of these experiences, without a teacher acting on their subjective interpretation of that child’s being and then starting the pathway to writing them up for disciplinary actions and then that snowballing.” ¹⁰⁸

Punished for Challenging Unfair School Conditions

Repeatedly, the girls that we interviewed described how they are routinely told to be polite and quiet, to “mind their business,” and not to “make a big deal out of things.” Nonetheless, our young interviewees often felt it was important to speak out about things they thought were unfair. They expressed concern not only with instances of individual injustice, but systematic injustice within their schools. This included concerns about the quality of education, the rules for which students were punished, policing, and a lack of financial investment in their schools. In some cases, students were punished for challenging unfair conditions at their schools. These girls felt it was unjust that their schools were plagued with problems that did not exist in other more affluent schools—problems about which they were expected not to complain. And when they did speak out about them, they were punished for defiance.

For example, on some occasions, complaints about the lack of access to the bathroom was considered a “defiant” act and a cause for punishment. As one young woman explained:

“Girls at my school get suspended for saying stuff about the bathrooms. They lock the bathrooms all the time, like they’re never open, like we have to go to the bathroom on the schedule they prepared. I be trying to tell them: we’re girls, so if we have to go, you have to let us go. If girls hold their pee too long, that can cause us to get like serious infections down there and everything. You have some administrators that will open the bathrooms, but others will be like, ‘Oh well, we can’t let you out of the classroom if you gotta go,’ and then you get in trouble for walking out of the classroom ‘cause you really got to go.”

When the terms “disruptive,” “disturbing,” or “disrespectful” are used to describe the behavior of Black girls, it is important to scrutinize the context in which these labels are used and how these labels may impact Black girls’ development as citizens in a democracy. While schools play a socializing role in teaching students to obey rules, schools also prepare students to think critically and develop as future leaders. In some cases, challenging the status quo may be a means for girls to advocate for justice when they believe the conditions at school are unfair. Over-punishing Black girls for “defiant” behavior may have the effect of discouraging their engagement and activism at school and, later, in society at large.

Stereotypes of the Angry Black Girl & Harsh Punishment for School Fights

The most common offense for which Black girls are suspended in BCPSS is fighting. Some educators believe that Black girls are punished more harshly for fights than other students because it is seen as “unladylike” and because Black girls are stereotyped as particularly “angry,” “aggressive,” and “threatening.” Moreover, some educators expressed concerns that the root causes of fighting by Black girls—in particular, anger and unresolved trauma—go unaddressed and are even exacerbated when Black girls are labeled “angry” and punished with exclusion, rather than receiving support for the problems that are the source of their behavior. As Kirk Crawley, a BCPSS high school teacher described:

“Really a lot of these fights are because the young ladies who are fighting are not heard. Some don’t know how to speak up, but a lot of them just are not heard. They want to establish themselves so they’re not disrespected, and they want to establish some sense of leverage or control. Instead, they are told not to be angry. I think there’s a lot of mistakes that are made when administrators and school officials try to deny a student the right to be mad because they may have a legitimate reason for being mad. My thing was to allow her to channel that anger to a point where she can express herself and not become a distraction. But do not deny her the right to be mad.”¹⁰⁹

Illegal Suspensions

BCPSS has a Code of Conduct that clearly limits suspendable offenses.¹¹⁰ But the students with whom we spoke indicated that BCPSS schools sometimes violate the Code of Conduct and state law restrictions by illegally suspending students for absenteeism and tardiness, which are not suspendable offenses.¹¹¹

The girls with whom we spoke also described illegal suspensions for dress code violations. One student whom we interviewed explained that dress code violations are enforced harshly for girls at her school:

“If you didn’t come in with uniform, you got sent home. Especially the girls, they didn’t want us to wear certain stuff. At my school, even with sports and stuff, girls couldn’t wear certain stuff to practice like leggings, and I don’t see what the issue was.”

As documented in a 2018 report by NWLC, Black girls face unique dress code burdens and are often punished for attire that is considered acceptable when worn by their white peers due to the prevalent perception that Black girls are more promiscuous.¹¹² The tendency of school officials to focus on punishing Black girls for their attire is particularly concerning because dress codes often “communicate to students that girls are to be blamed for ‘distracting’ boys, instead of teaching boys to respect girls, correct their behavior and be more responsible. This dangerous message promotes sexual harassment in schools.”¹¹³



Undocumented Suspensions

Importantly, there is reason to believe that publicly released data does not reflect the full extent of suspensions in BCPSS. Many students gave examples in interviews of illegal suspensions where students were sent home for the day or for multiple days without documentation by the school, which should have triggered formal protections for the students. In other cases, schools created an unofficial “do-not-admit” list for “problem” students. Attorneys from the Maryland Suspension Representation Project (“MSRP”), which provides free legal advice and assistance to families during the suspension process,¹¹⁴ confirmed that some of the students they represent had undocumented suspensions. In some cases, students and families complied with this practice in order to avoid an official suspension that would impact the student’s disciplinary record. Further research is needed to quantify the practice within BCPSS of imposing exclusionary discipline on students without following the required legal procedures. BCPSS’s responsibility under federal law to keep accurate records is compromised when schools fail to document and report suspensions and expulsions.¹¹⁵

Other Process Violations

Students’ rights are also violated during the suspension process when schools fail to provide written notice of a suspension or information about a suspension conference.¹¹⁶ Although students facing exclusionary discipline have the right to an attorney, the vast majority of students facing suspension or expulsion are unaware of this right or do not know how to find counsel. Maryland law requires that students facing suspension be promptly provided a list of community resources to support them throughout the suspension and expulsion process.¹¹⁷ Yet BCPSS does not provide students with any information about legal resources, such as the MSRP.

Denial of Transportation as a Form of Punishment

When students are accused of misbehavior while commuting on the Maryland Transportation Authority (“MDTA”), the MDTA has sometimes suspended the student from using public transportation for 30 days. Many students in upper grades rely on public transportation to travel to school.

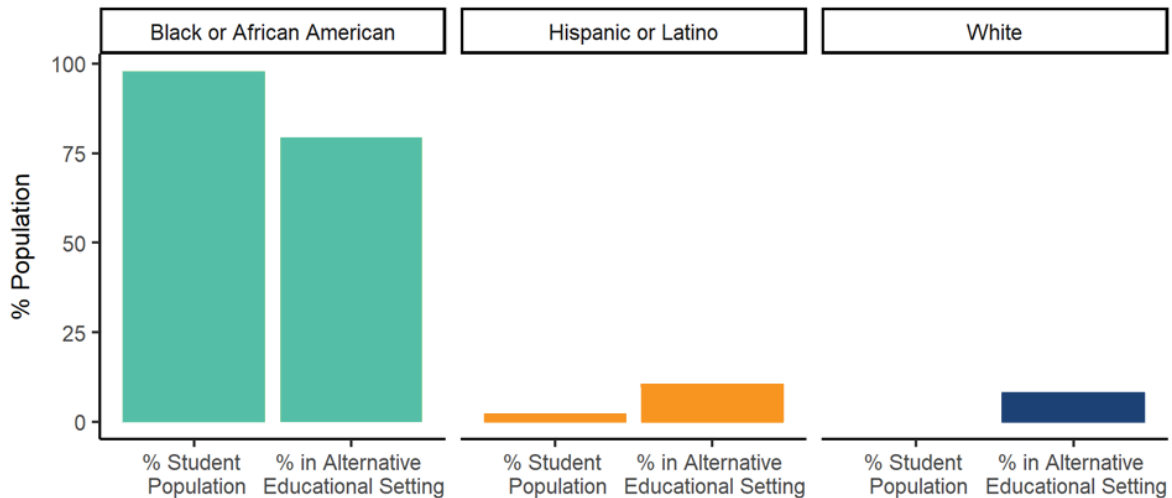
Because BCPSS does not provide an alternative form of transportation, students are in effect excluded from school if they do not have a private option for commuting. According to multiple sources, this consequence is, at times, coupled with the unenrollment of students from school by BCPSS. For example, Renuka Rege, an attorney at the Public Justice Center, described a case in which she represented three siblings who were involved in an incident on MDTA on the way to school that led to their arrest:

“The next day, there was a meeting at [the school district] to talk about this. The students’ mother did not receive notice from BCPSS about the meeting and only heard about it from the school. When their mother attended the meeting, she was told her kids were banned from MDTA for 30 days. Later that day, she learned that her kids had been disenrolled from school. She filed a complaint [with] the BCPSS ombudsman, who eventually reenrolled the kids in school after a week. Had the mom not been such a persistent advocate, the result could have been different. The takeaway is that this seems like an unofficial way to exclude kids for conduct that did not even occur at school.” ¹¹⁸

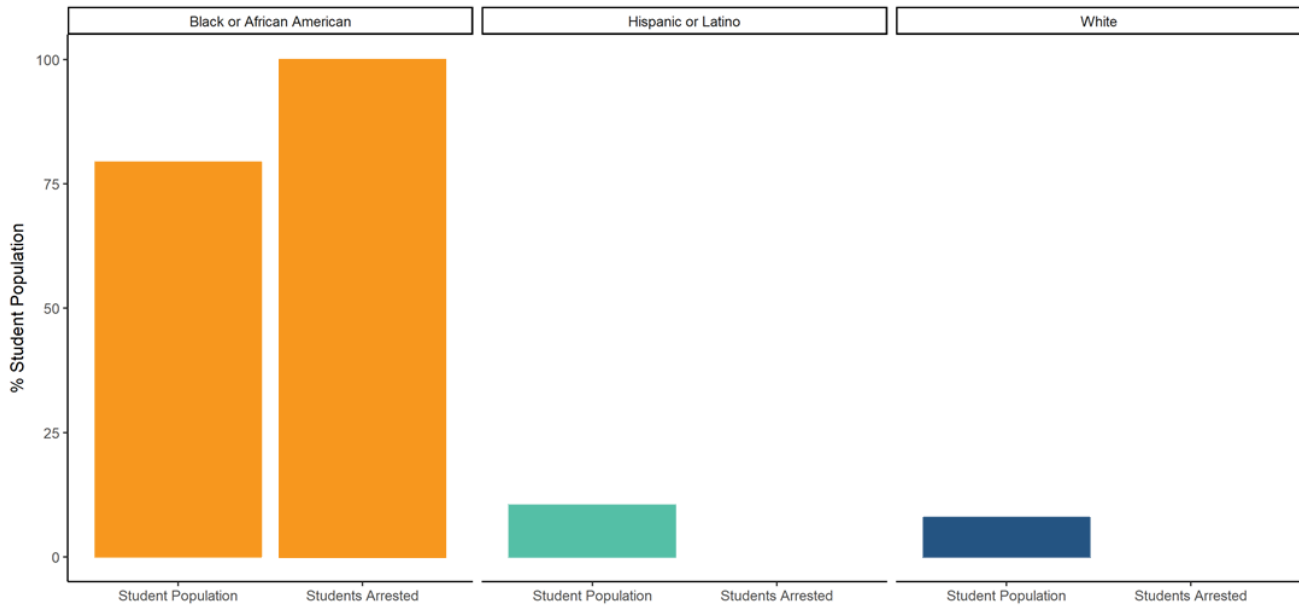
Insufficient Access to Alternative Education

Students who are suspended for more than ten days can be referred to an alternative program by BCPSS.¹¹⁹ As depicted in the table below, white and Latinx students are enrolled in alternative education at higher rates than their enrollment in the district, while Black students—who are already suspended and expelled at higher rates—are enrolled in alternative education at rates below their enrollment in the district. This suggests that once suspended or expelled, Black children are more likely to be pushed out of the school setting entirely. Further research is needed to determine and quantify the outcomes of these students after they are suspended or expelled.

Students Placed in Alternative Educational Settings by Race: 2016-2017



Students Arrested by Race: 2016-2017



Overreliance on School Police

While there is no reliable evidence that School Resource Officers (“SROs”) improve safety,¹²⁰ non-violent conflict resolution and restorative justice practices are evidence-based programs that have demonstrated results in improving relationships, decreasing incidents of violence, and reducing disorderly conduct in schools.¹²¹ Conflict resolution programs teach students how to handle conflict by both addressing the theory behind conflict resolution and by putting into place a process to resolve problems.¹²² Restorative justice considers the needs of victims, offenders, and the community by encouraging offenders to take responsibility for their actions and repair the harm.¹²³ Overall, building relationships between students, parents, and staff is demonstrated to be more effective in making a school safe than increased security measures.¹²⁴

BCPSS spent \$12,848,800 in 2016 and \$7,181,015 in 2017 on its school police.¹²⁵ In comparison, the District only spent \$345,984 and \$217,226 on guidance and school counseling respectively.¹²⁶ In 2015-2016, there were approximately 117 full-time police personnel and 111 counselors. Surrounding districts do not have school police forces, but *all have a greater student-to-counselor ratio*. Indeed, Anne Arundel, which has a student enrollment that is similar to BCPSS, has nearly twice as many counselors.¹²⁷

School-Based Arrests

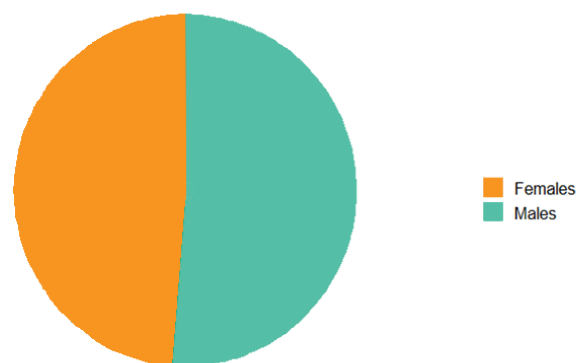
Created by statute in 1991, BSPF is comprised of officers who are employees of the Board and have “all of the powers of a law enforcement officer in the state,” including

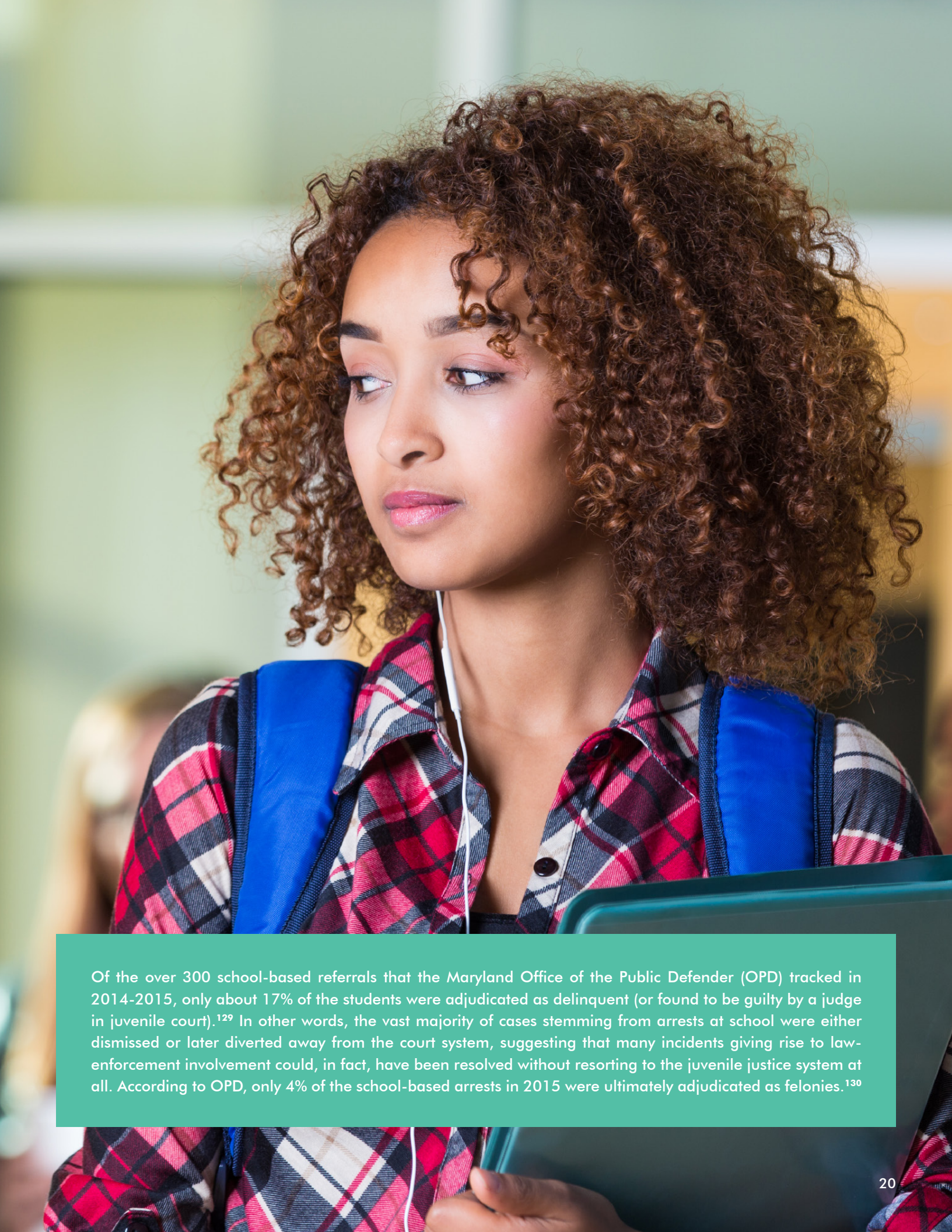
arrest powers.¹²⁸ Although the overall numbers of school-based arrests have decreased since 2014, the racial disparities have not. As of March 2017, 100% of students arrested during the 2016-2017 school year were Black, even though Black children comprised 81% of the student population; 17 of the 85 school-based arrests, or 20%, were of Black girls. Conversely, white and Latinx students represent 8% and 11% of the student population, respectively, but were involved in 0% of arrests.

School-Based Referrals

According to data from DJS, there were 156 school-based referrals to DJS that came out of Baltimore City. Black students represented 149 of these complaints. Girls and boys were represented nearly equally—80 of the school-based DJS complaints involved boys, 76 involved girls.

BCPSS School-based Referrals to DJS





Of the over 300 school-based referrals that the Maryland Office of the Public Defender (OPD) tracked in 2014-2015, only about 17% of the students were adjudicated as delinquent (or found to be guilty by a judge in juvenile court).¹²⁹ In other words, the vast majority of cases stemming from arrests at school were either dismissed or later diverted away from the court system, suggesting that many incidents giving rise to law-enforcement involvement could, in fact, have been resolved without resorting to the juvenile justice system at all. According to OPD, only 4% of the school-based arrests in 2015 were ultimately adjudicated as felonies.¹³⁰



Misconduct and Use of Force by BSPF

In March 2016, Youth as Resources, a Baltimore youth-led organization, administered a survey to students in 36 city schools that have stationed SROs about their interactions with the officers. Of the more than 5,400 fifth through twelfth grade students who participated in the survey, 48% of the students surveyed said the police used “excessive force” when dealing with conflicts.¹³¹

The students interviewed for this report described SROs using force without concern for the student’s gender. One girl reported that: “[T]hey do the same thing to girls, even when we’re not bigger than them, they do it ‘cause they can.” She described how a police officer at her school assaulted a female student while she was handcuffed:

“We don’t know what [the student] did, so I can’t say what she did, but I do know they was outside and she was already in handcuffs and [the officer] slammed her on the ground. She was really bony, like she was really small. She wasn’t a big girl, especially not bigger than him. And he slammed her in the ground. Her face was like in the mud, and he just, he bent her legs and had the chain of the handcuffs, he was like holding it, and he bent her legs, and he had his knee

on her so she couldn’t move or anything. We was outside watching her, and a couple of kids recorded it and posted it. The principal was right there.

“They didn’t let us know anything. They know some of us saw, but then they was just like, ‘Go in your classrooms, go in your classrooms.’ When they brought her into the building, you could just hear her screaming ‘cause I was in one room and she was in the next room. And she was just screaming, and like chairs was just moving so we thought she was thrown across the classroom and everything. And then some of us even tried to go in and check on her, but they wouldn’t let us even in the room. Nobody knows why.”¹³²

Some of the girls described feeling unsafe around SROs and security officers at school because of instances of excessive force. As one student stated:

“They need to train the cops that will be in school better and let them know that we’re not grown adults, you’re dealing with a bunch of children, so you can’t handle us with force and all that.”

In Baltimore, complaints that allege misconduct or use of force by SROs may be investigated through three processes: administrative complaints, internal affairs complaints, or excessive force complaints. SRO misconduct is also reviewed through the legal system, either through criminal prosecution or civil cases. In 2017, there were twelve administrative complaints against SROs: ten were sustained, one was non-sustained, and one remains pending.¹³³ There were twelve internal affairs complaints against SROs: 5 sustained; four non-sustained; one administratively closed; and two remain pending/open.¹³⁴ Of the eleven complaints of excessive force, seven were determined to be justified, and four were found to be justified with training.¹³⁵ From 2015-2017, there were three officers criminally charged with unlawful conduct during interactions with student. One pled not guilty and resigned. The remaining two officers were found not guilty and remain employed.

In Search of Supportive Adults at School

A study conducted by the University of Maryland Baltimore County's Student Voice Project found that some BCPSS female students have positive perceptions of school police when officers take an active role in talking with students, being personally engaged with them, and getting to know them outside of incidents.¹³⁶

One student in that study described an interaction when the school resource officer listened to her and encouraged her to be open, despite her initial fear of interacting with the officer:

"Officer Anna, she was like, 'Why are you crying?' I'm scared of her, first of all, so when she approached me, I was, like, shaken up. Like she would tell me, 'Just stop crying and go to class!' Nah, she sat down and she talked to me and listened to me rant. She's like, 'I don't care what you say. It's going to stay in this room. You can cuss, I don't care. Just say how you feel.' And I told her everything. She was just, like there for me to just rant. And I needed that."

Another student explained:

"I believe Officer 'Sam' is my favorite one because whenever I see him, I'm like, 'Sam!' He be like, 'You can come to the office, get your juice now.' Walk to his office, get me a juice, some candy. He walk me to class and give me a pass. He be like, 'Miss, you get this grade up, though.' I be like, 'All right.'...They're just, like, kind of second parents in a sense, because they will watch over you."

Some girls interviewed for this report also appreciated when police officers took the time to listen and build relationships with them. While it is far preferable for SROs to have these types of positive interactions with students, similar roles could be fulfilled by other supportive adults, such as counselors, coaches, or mentors, whose responsibilities include getting to know students prior to incidents occurring and helping them talk through their problems. Indeed, unlike confiding in counselors and other non-law enforcement personnel, there is a significant risk that statements made by students to SROs may be used against them or another student in some law enforcement capacity.

Some students and teachers believe that having police in the schools serve as temporary help, but does not address the underlying causes of problems in the school, such as lack of resources and support. School police officers can be a "Band-Aid" to address serious problems in the school.

As one teacher described:

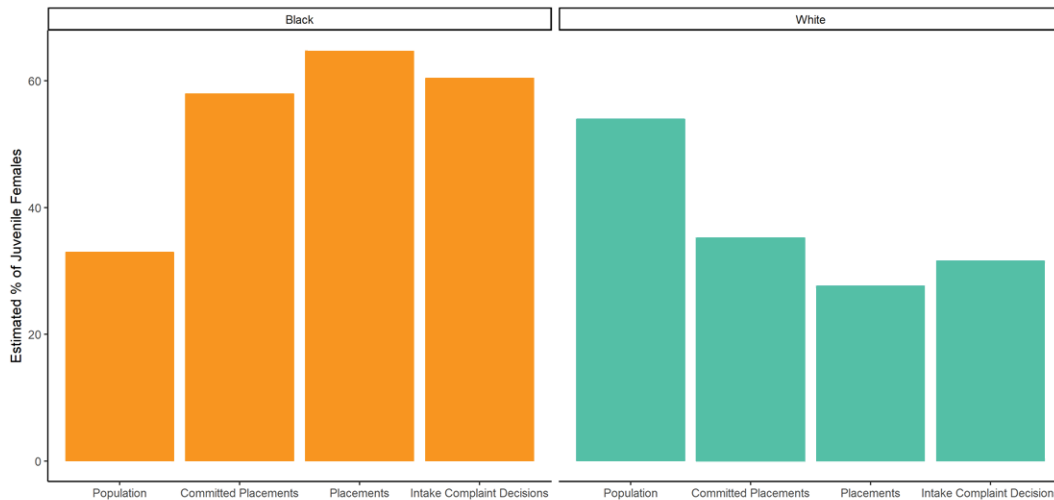
"They're not coming to resolve the problem; they're coming to control the problem. That's a major difference. Police officers want to control the problem, make it stop, and not get to the root of the problem so we can deal with whatever is causing it. So, I believe that if the situation calls for it, then they may be a restraining influence initially, but in the resolution of the problem, that restraining nature is not going to work. You're going to have to allow the student some sense of freedom of expression, and you don't get that by being ordered, 'Sit there,' 'Be quiet,' you know, but communicating in different ways."¹³⁷

Overreliance on Confinement

Black Girls Are Overrepresented in the Juvenile Justice System in Baltimore

Girls make up 17% of DJS-involved youth. Approximately 33% of female youth in Maryland are Black, but they represent nearly 60% of the female intakes, and nearly 65% of the female placements, in the juvenile justice system. Conversely, white girls represent approximately 54% of the female youth population but are involved in DJS at significantly lower rates. Black girls in Maryland are nearly five times more likely to be referred to the juvenile justice system than white girls.¹³⁸

Females Involved in MD Department of Juvenile Services 2017



Moreover, Black girls in Baltimore are also detained, on average, for longer periods of time. The chart below compares the average length of stay for Black girls and white girls.¹³⁹ Black girls are detained for longer average lengths of time than white girls at all stages of detention and commitment.

Average Length of Detention & Commitment for Baltimore Youth in Days

Placement Type	Black Female	White Female
Commitment	154.0	111.9
Pre-Disposition Detention	20.8	11.6
Post-Disposition Detention	57.4	20.4
Adult Detention	5.1	N/A



Jabriera Handy

At the age of 16, Jabriera got into an argument with her grandmother. While her grandmother was hitting her, Jabriera held her grandmother's arms back and shoved her away, before leaving the home. Following the incident, her grandmother died of a heart attack. Jabriera was charged as an adult for second-degree murder, second-degree assault, and first-degree assault. When she went to court for a hearing, she pleaded guilty to the charges in order to avoid harsher punishment. She spent eleven months in the Baltimore City Detention Center, an adult facility. Recounting why she was charged as an adult, Jabriera explains:

"You would think that the judge would consider me a child because of how I looked. The jumpsuit was so big on me—I couldn't have been more than 97 pounds at that time and I had a young face. I was 5'7 at the most. But the judge saw in [my] school record that I had been suspended a few times. In particular, he saw that I threw a book at the history teacher. What he did not see was that this was after the teacher called me a nigger and locked me out of the classroom, so I reacted and threw a book that broke the glass of the door. The judge did not see that, in fact, the teacher had written a letter in my defense.

"Words can't explain what I went through in the adult system. I was forced to shower with a woman twice my age and shamelessly exposed to a squat and cough in front of everyone. I was neglected and did not receive the psychological and healthcare help I needed throughout my stay."

Describing the other women at the facility, she notes:

"There was only one Caucasian girl. She didn't even stay an hour. She came, and she went. It was like she was a ghost. She had an armed robbery, a charge like the rest of us."

Jabriera was placed on lockdown three times. The last lockdown was supposed to last two weeks but ended up being 36 days. She explains:

"We were not allowed to use sanitary napkins and tampons. The discipline did not make sense, but we had a male captain."

Although she took accredited courses while she was incarcerated, her principal refused to sign her diploma when she was released. Nonetheless, Jabriera has a passion for helping others that has not been broken despite all of the barriers imposed upon her so early in life. Shortly after her release from detention, she began working with Just Kids Partnership to End the Automatic Prosecution of Youth as Adults as an Assistant Youth Organizer. The organization helped her get her record expunged. She later participated in Year Up. Today she is a mentor to youth and an advocate for change. When asked how to end the school-to-prison pipeline as it affects girls, she said:

"There's a lot of strengthening that needs to happen for young women. Sometimes we need gendered programming. No one is helping girls speak at all, helping them become women."¹⁴⁰

Punished for Behavior that is Associated with Trauma

Black girls are unique when one considers the offenses for which they receive punishment.¹⁴¹ The majority of Black girls in detention or committed placements in Baltimore are held for misdemeanors and property offenses: of the 497 total offenses reported at intake for Black females in Baltimore, over half (268) were misdemeanors and over a quarter (127) were property offenses.

In 2017, 78% of the complaints against girls were misdemeanors compared to 64% of boys.¹⁴² Young women in Maryland are also generally more likely to appear before a judge for probation offenses, such as running away, breaking curfew, and defiance.¹⁴³ Roughly two-thirds of girls (66%) in a DJS-committed, out-of-home program ran away at least once. These offenses represent behavior that is often a response to abuse, trauma, and family conflict that detention does not address.¹⁴⁴ As Juvenile Justice Monitor Eliza Steele notes, many girls face social-emotional and mental health challenges that the detention centers are not equipped to properly address.¹⁴⁵

DJS-involved girls in out-of-home placement have higher rates of ACEs and trauma than boys. Nearly half (47.8%) of the girls in a committed, out-of-home placement in 2017 had been either physically or sexually abused, compared to 18% of boys.¹⁴⁶ Girls were most likely to be assessed as “moderate” or “high need” in terms of mental health assessments (81% of girls compared to 61% of boys were moderate or high need) and assessments of family stability and conflict (90% of girls compared to 79% boys were moderate or high need).¹⁴⁷

Because there are fewer facilities for girls, they are more likely to be placed in settings that are more secure than warranted and inappropriate for their needs, simply due to the lack of available facilities that serve girls.¹⁴⁸ For example, although the J. DeWeese Carter Youth Facility Center “(Carter”) is a maximum-security facility, girls in Maryland are routinely referred there for misdemeanors and probation violations, including disturbing school.¹⁴⁹ Research also shows that judges are generally more likely to detain girls for longer periods of time out of a paternalistic concern that young women are uniquely at risk of danger and require supervision.¹⁵⁰ At Maryland’s most secure facilities, girls are committed, on average, 25% longer than boys and for less serious offenses.¹⁵¹ One mother explained that, when she sought help for her daughter, her daughter was committed to the secure facility for girls due to probation violations:

“She was detained because she wasn’t following the rules and stipulations that they gave her on probation. She was breaking curfew and still skipping school and stuff so um, I had called her PO, you know. Tried to get some help, you know. What can I do? When they came out, actually the day they pulled up, she wasn’t in the house, so they violated her. When she came back home, they detained her.”¹⁵²

A young Black woman with her hair in a bun, looking down at a book. She is wearing a grey sweater and a grey scarf. The background is blurred, showing what appears to be a library or study area with bookshelves.

History on How Maryland Has Detained “Troubled” Black Girls

Prior to the Civil War, Black behavior was often assessed through “plantation justice” rather than the criminal justice system, leaving Black people without legal rights and at the mercy of slave owners. After the war, alternative mechanisms of social control of Black individuals were introduced, including all-Black penitentiary systems, the convict lease system, and later the establishment of special juvenile justice institutions for Black youth. For Black women, the criminal justice system replaced slavery as the institution that regulated behavior and punished nonconformity—particularly when it came to gender and sexuality.¹⁵³ In 1882, the Maryland legislature established the Industrial Home for Colored Girls, the first juvenile home for Black females in the United States. In 1930, Judge Thomas J. S. Waxter described this facility as “inadequate for recreation, schooling and vocational training.”¹⁵⁴ Judge Waxter also identified the population in the Industrial Home for Girls as struggling with “social disease,” and claimed that nearly all of the girls were homosexual.¹⁵⁵ Judge Waxter’s advocacy led to the creation of a new residential facility for young Black women, and Baltimore’s secure facility for girls is named for him today. But many of the problems that Judge Waxter observed in his advocacy continue. In addition to the lack of education and opportunities for rehabilitation that Judge Waxter emphasized, two of his observations about the population of girls detained are borne out in statistics today: the juvenile system remains the primary means of dealing with poor, Black girls who face severe social-emotional challenges and who identify as LGBTQ.



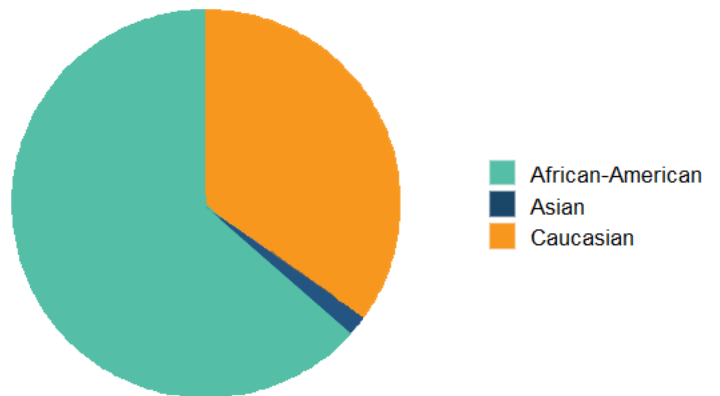
Confined for “Their Own Protection”

Girls who have been victims of sex trafficking are too often detained at secure facilities rather than provided therapeutic services,¹⁵⁶ effectively punishing them for the domestic and sexual abuse they have suffered. Jenny Egan and Catherine French, public defenders in Baltimore, reported that judges hold their female clients for longer periods of time than their male peers because of a fear that they will be vulnerable to sex trafficking.

According to the attorneys, this is particularly a problem for girls of color, who are stereotyped as being sexually promiscuous. In one case, an attorney described how an SRO asserted that her client was trafficked, but provided no information to substantiate his assertion.¹⁵⁷ Her client was confused during the court proceeding as to why adults were referring to her as a prostitute.

Sex trafficking is an issue that disproportionately affects Black girls. Of the youth identified in Maryland between July 2013 and October 2017 as suspected victims of trafficking, approximately 92.3% were female, 4.2% were male, and 3.5% were transgender female.¹⁵⁸ In the cases for which race data was available and as shown in the pie chart below, approximately 64% were Black, 35% were Caucasian, and <1% were Asian.

Reported Maryland Victims of Trafficking



Cheri's Story

When Cheri was twelve years old, a man pulled her into an alley on the way to school and raped her. She continued to pass him on the way to school every day and heard that he had attacked other girls. She began carrying a knife for protection.

One day, Cheri got into a fight with two girls at school. During the fight, her bag was kicked over and a knife fell out. While disciplining the girls, an administrator asked her why she had the knife. Cheri then told the administrator the story of her rape. Despite this, the school suspended Cheri for possessing the weapon at school under BCPSS's zero-tolerance policy. She was arrested at school, but not provided any support to address the trauma she had experienced. Cheri was charged and pled guilty to possession of a weapon at school.

About a year later, Cheri moved in with her sister. She was asked to contribute to rent and began working. She sometimes did not go to school because she was working. She learned about a job at a cell phone store and went for an interview. But the manager had other intentions. She was asked to work parties upstairs above the cell phone store and became the victim of sex trafficking.

She later realized that the young women who suggested that she work at the cell phone store knew she was going to be trafficked. She went to confront the girl, and the two girls got into an altercation. She was arrested for assaulting the girl. In court, the judge felt that it was too dangerous to release her because she might run away and engage in sex work, so she was detained in a juvenile diagnostic facility.¹⁵⁹

Overrepresentation of LGBTQ Youth

At least 40% of the girls in the juvenile justice system identify as LGBTQ—nearly three times what is reported for boys.¹⁶⁰ One mother explained that when her daughter struggled with sexual identity, she began to act out in school, and was quickly labeled. She was later detained for status offenses that included chronic truancy:

"She's gay. I think her struggling with that had a part, not knowing how to come out...I think [the school] could've handled it better. First, when they seen her falling off task, I had asked them, 'Can she see a counselor and find out what the problem was?' trying to seek and get her some type of help. I feel like that's a lot of the problem with our children, African American kids, that have problems. We don't know what's going on inside unless somebody talk to them and find out what the problem is, and they don't do that enough. I think she was labeled, so once she was labeled if you keep telling a child they're bad, they gonna be what? Bad."¹⁶¹

Unfit for Rehabilitation

With these statistics in mind, the goal of DJS should be clear: to provide services and rehabilitate youth. In reality, however, the problematic conditions of Maryland's detention and committed placement centers often result in the punishment of trauma. For example, during an incident at Alfred D. Noyes Children's Center, a girl who may have been a victim of sex trafficking was held down and restrained by three men for refusing to allow the male staff to cut off her ankle monitor.¹⁶²

Girls incarcerated in Maryland's DJS system suffer from policies and procedures that undermine their rehabilitation. By mandating punitive responses to symptoms of trauma (such as irritability, withdrawal, uncooperativeness), DJS detention facilities may worsen the core problems that lead many girls to enter the system in the first place.¹⁶³ These policies point to the increasingly obvious conclusion that juvenile detention and committed placement centers are not effective administrators of mental health and trauma treatment. As a result, many girls are put in a system that ignores and, in some cases, exacerbates their suffering. One girl expressed her opinion on the effects of this system:

"[I have] nothing to look forward to besides sitting in here every day and going outside for an hour." The same youth stated that she is "in here because [her] mom doesn't want [her] home," and that she and other girls at Carter "feel like we are getting too punished."¹⁶⁴



RECOMMENDATIONS

IMPROVE THE SCHOOL ENVIRONMENT, CURRICULUM, AND RESOURCES

Improve access to racially and economically diverse schools.

BCPSS should develop policies that consider race among other factors in creating diverse schools by developing its middle and high school choice programs to offer more racially integrated schools. MSDE should also develop regional policies that focus on reducing racial isolation through programs that allow students to attend schools outside their assigned district.

Provide the basic conditions for learning

BCPSS must provide the basic conditions for learning, including heat and access to safe bathrooms throughout the day, so that girls can focus on learning rather than meeting other basic needs. In addition, by adopting practices that focus on building a positive climate school-wide, BCPSS schools can proactively limit distractions, prevent misbehavior, and increase student engagement.¹⁶⁵ For example, positive behavior supports have proven statistically effective at improving school climate and deterring future misbehavior.¹⁶⁶

Increase access to critical-thinking and self-inquiry curricula.

BCPSS should increase access to gifted and advanced learning opportunities for Black girls. Moreover, BCPSS should implement critical-thinking and self-inquiry curricula that include the voices of queer individuals and women of color to counteract damaging narratives about Black women and girls. Educators should provide more opportunities for girls to have voice in the classroom and in decision-making at the school and district-level in order to encourage young women to become leaders and advocates for change.

Improve access to social-emotional and mental health support by increasing funding for counselors, therapists, and social workers in schools.

In addition to increasing social-emotional and mental health resources generally, BCPSS should ensure comprehensive in-school support for students who are victims and survivors of sexual violence.¹⁶⁷ BCPSS should also provide diversity and inclusion programming and counseling to support LGBTQ students. Finally, BCPSS should incorporate mentoring and college/career counseling programs that help girls identify long-term goals and plan the steps necessary to reach those goals.

REDUCE RELIANCE ON EXCLUSIONARY DISCIPLINE AND DISPARITIES IN PUNISHMENT.

Systematically incorporate evidence-based, trauma-informed education and restorative practices school-wide at every school in the district.¹⁶⁸

BCPSS is currently implementing a \$2.4 million “Promoting Student Resiliency” grant from the MSDE to focus on addressing trauma at thirteen selected schools over three years.¹⁶⁹ The selected schools will implement cognitive behavioral therapy, mindfulness, restorative practices, and expanded mental health. This is a promising approach. We recommend that this programming be expanded to all schools in BCPSS. This training should include support staff and paraprofessionals.

BCPSS has also partnered with the Open Society Institute to train staff members at fifteen schools on how to implement restorative practices over the next five years. We recommend expanding training throughout the district. Restorative practices should be more deeply integrated into the BCPSS Code of Conduct and individual school discipline policies to provide clear guidance to educators on when restorative practices should be used instead of other consequences. We also recommend that schools already implementing restorative practices provide ongoing coaching and support to reinforce the practices school-wide into all school activities.¹⁷⁰

Train school staff about intersectional implicit bias to reduce disparate punishment of Black girls for subjective offenses.

Training should include education about intersectional stereotypes, implicit bias, and demonstrated interventions to limit the impact of implicit bias in school discipline. In a recent report, LDF outlined evidence-based interventions, including “empathic discipline” that attempts to understand perceived misbehavior from the student’s perspective.¹⁷¹

Audit schools to ensure that undocumented, illegal suspensions are not occurring.

BCPSS must audit schools to ensure compliance with the Code of Conduct and state law. This could be as simple as conducting unannounced observations of in-school-suspension rooms, the school office, and other areas where discipline is administered, and conducting an annual survey to students and families when the Code of Conduct is distributed.

Provide alternative transportation for those students who are denied access to MDTA.

BCPSS must ensure that students are not unofficially excluded from school through MDTA restrictions and provide alternative transportation for those students who are denied access to MDTA as a disciplinary consequence but depend on public transportation to attend school. In addition, there must be a deeper investigation into how students are disciplined following MDTA incidents.

Inform students and families about school discipline rights so that they can better identify when their rights have been violated.

BCPSS should publicly release discipline data in a format that is disaggregated by race, gender, and special education status. Information on the MSRP and other legal resources should be provided when students are given suspension letters and when families are given the Code of Conduct at the beginning of the school year. Suspension conferences should also be formalized to include a full investigation and a BCPSS attorney familiar with the circumstances leading up to the suspension so that BCPSS's reasons for imposing a suspension are clearly documented and articulated to students and families.

Utilize appropriate referral to school-based services, such as special education, including for students whose behavior manifests untreated complex trauma.

Educators should use school-based referral services, including special education, to provide support for students whose behavior is a manifestation of a disability—including a disability that results from experiencing complex trauma.¹⁷² Too often, bias prevents school staff and SROs from recognizing the behavior of Black girls as manifesting special needs, as opposed to simply an attitude. Under the IDEA,¹⁷³ there are disciplinary provisions that protect both children with disabilities and children who may be eligible for special education and related services.¹⁷⁴ Schools also have a duty to accommodate students with known disabilities when enforcing discipline under Section 504 of the Rehabilitation Act of 1973.¹⁷⁵

REDUCE RELIANCE ON SCHOOL POLICE

Reexamine the use of BSPF personnel

During the 2016-2017 school year, there were more SROs than school-based arrests.¹⁷⁶ Most schools in BCPSS had no DJS referrals and no arrests during the 2016-2017 school year. This begs the question of whether SROs are engaged in activities that do not actually require police.

Arrests were concentrated in a minority of schools: all 85 arrests came from just 30 schools (or 17% of schools). In addition, 56 DJS referrals came out of 36 schools (or 20% of schools). These numbers could lead to a mistaken conclusion that these schools require police more than other schools. However, data shows that BCPSS school arrests are not always associated with DJS referrals. For example, one school had thirteen school-based arrests but only one referral. The following table breaks down BCPSS by the number of referrals and the number of arrests in 2016-2017.



Baltimore City Public Schools by DJS Referral and Arrests						
	0 Referrals	1 Referral	2 Referrals	3 Referrals	4 Referrals	6 Referrals
0 Arrests	121	18	4	0	1	0
1 Arrest	8	1	1	1	0	0
2 Arrests	2	2	1	0	0	0
3 Arrests	2	1	1	0	0	0
4 Arrests	1	0	1	0	0	0
6 Arrests	2	0	0	0	0	0
7 Arrests	0	0	0	1	0	1
13 Arrests	0	1	0	0	0	0

This data indicates a need to explore whether students arrested at school are being unnecessarily subjected to law enforcement involvement. As previously discussed, arrests in Baltimore schools usually do not lead to substantiated complaints. Therefore, in most cases where youth become involved with law enforcement at school, the facts are not sustained in court, and the complaints against them are dismissed or diverted. This pattern suggests that many incidents could have been addressed without ever involving the juvenile justice system. Thus, the deployment plan of SROs should be reexamined with these concerns in mind, and with community feedback and input.

Also, BCPSS must invest more in trauma-informed practices for addressing the root causes of student misbehavior and the incorporation of restorative practices to respond to non-violent misdemeanors and property crimes and to substantially reduce BCPSS’s reliance on police.

Improve and make more transparent the process used by school officials to refer students to school-based and community diversion programs in lieu of arrests and expand diversion programs that are focused specifically on girls.

Under a new Board policy, SROs will investigate allegations of criminal wrongdoing in schools, but all minor offenses will be forwarded to the school administration or to diversion programs. Charges for those youth who successfully complete the diversion program will not be prosecuted. A school diversion assessor will conduct the initial screening of youth by reviewing their arrest record and the general eligibility requirements for the various diversion programs. Further clarity is needed around the role of the assessor, the criteria for eligibility for diversion, and the limitations on the assessor’s discretion. The assessor should be someone independent of the criminal investigation and not an SRO. The diversion programming specifically designed for girls should be expanded and should include programming that addresses the needs of LGBTQ students.¹⁷⁷

Limit BSPF authority to arrest students to incidents for which diversions are not permissible.

BCPSS is currently revising its policies on school police. While BCPSS should be commended for its recently adopted policy, which limits the role of police officers in schools and identifies the types of student behavior that SROs are permitted to address, more work must be done to ensure that SROs only become involved with students as a last resort when absolutely necessary. BSPF's authority to arrest students should be limited to those incidents for which diversions are impermissible. As previously discussed, BSPF should undertake a careful assessment of the use and ramifications of arrests, given that arrests are often not associated with DJS referrals. As currently designed, BSPF policy permits arrests for offenses that are later diverted, including nonviolent misdemeanors. However, arrests are themselves a form of criminal sanction and have traumatic impact on youth, regardless of later attempts to divert students. It makes little sense to arrest students for offenses that are later removed from the criminal justice system, especially because BCPSS recognizes these offenses as behavior for which criminal sanctions are not necessary. Strictly limiting BSPF authority to arrest is essential to ending this racially discriminatory form of punishment.

Clearly warn students about the risks of sharing information with police officers.

Relationship-building is essential to reducing the risks of implicit bias in policing as SROs get to know students and rely less on stereotypes. However, relationships must be built in a manner that clearly communicates to students that information shared with police is not confidential. For example, when an SRO encourages a young woman to speak openly and promises confidentiality, without warning her of the legal risks and the limitations that come with speaking to an officer, the student may provide information that is later used against her or in police investigations against other students, while relying on a potentially false trust that she is sharing a story in confidence. BCPSS should adopt a policy that warns girls about the risks of sharing information with officers and the duties of officers to report and to share information as part of investigations, even in informal conversations.

Require youth-specific *Miranda* warnings whenever youth are questioned in the presence of police.

BCPSS must adopt a policy that provides for students to be given youth-specific¹⁷⁸ *Miranda* warnings whenever questioned in police presence in the school setting, even when administrators are doing the questioning. Specifically, there should be a policy that provides that an SRO may question or participate in the questioning of a student about conduct that could expose the child to court-involvement or arrest only after informing the child of his or her *Miranda* rights and only in the presence of the child's parent or guardian. BCPSS should also adopt a policy that youth cannot waive their rights to counsel during police interrogation without being given an opportunity to consult with an independently interested adult who is informed of the rights guaranteed to the child.¹⁷⁹ BSPF should offer a female officer to students who identify as female to conduct questioning about sensitive topics, and all officers should receive training on how to conduct investigations and interviews related to sexual harassment, sexual assault, and sex trafficking, by applying trauma-informed practices and in partnerships with counselors and crisis intervention specialists when necessary.

Train staff on the appropriate use of SROs and provide sufficient support for staff so that they do not resort to relying on police officers for work that should be handled by educators and support staff.

Educators interviewed for this report believe that adults in schools sometimes rely on SROs because they do not have sufficient capacity as a staff, both in terms of the number of staff members and in terms of training, to meet the needs of students. By implementing positive behavior supports and trauma-informed practices, educators and staff can limit their reliance on SROs to incidents that require law enforcement.

Stop using the school police as an auxiliary force to aid BPD.

Under the terms of the Consent Decree, BPD must also conduct an initial assessment to evaluate how BSPF uses BPD's authorization to exercise law enforcement powers. The DOJ Investigation expressed concern that the City used the BSPF as an auxiliary force to BPD. While the current Memorandum of Understanding ("MOU") between

BPD and BSPF more clearly delineates which agency oversees an investigation when officers from both agencies respond, the MOU maintains concurrent jurisdiction between the two agencies.¹⁸⁰

There are many reasons to be concerned about BSPF working concurrently as part of BPD. By relying on BSPF officers when BPD is short-staffed, BPD is, in effect, relying on school district money to fund BPD. Another problem is the inconsistent expectations of BSPF officers as they switch between being a police officer patrolling the street and an SRO building relationships with youth in schools. These inconsistent duties are likely to undermine the SRO's training and instruction on how to properly conduct themselves with children in schools. In addition, when incidents of excessive force or police misconduct occur, it is unclear which agency's policy would control and which agency would conduct the investigation for purposes of accountability. Data collection is also difficult when both agencies have jurisdiction over a stop, frisk, or arrest. The deployment plan of SROs should ensure that they are not used as an auxiliary force to BPD. Moreover, while some officers should be assigned to more than one school, no officer should patrol in the community without a specific school assignment, and police should not have concurrent jurisdiction with BPD outside of schools.

Adopt constitutional and gender-informed search and seizure policies.¹⁸¹

BCPSS should adopt a search and seizure policy that provides protection for consent searches that occur at a student's home as the result of an incident that occurred at school. Moreover, specific training is needed around gender-informed search and seizure practices. Students who identify as female should be offered a female officer for frisks when these actions are absolutely required. This option is particularly necessary as part of a trauma-informed approach to school policing because of the high rates of sexual harassment, sexual assault, and sexual exploitation that girls experience and the reality that being forcibly touched by an older male can be re-traumatizing for young women.

Except for the purpose of temporarily restraining students in situations of serious and imminent physical danger, SROs should not use force.

Absent a serious and imminent threat to the physical safety of a student, member of school staff, SRO, or other person, an SRO should be prohibited from using physical force or restraints, including handcuffs, tasers, mace, or other physical or chemical restraints. BSPF should require de-escalation and integrate de-escalation principles throughout all BSPF policies.

Adopt a transparent complaint process that holds police accountable to communities for police misconduct and excessive use of force.

BSPF should collect and report data on school-based arrests; police use of force; deployment of officers; and student/parent complaints, that is disaggregated by race, gender, and disability status. All complaints should be handled through BSPF and documented, and the resolution of administrative investigations, internal affairs investigations, criminal cases, and civil cases should be made available to students, families, and school staff. Finally, BSPF should expand the School Police Student Committee and the Community Advisory Board in order to provide opportunities for public input and for holding school police accountable to the public,¹⁸² as recommended by Akil Hamm, the current Chief of BSPF.

Provide annual mandatory police training in race and gender bias, adolescent development, disability awareness, and trauma-informed practices.¹⁸³

Since Chief Hamm's tenure, BSPF has held trainings on race and gender bias, adolescent development, disability awareness, and trauma-informed practices. BSPF should be commended for implementing these trainings, which should be reinforced through additional trainings and simulations on at least an annual basis.



REDUCE RELIANCE ON CONFINEMENT

Expand community-based programming.

Maryland DJS should reinvest resources in community-based programming instead of more expensive detention facilities. Currently, there are two DJS-run programs that specifically target girls: the Female Intervention Team and the Links program. Similar programs for girls outside of DJS facilities that can serve as diversion programming should be expanded.¹⁸⁴ In addition, programs that focus on providing support for LGBTQ youth should be developed.

Finally, there is a real need for community-based programming that targets youth who have experienced sexual abuse, sexual assault, and sexual exploitation. National research has found, and this study of Baltimore confirms, that for at least a century, girls have been disproportionately punished after experiencing sexual assault and sexual exploitation through pathways that have been described as the sexual abuse-to-prison pipeline.¹⁸⁵ Instead of placement in DJS facilities, when there is evidence that girls have been the victims of sexual assault or sex trafficking, they should be referred to community-based programs and services.

As juvenile public defender Neeta Pal described:

“Schools, courts, detention facilities, probation and other monitoring programs should not exist in a vacuum separate from the #MeToo movement. Too often, when these institutions acknowledge—if at all—young Black girls’ experiences with sexual assault and abuse, they do so on the back end, after they have been suspended, arrested or detained, after a court makes some finding of guilt and deems them eligible for ‘services.’ What this moment is teaching us is that we have to recognize young women’s experiences up front and decide that institutional settings are the antithesis of what they need to heal and overcome trauma.”¹⁸⁶



Implement non-punitive, gender, and trauma-informed supports in DJS facilities.¹⁸⁷

Staff at detention and committed placement centers should receive specialized training on race and gender bias and children’s mental health. DJS should also adopt a trauma-informed model in detention and committed placement centers and train all staff accordingly. More generally, MSDE should provide quality educational programming in DJS facilities that will further rehabilitation. This includes investing in and recruiting quality teachers who are paid competitive salaries and provided adequate support, including mentors, to improve retention.¹⁸⁸

Stop charging youth under eighteen as adults.¹⁸⁹

Under Maryland law, there are more than 30 crimes for which youth as young as fourteen or sixteen years old can be charged as an adult. Currently, defense attorneys must request hearings if a youth is charged as an adult, asking the judge to transfer the youth to juvenile court.¹⁹⁰ As previously discussed, research shows that Black girls are more likely to be viewed as older, less in need of support, more threatening, and less redeemable.¹⁹¹ The result is that Black girls, like Jabriera Handy, are less likely to be transferred to juvenile court than similarly situated peers.¹⁹² One study found that 68% of girls in adult court were Black.¹⁹³ The state legislature must act to remove prosecutorial authority to charge youth under eighteen as adults. Moreover, even without a change in the law, prosecutors should stop exercising discretion to charge youth under eighteen as adults.

Provide gender and race bias training to judges who hear child welfare and delinquency cases.

The attorneys interviewed for this report described how judges in their cases are more likely to detain Black girls for longer periods of time. Thus, judges should be provided with implicit bias training to understand how intersectional stereotypes may affect their decision-making and how to counteract this bias, as well as training on how trauma impacts boys and girls.¹⁹⁴ In addition, more in-home service options should be developed so that judges are not faced with a choice of detaining girls or releasing them to potentially dangerous situations.



CONCLUSION

As this report has shown, Baltimore has an opportunity for change. However, the needs of Black girls have been largely overlooked in current reform efforts. These recommendations provide an outline for how Baltimore can reduce reliance on exclusionary discipline, policing, and confinement of Black girls by improving the school environment, curriculum, and resources they are provided. Real and enduring criminal justice reform will only happen with the needs of Black girls at the center of advocacy and with sustained investment in the potential of Black girls as future leaders.

Young Women Leading Activism in Baltimore Today

Young Black women in Baltimore continue to rise in challenging moments and speak out for justice and equality. For example, Brittany Oliver, a 29-year-old Baltimore activist and the founder of Not Without Black Women, describes her organization as a movement of “everyday” Black women aiming to “radically uplift our voices through sisterhood, dialogue and self-expression.” Activist Makayla Gilliam-Price is the founder of City Bloc, a youth-led, grassroots activist collective that advocates for social justice in Baltimore, and is an organizer who leads protests against police violence. Kidra Robinson, CEO of Black Girls Vote, encourages Black women to become involved in local politics and policy. Other youth-led advocacy groups depend upon and elevate the voices of young women, including: Leaders of the Beautiful Struggle (“LBS”), a grassroots think-tank that advances the public policy interests of Black people; Youth as Resources (“YAR”), a youth-led, grant-making, community organizing and leadership development organization; and Baltimore Algebra Project, a youth-run organization that tackles math illiteracy and seeks to empower youth within BCPSS through math education and student organizing.

ENDNOTES

- 1 Sherrilyn Ifill, President & Director-Counsel of LDF, as depicted in ANNA DEAVERE SMITH, NOTES FROM THE FIELD (HBO 2017). Both Ifill and Smith are Baltimoreans and leaders who lift up the stories of Black women and girls in the fight to end the school-to-prison pipeline.
- 2 From 1997 to 2007, the number of school resource officers (“SROs”) increased by 27%. See Simone Roberts et. al, *Indicators of School Crime and Safety*, NAT. CTR. FOR EDUC. STATISTICS & THE BUREAU OF JUST. STATISTICS (2010), <http://nces.ed.gov/pubs2011/2011002.pdf>.
- 3 Whenever data is not disaggregated by race and gender, the agency(ies) providing the data did not maintain or would not release the data in that format despite our request, underscoring the need for an intersectional approach to data collection.
- 4 Seilah Kast & Andrea Appleton, *Are School Police Doing More Harm than Good?* ALL THINGS CONSIDERED (NPR Mar. 16, 2016), <http://wpr.org/term/baltimore-city-school-police>.
- 5 BALT. CITY PUB. SCHOOLS, OPERATING BUDGET 2017-18 at 92 (May 23, 2017), http://www.baltimorecityschools.org/cms/lib/MD01001351/Centricity/Domain/8051/FY18_AdoptedBudget_Final_Web.pdf.
- 6 *Id.* at 67.
- 7 See DIGNITY IN SCHOOLS CAMPAIGN, A RESOURCE GUIDE ON COUNSELORS NOT COPS at 4 (2016), http://www.dignityinschools.org/wp-content/uploads/2017/10/Resource_Guide-on-CNC-1.pdf (“COUNSELORS NOT COPS”).
- 8 See Editorial, *Girls in juvenile justice: Treating the victim as a criminal*, BALT. SUN (Dec. 19, 2016), <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-girls-juvenile-justice-20161219-story.html>.
- 9 MD. DEP’T OF JUVENILE SERV., INTERIM REPORT, SERVICES FOR DJS-INVOLVED GIRLS at 29 (forthcoming January 2018).
- 10 See Saliqa Khan, *School police officer pleads guilty to assault of 3 students* (WBAL-TV Sep. 25, 2015), <http://www.wbalv.com/article/school-police-officer-pleads-guilty-to-assault-of-3-students/7096193>.
- 11 Jayne Miller, *Girls injured, suspended after fight with school police* (WBAL-TV Jan. 29, 2015), <http://www.wbalv.com/news/girls-injured-suspended-after-fight-with-school--Officerf31004666>.
- 12 *Id.* The state’s attorney dropped the criminal charges after viewing the tape and photos of the students’ injuries, and the officer was reassigned to administrative duties. The officer later pleaded guilty to three counts of second-degree assault.
- 13 LDF & NWLC, UNLOCKING OPPORTUNITY FOR AFRICAN AMERICAN GIRLS at 18, 20 (2014) (“UNLOCKING OPPORTUNITY”). See also PRISCILLA OCEN, JYOTI NANDA, & KIMBERLÉ CRENSHAW, BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED, AND UNDERPROTECTED (2015) (explaining “there is very little research highlighting the short and long term effects of overdiscipline and pushout on girls of color”).
- 14 UNLOCKING OPPORTUNITY at 15.
- 15 *Id.* at 16.
- 16 See LDF, LOCKED OUT OF THE CLASSROOM: HOW IMPLICIT BIAS CONTRIBUTES TO DISPARITIES IN SCHOOL DISCIPLINE at 4 (2017) (“IMPLICIT BIAS REPORT”), http://www.naacpldf.org/files/aboutus/Bias_Reportv2017_30_11_FINAL.pdf.
- 17 *Id.* at 6, 15-16.
- 18 See U.S. DEP’T OF EDUC., OFFICE OF CIVIL RIGHTS, & U.S. DEP’T OF JUSTICE, DEAR COLLEAGUE LETTER: NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE n.4 (Jan. 8, 2014), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.
- 19 MONIQUE MORRIS, PUSHOUT: THE CRIMINALIZATION OF BLACK GIRLS IN SCHOOLS (2015).
- 20 REBECCA EPSTEIN, JAMILIA J. BLAKE, & THALIA GONZÁLEZ, GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS’ CHILDHOOD (2017) (“GIRLHOOD INTERRUPTED STUDY”), <https://www.law.georgetown.edu/news/press-releases/Black-Girls-Viewed-As-Less-Innocent-Than-White-Girls-Georgetown-Law-Research-Finds.cfm>.
- 21 See Justin Fenton, *Six Baltimore Police Officers Indicted in Death of Freddie Gray*, BALT. SUN (May 21, 2015).
- 22 BALT. POLICE DEP’T, INCIDENT REPORT, FREDDIE GRAY CASE (April 12, 2015).
- 23 See Kevin Rector, *Charges Dropped, Freddie Gray Case Concludes with Zero Convictions Against Officers*, BALT. SUN (July 27, 2016).
- 24 U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT (Aug. 10, 2016) (“BPD INVESTIGATION REPORT”), <https://www.justice.gov/opa/file/883366/download>.
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- 170 OSI-BALTIMORE, BALTIMORE CITY PUBLIC SCHOOL SYSTEM RESTORATIVE PRACTICES REPORT at 6-7 (2018), <https://www.osibalaltimore.org/wp-content/uploads/RP-plan-and-appendix-FINAL-VERSION.pdf>.
- 171 See IMPLICIT BIAS REPORT, *supra* note 16.
- 172 Experiences of complex trauma can be cognizable as a disability when students have experienced traumatic experiences that cause physical or mental impairments. See *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1098 (C.D. Cal. 2015) (claims based on violation of Title II for failure to address students' complex trauma surviving a motion to dismiss).
- 173 INDIVIDUALS WITH DISABILITIES EDUCATION ACT ("IDEA"), 20 U.S.C. § 1400, *et seq.*, 34 C.F.R. pt. 300.
- 174 Section 615(k)(1)(E)(ii) of IDEA and 34 C.F.R. § 300.530(e)(1) require that, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, review relevant information to determine: (I) if the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or (II) if the conduct in question was the direct result of the local education agency's failure to implement the individualized education plan. See also COMAR 13A.08.03.10 (regulations outlining the Maryland state manifestation determination requirements).
- 175 Section 504 of the REHABILITATION ACT OF 1973, 34 C.F.R. pt. 104.
- 176 Of the 105 full-time police personnel, 38 were assigned as school-based units. The remaining officers were: (1) assigned to multiple campuses to patrol; (2) members of the Mobile Response Unit ("MRU") who are not permanently assigned to schools, but respond as needed to calls for service at schools; or (3) members of the Night Response Unit ("NRU") which provides support for afterschool activities and to major hubs of student transition from school.
- 177 For further discussion, see Angela Irvine & Aisha Canfield, *Reflections on New National Data on LGBQ/GNCT Youth in the Justice System*, VII LGBTQ POL. J. HARV. KENNEDY SCH. (2017).

- 178 See *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (providing that age must be considered for the purposes of whether a child is in custody and should be Mirandized).
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- 180 MEMORANDUM OF UNDERSTANDING BETWEEN THE BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS AND THE BALTIMORE POLICE DEPARTMENT at 2-3 (February 16, 2017).
- 181 See COMAR 13A.08.01.14 (providing that police officers may search students and lockers only upon the authority of a search warrant, unless the search is essential to prevent imminent danger to the safety of the student, school personnel, or school property).
- 182 The School Police Student Committee relies on students to develop recommendations on how to improve the relationships between police officers and students. The School Police Community Advisory Board is comprised of members of public and private organizations, educational institutions, and private citizens who volunteer their efforts and time to improve the relationship between school police and the community.
- 183 See Rebecca Epstein & Monique Morris, *Be Her Resource: A Toolkit About School Resource Officers and Girls of Color*, GEORGETOWN LAW CTR. ON POVERTY & INEQUALITY (2017), <https://www.law.georgetown.edu/news/press-releases/upload/be-her-resource.pdf> (providing resources for educators).
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UNLOCKING
OPPORTUNITY
FOR AFRICAN
AMERICAN GIRLS

A Call to Action for
Educational Equity



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The NAACP Legal Defense and Educational Fund, Inc. (LDF)
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The NAACP Legal Defense and Educational Fund, Inc. (LDF) is the first and foremost civil and human rights law firm in the United States. Founded in 1940 under the leadership of Thurgood Marshall, LDF's mission has always been transformative – to achieve racial justice, equality, and an inclusive society. LDF's victories established the foundations for the civil rights that all Americans enjoy today. In its first two decades, LDF undertook a coordinated legal assault against officially enforced public school segregation. This campaign culminated in *Brown v. Board of Education*, the case that led to the unanimous landmark Supreme Court decision in 1954 that outlawed legalized racial segregation nationwide. Today, through litigation, advocacy, and public education, LDF continues to advance issues of education, voter protection, economic justice and criminal justice. LDF has been a separate organization from the NAACP since 1957.

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Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity

1

INTRODUCTION

This year offers an opportunity to reflect upon monumental civil rights victories, including the United States Supreme Court’s landmark decision in *Brown v. Board of Education*¹ as well as the 50th anniversaries of both the Civil Rights Act of 1964² and Freedom Summer.³ These milestones helped to dismantle the system of *de jure* (legalized) racial segregation in the United States, which had endured for more than three centuries, and were pivotal for the nation as a whole in advancing educational opportunities for all students. Too often, the extraordinary role played by African American girls and young women⁴ in the fight for civil rights and for educational equality goes unrecognized. In fact, girls like Linda Brown and Barbara Johns, and women like Daisy Bates were key architects of some of the greatest efforts to obtain access to high quality education for all children. Yet today, many African American girls and women face significant barriers to educational achievement.

This report seeks to expand conversations around educational opportunity by taking a comprehensive look at the barriers African American girls face and the educational and economic outcomes that result. One important barrier is the prevalence of stereotypes that adversely impact the educational experiences of African American girls. Structural and institutional barriers examined in this report — such as under-resourced schools, disparate discipline practices, gender-based violence and harassment, and lack of support for pregnant and parenting students — further compromise educational outcomes for African American girls.

This report fills an important gap in existing data on educational achievement and its attendant economic consequences. Although there is plentiful data on American children and education, the lack of data broken down by race and gender together has fueled the assumption that all girls are doing fine in school. But in fact, although girls overall graduate from high school at higher rates than boys, girls of color are graduating at far lower rates than white girls and boys. In almost all states with available data, the high school graduation rate for African American girls is below the national average for girls overall, resulting in severe economic consequences for African American women and their families.



On May 18, 1954, Nettie Hunt sat on the steps of the U.S. Supreme Court with her arm around her daughter Nikie, holding a newspaper with the headline “High Court Bans Segregation in Public Schools.”⁹

The iconic photo, taken the day after the Supreme Court’s unanimous ruling in *Brown v. Board of Education*,¹⁰ captured the hope of this country’s African American children (and all children), that the promise of equal education — and improved odds of lifetime success — would be fulfilled. The landmark case was argued by the NAACP Legal Defense and Educational Fund, Inc.’s chief legal counsel, Thurgood Marshall, who later became the first African American U.S. Supreme Court Justice.



Finally, this report offers solutions, setting forth recommendations to help advance African American girls’ educational opportunities and outcomes. We urge educators, school leaders, community leaders and members, advocates, policymakers, and philanthropic organizations to take action to advance the success of African American girls, complementing the important ongoing work to improve educational outcomes for boys and men of color. This is a call to unlock opportunity for African American girls. Our entire nation has a stake in ensuring the academic and professional success of all children.

2

PAST IS PROLOGUE

THE LEGACY OF SEPARATE BUT EQUAL AND THE AFRICAN AMERICAN GIRLS AND WOMEN WHO WAGED LEGAL BATTLES TO DISMANTLE IT

In *Brown*, the United States Supreme Court declared that racially segregated schools were inherently unequal and ordered their desegregation.⁵ Central to this victory was Linda Brown, who had to walk more than 80 minutes over dangerous railroad tracks to the closest predominantly black school, despite living closer to a white school that denied her admission.⁶ The NAACP’s⁷ lawsuit challenging Linda Brown’s denial of admission to a white school led to her historic role in the unanimous *Brown v. Board of Education* case.⁸

The *Brown* Court emphasized the critical importance of education to the life-long success of children. Writing about the state of education in 1954, the Court noted:

Today, education is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principle instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state is undertaken to provide it, is a right which must be made available to all on equal terms.¹¹



FREEDOM SCHOOLS

Launched by the Student Non-Violent Coordinating Committee (SNCC), Freedom Schools were created to educate young African American students who were expelled from school due to political participation or whose schools were closed in protest against desegregation orders. The schools helped students learn critical advocacy skills. SNCC was the brainchild of Ella Baker, an African American woman who held many leadership roles within the NAACP. As the Executive Director of the Southern Christian Leadership Conference, she recognized the importance of including youth in a collaborative approach and shared decision-making process and in April 1960, she organized a three-day youth leadership summit in North Carolina that brought together approximately 200 students (the students were involved in sit-ins across the south, who were from northern colleges and from national civil rights groups). It was at the convening that SNCC was born during Freedom Summer.

In 1964, during Freedom Summer, a number of Freedom Schools were opened throughout the south and other parts of the nation, as some states around the country closed schools in response to the Court's decision in *Brown*. The schools were aimed at ensuring African Americans attained the skills necessary to have a voice in society; and many leading civil rights organizations, including the National Association for the Advancement of Colored People (NAACP), the Congress on Racial Equality (CORE), and the Student Nonviolent Coordinating Committee (SNCC) were involved in the Freedom Summer campaign.

SARAH ROBERTS

More than a century before the *Brown* decision, another African American girl and her family challenged school segregation based on the harm she suffered from racially segregated schools. In 1850, an African American five-year old girl named Sarah Roberts asserted that Boston's segregated school policy — that forced her to walk past five all-white Boston public schools to get to the closest "Negro" school — was unconstitutional. Sarah's father, Benjamin F. Roberts, attempted to enroll her in the all-white schools that were closer to their home, but she was denied admission and was even physically removed from one white school. While Sarah's court challenge was not successful,¹³ it laid the groundwork for the Supreme Court's *Brown v. Board of Education* decision. In addition, Roberts brought her challenge to the Massachusetts state legislature, which, in 1855 passed a law banning segregation in public schools.¹⁴ With that act, Massachusetts became the first state in the nation to legislatively prohibit racially segregated schools.



In the years after *Brown*, other girls and young women continued to lead the effort to ensure that the promise of desegregation was fulfilled. Thus, in 1957, Daisy Bates — President of the Arkansas State Conference of Branches of the NAACP — led nine black students in the effort to integrate Little Rock, Arkansas's Central High School (the group became known as the "Little Rock Nine"). In response, then-Arkansas Governor Orval Faubus dispatched the National Guard to prevent the students' entry into the high school and President Eisenhower was required to federalize the Arkansas National Guard and enlist the services of the 101st Airborne Division (returning from Korea), to enforce the desegregation orders. Ultimately, the students successfully enrolled and completed the school year.¹⁵

These words have particular resonance today, because a high school diploma and at least some postsecondary education or training are the minimal prerequisites for steady, well-paying jobs in many of the growing sectors of our economy.¹² However, the deep racial and economic disparities that persist in our society (which are vestiges of “separate, but equal”) undermine the access of children of color to quality educational opportunities that can pave the road to

career success and have a lasting negative impact on their educational achievement.

Despite this history, however, little attention has been focused on the contemporary challenges facing African American girls in our nation’s schools. This report connects the historical struggle by African American girls for educational access and excellence with the contemporary reality of the challenges they face.

3

PUBLIC PERCEPTION AND SELF-ESTEEM RACIAL AND GENDER STEREOTYPES IN THE CLASSROOM



THE “DOLL TEST”

The test subjects, African American children between the ages of three and seven, were asked to identify both the race of the dolls and which color doll they preferred.¹⁹

Dr. Clark recalled one particular instance in which he was conducting the “doll test” experiment in rural Arkansas and he asked a young boy to point to the doll that was most like him; the boy pointed to a brown doll and said “[t]hat’s a ni**er. I’m a ni**er.”²⁰

The Clarks concluded that prejudice, discrimination, and segregation created a feeling of inferiority among African American children and damaged their self-esteem.²¹

While negative racial and gender stereotyping and perceptions are not the sole reasons for poor educational outcomes, they unquestionably impose significant barriers to educational achievement for African American girls.

A. STEREOTYPES THROUGHOUT HISTORY

The negative public perception of African Americans prior to and after the Supreme Court’s ruling in *Brown* was pervasive and often rooted in racial discrimination. One particularly noteworthy aspect of the Court’s decision in *Brown* was its reliance, in part, on the results of a study on the psychological effects of segregation on African American children.¹⁶ In fact, the Court noted that this study — the so-called “Doll Test,” conducted by African American psychologists Kenneth and Mamie Clark 14 years before the *Brown* case made it to the Supreme Court, found that racial segregation negatively impacted African American children’s self-perception and self-esteem.¹⁷ A majority of the children preferred the white doll and assigned positive characteristics to it.¹⁸

The *Brown* Court concluded that separating children on the basis of race creates dangerous inferiority complexes that may adversely affect African American children’s ability to learn, and ultimately denied them equal educational opportunity.²² Referencing the doll test, the Court noted:

To separate [African American children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.²³

Thus, as the *Brown* Court recognized, equal educational opportunities figure significantly in the development and reinforcement of children’s self-perception, self-esteem and educational achievement; and the segregation of children merely because of the color of their skin served to stem their development. What the Court did not include in its ruling was Dr. Clark’s findings that segregation also inhibited the development of white children as well.²⁴

B. STEREOTYPES AND SELF-ESTEEM

Decades after the doll test was conducted, researchers continue to document a strong link between positive self-esteem and better educational outcomes.²⁵ For example, in a recent study of African American girls in New York City, the girls who had a strong racial identity — e.g., those who described themselves as “strongly in touch with their racial heritage” or “Afrocentric” — were more likely than others to say that they were happy on a typical day, to indicate a serious commitment to their schoolwork, to get good grades, and to express a desire to go to college.²⁶ They were also more likely to believe that they would ultimately achieve their goals (64 percent versus 21 percent) and to have healthy relationships.²⁷ Evidence also suggests that positive messages and support from parents and other important adults, as well as peers, can support the development of positive race and gender identities and mitigate some of the effects of racism.²⁸ Interestingly, in a study focused on racial differences in self-esteem, African American children scored higher than white children on certain self-esteem measures, and those differences in scores between African American and white children were more pronounced for girls and increased with age even though many youth struggle with self-esteem during adolescence.²⁹



Unfortunately, because of systemic race and gender discrimination, African American girls are often stereotyped before they even enter a school building, and this affects their self-perceptions and self-esteem as well as the perceptions of their teachers. Indeed, “as African American boys and girls develop their identity and gender role perspectives, they must determine how to reconcile negative images and stereotypes and experiences of oppression into their identities and self-concepts.”³⁰ Stereotypes of African American girls and women date back to slavery — such as the view that African American women are “angry” or “aggressive,” and “promiscuous” or “hyper-sexualized.”³¹ Such racial and gender stereotypes shape educators’ and administrators’ views of African American female students in critically harmful ways.³² This implicit bias is rarely discussed or acknowledged, and therefore it goes virtually undetected. But addressing it is essential, as it can lead to the setting of lower academic expectations for African American girls, significant discipline disparities and a higher rate of referrals to the juvenile justice system, all factors that push African American girls out of school.

C. STEREOTYPES AND DISCIPLINE

The intersection of racial and gender stereotypes has a significant impact on discipline rates for African American girls, likely due in part to bias in the exercise of discretion by teachers and administrators. For instance, the contrast between “traditional” middle class notions of femininity, which require girls to be passive and modest, and stereotypical images of African American females as loud, confrontational, assertive, and provocative, can generate differing punishments for similar conduct.³³ Subjective offenses like “disobedience” or “disruptive behavior” can be code for a student’s failure to conform to dominant gender stereotypes, which shape teachers’ views of what is appropriate “feminine” behavior.³⁴ Failure to conform to gender stereotypes may also be the basis for disproportionately disciplining African American girls for physical fights, as losing control and visibly or even physically expressing anger defies stereotypes about what is “ladylike.”³⁵

Similarly, negative perceptions of African American female behavior, informed by stereotypes, lead teachers to assume African American girls require greater social correction and thus lead to increased disciplinary referrals.³⁶ For example, African American girls who are outspoken in class, who use profanity or who confront people in positions of authority — as well as African American girls who are perceived as dressing provocatively — are disproportionately disciplined.³⁷ Indeed, African American girls are at greater risk than other girls of receiving citations for dress code violations and for talking back to teachers,³⁸ as well as for much less severe behaviors such as gum chewing, defiance, and failure to comply with prior discipline.³⁹ The quality of assertiveness that some African American girls have — a valuable quality that generally has led to positive public perceptions of African American women in leadership roles⁴⁰ — conversely puts them at greater risk for inequitable discipline in K-12 schools.⁴¹ Thus too many African American girls are in a no-win situation: they 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.

D. AFRICAN AMERICAN GIRLS AND LEADERSHIP

As the previous section of this report recounted, African American girls and women have historically assumed leadership roles in challenging discrimination in our nation’s schools. This legacy is just one example of the determination of African American girls and women to access education and to improve not only their own lives but also the lives of



others in their communities. According to a recent survey, African American girls aspire to be leaders more than any other group of girls. In fact, 53 percent of African American girls surveyed expressed a desire to be leaders as compared to 50 percent of Hispanic girls and 34 percent of Caucasian girls.⁴² African American girls were also the most likely group of girls to consider themselves to be leaders (75 percent), and the most likely to have leadership experience (78 percent).⁴³ African American and Latina girls rated themselves more highly on “leadership skills” than white girls did.⁴⁴ Yet “[o]pportunities for leadership are scarce” for girls, even today.⁴⁵ In 2009, only 12 percent of twelfth-grade girls overall participated in student council or government to a “considerable or great extent,” and African American and white girls both reported participation to a “considerable or great extent” at 11 percent.⁴⁶

Ultimately, educators’ perceptions of African American young women often involve racial and gender stereotypes — and this undermines their potential for success — so it is imperative that African American girls get access to programs that foster their self-esteem and provide them with meaningful leadership opportunities.

4

PATHWAYS TO POVERTY

SCHOOL DISPARITIES AND RACIAL AND GENDER-BASED BARRIERS TO EDUCATIONAL SUCCESS FOR AFRICAN AMERICAN GIRLS

In addition to issues related to stereotyping and perception, a variety of other factors — such as under-resourced schools; unequal access to Science, Technology, Engineering and Math (STEM) learning opportunities; overly punitive school discipline practices; sexual harassment, violence, and trauma; the challenges of early pregnancy and parenting; and discrimination by school personnel — systematically operate to disproportionately push African American girls out of school and into the juvenile justice system and low-wage occupations.

A. RESOURCES

Decades after legal battles were fought to dismantle legalized racial segregation in education, African American students are still disproportionately enrolled in schools without access to quality resources, credentialed teachers, rigorous course offerings, and extracurricular activities. And data show that access to these resources is key to enhancing educational experiences and improving outcomes. In fact, the Supreme Court, in the wake of *Brown*, detailed the aspects of a school district's operations that courts should examine when deciding whether the school system has eliminated the vestiges of legally segregated education.⁴⁷ Those factors, such as faculty assignment (including qualified teachers) and extracurricular activities, as well as quality and rigorous curricula, remain crucial to the success of children today.



Of course, school resource disparities affect girls and boys in the same communities, and data on the impact of school resource disparities are not tracked by gender. But even absent gender-specific data, this report would be remiss not to include any discussion of the lack of access to adequate school resources, given its impact on all students attending high-poverty, high-minority schools, including girls.

There is emerging research showing a strong correlation between attending a high poverty, racially isolated (high minority) school and lack of access to equitable and quality school resources; in fact, research shows that concentrated poverty magnifies issues associated with poverty in general, including dysfunctional and poorly resourced schools.⁴⁸ National data show that nearly 39 percent of African American children under age 18 live in poverty,⁴⁹ and 45 percent live in concentrated poverty.⁵⁰ In fact, African American boys and girls disproportionately attend high-minority, racially isolated, and high-poverty schools as compared to many of their peers of other races and ethnicities.⁵¹ One researcher attributes this economic and racial isolation and inequality to the vestige of school segregation and notes that students in economically and racially diverse learning environments have better outcomes, illustrating the relationship between racially and economically-isolated education to current achievement gaps among African American students, including African American girls.⁵² High-poverty schools have fewer resources than other schools and have more difficulty recruiting and retaining qualified and experienced teachers.⁵³ And resource inequities begin as early as pre-kindergarten.



own, with limited economic resources. And African American families who pay for child care shoulder a huge burden, especially as compared to families of other races: African American families who pay for child care spend, on average, 10 percent of the family's monthly income on child care, compared to white, non-Hispanic families who spend an average of 7 percent.⁶² In 2012, the average annual cost of full-time care ranged from \$3,704 to \$16,430, depending on the state in which a family lives, the type of care, and the age of the child.⁶³ These high costs of care can make access nearly impossible for low-income families.

The lack of sufficient access to high-quality early care and education leaves many African American children without the preparation needed to enter school ready to succeed. In fact, African American children entering

kindergarten have lower scores than white children on school readiness assessments in both math and reading.⁶⁴ There is a clear need to expand affordable and accessible high-quality early care and early education opportunities for African American children and all children.

1. EARLY CHILDHOOD

Numerous studies show that children who attend high-quality early care and education programs are more likely to succeed in school and become productive, successful adults.⁵⁴ Those children go on to perform better on cognitive tests in elementary and secondary school; are more likely to graduate from high school, go to college, be employed, and be in good health; and are less likely to become involved with the criminal justice system or to have to rely on public assistance.⁵⁵ Yet many children — particularly children from low-income families and neighborhoods who stand to benefit the most from quality early learning — lack access to quality early education.⁵⁶

Even though African American children represent a disproportionate share of the children served by Head Start and the Child Care and Development Block Grant,⁵⁷ these programs are serving just a fraction of the eligible population, leaving many low-income children and their families without assistance for or access to early learning opportunities.⁵⁸ Only one in six children eligible for federal child care assistance received it in 2009 (the most recent year for which data are available).⁵⁹ In 2013, nineteen states had waiting lists for child care assistance or turned families away without taking their names, and in many states, these waiting lists are quite long.⁶⁰ Head Start reaches less than half of eligible preschool-age children and Early Head Start reaches just over 4 percent of eligible infants and toddlers.⁶¹

Without sufficient help, low-income families are left to try to afford early care and education programs on their

2. ELEMENTARY AND SECONDARY

Once in elementary school, African American children are more likely than other children to attend schools with fewer resources⁶⁵ and are less likely to have access to quality and rigorous curricula and instruction that will place them on track to pursue postsecondary education and high-wage careers.⁶⁶ African American children are also more likely than white children to have teachers who do not meet state licensure and certification requirements. Recent national data show that nearly 7 percent of the country's African American students — over half a million students — attend schools where 20 percent or more of their teachers have not yet met state certification or licensure requirements.⁶⁷ Additionally, teachers in high-minority and high-poverty schools are less likely to have the necessary materials available for their classes than those in low-minority and low-poverty schools.⁶⁸

This dearth of resources, coupled with the lack of qualifications and experience of classroom educators, can prove detrimental for African American girls and boys. African American children who attend under-resourced schools do not have access to quality curricula or instruction to ensure proper preparation to succeed in important subjects. Lack of resources and lack of qualified teachers can have a profound impact on student achievement, especially for African American girls and all African American children. One growing body of research

During segregation, African American girls served as active advocates for equitable school resources and improved conditions in black schools. Notably, in *Davis v. County Board of Prince Edward County*,⁷⁰ Barbara Rose Johns,⁷¹ a 16-year old student at the all-black Robert Moton High School in Farmville, Virginia, protested the school's deplorable conditions. The school had no cafeteria or gymnasium and the students did not have desks. Furthermore, the school was so overcrowded that some students had to take classes inside of a school bus. Barbara Johns organized a walkout of 450 students to raise awareness about the poor conditions. The students walked to the homes of the school board members and, when ignored, began a two-week protest. Two NAACP lawyers, Spottswood Robinson and Oliver Hill, filed suit on behalf of the students, leading to the *Davis* case, which was later appealed to the U.S. Supreme Court and consolidated with four other cases into the *Brown* case.⁷²



shows that “student achievement is more heavily influenced by teacher quality than by students’ race, class, prior academic record, or a school a student attends. This is especially true for students from low-income families and African American students. The benefits associated with being taught by good teachers are cumulative.”⁶⁹

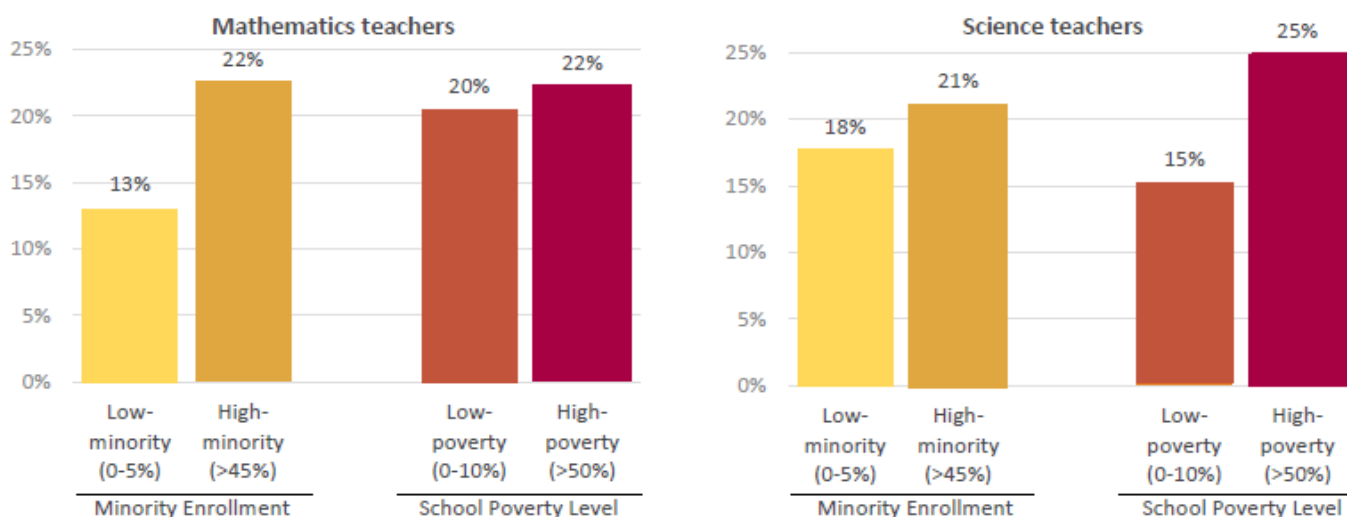
Decades after the *Brown* ruling declared the inherent inequality of racially segregated schools, disparities still persist along racial lines in America’s schools. In addition to the inadequate access to qualified teachers and school resources, predominantly African American schools also often lack rigorous course offerings.⁷³ As the next section highlights, the lack of rigorous course offerings at the schools they attend, especially in science, technology, engineering, and mathematics (STEM), impedes the future ability of African American girls and women to compete in an increasingly competitive global economy.

B. MEANINGFUL ACCESS TO SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS (STEM) CURRICULA AND LEARNING OPPORTUNITIES

Researchers have identified two root causes of low numbers of African American girls in STEM classes and careers: (1) a lack of STEM course offerings in low-income schools disproportionately attended by students of color; and (2) stereotypes attached to both race and gender that discourage African American girls from pursuing STEM education and opportunities.⁷⁴

The problem often begins with limited STEM curricula being offered in the schools that African American girls and boys attend. For example, there are significantly fewer mathematics and science course offerings in predominantly African American schools.⁷⁵ Specifically, nationwide, only 50 percent of high schools offer calculus and only 63 percent offer physics.⁷⁶ Further, between 10 to 25 percent of high schools do not offer more than one of the core high school math or science courses — Algebra I and II, Geometry, Biology, and Chemistry.⁷⁷ For students of color, these course offering disparities are especially stark: of the high schools in the U.S. with the highest percentage of black and Latino students, one-quarter do not offer Algebra II and one-third do not offer Chemistry.⁷⁸ In addition, only 57 percent of African American high school students have access to the full range

Percentage of Middle and High School Teachers Who Have Been Teaching for 3 Years or Less



Source: National Science Foundation, National Center for Science and Engineering Statistics, Science and Engineering Indicators 2012, Appendix Table 1-18, <http://www.nsf.gov/statistics/seind12/append/c1/at01-18.pdf>

of math and science offerings (Algebra I, Geometry, Algebra II, Calculus, Biology, Chemistry, Physics) in their schools;⁷⁹ while significantly more — 71 percent — of white high school students attend schools where the full range of math and science courses are offered.⁸⁰

Even when African American children attend schools where STEM courses are offered, an overall lack of access to experienced teachers may impede their academic success.⁸¹ Students in high-minority schools are more likely than students in low-minority schools to have novice math and science teachers with three or fewer years of teaching experience. As the graph illustrates, in the academic year 2007-08, 22 percent of mathematics teachers and 21 percent of science teachers were novices in high-minority schools, compared with 13 percent and 18 percent in low-minority schools.⁸² And only 49 percent of science teachers in high-poverty schools had advanced degrees (master's degree or higher), while 69 percent of science teachers in low-poverty schools held advanced degrees.⁸³ This demonstrates that at the outset, more African American children are being taught math and science by educators with fewer years of teaching experience and less expertise, which can reduce student gains in these areas.⁸⁴

Additionally, some science teachers in high-minority and high-poverty schools do not have the resources necessary for instruction. In the 2007-08 academic year, 24 percent

of science teachers in high-minority schools and 22 percent in high-poverty schools lacked the necessary materials, compared to only 13 percent of science teachers in both low-minority and low-poverty schools.⁸⁵

African American girls also face stereotypes informed by both their race and gender that undermine their success in STEM courses. In fact, studies show that education professionals steer African American girls to classes that promote dialogue, instead of encouraging them to achieve in the sciences.⁸⁶ It follows that African American girls who are steered away from rigorous math and science courses in high school later face limited collegiate and professional prospects within these fields of study. Research has shown that students who take Advanced Placement (AP) or other advanced STEM courses in high school are more likely to major in STEM fields in college and graduate with STEM degrees than those who did not take AP STEM courses.⁸⁷

The confluence of racial and gender stereotypes related to African American girls in STEM and their subjection to overly harsh discipline practices is exemplified in the story of African American honor student Kiera Wilmot.

Kiera's experience highlights how, instead of fostering her intellectual curiosity and enthusiasm for science, school administrators criminalized her.

Kiera's mother works in the STEM field at the Florida Industrial and Phosphate Research Institute, and was supportive of her daughter's interest in STEM.⁸⁸ As a sixteen-year old at Bartow High School in central Florida, Kiera was preparing an advanced volcano experiment for her biology class.⁸⁹ Friends encouraged her to try the experiment fifteen minutes before the first-period bell, and she mixed toilet bowl cleaner and aluminum foil for the experiment in a plastic water bottle outside on campus.⁹⁰ The mixture caused the lid of the bottle to pop off and generate smoke. Although no one was injured in the minor explosion, nor was there any property damage, she was arrested on two alleged felony charges (possessing a weapon on campus and discharging a destructive device), suspended from school for 10 days, and forced to finish her junior year of high school at an alternative school.⁹¹ Public outcry over Kiera's punishment led to the dropping of the charges (after accumulation of thousands of dollars in court costs) and she graduated from Bartow High School in June 2014.⁹² Although the felony charges were dropped, the felony arrests on her record may take up to 5 years to clear.⁹³ Kiera's attorney continues to work to expunge her record.⁹⁴



Media coverage of Kiera's story also garnered the attention of 18-year NASA veteran and author Homer Hickam who recalled, as a high school student, being led away in handcuffs with a friend for allegedly starting a forest fire, only to eventually be cleared of any wrongdoing by his physics teacher and high school principal.⁹⁵ Hickam sponsored a scholarship for Kiera and her twin sister Kayla to attend a summer program at the United States Advanced Space Academy.⁹⁶ This intervention supported Kiera's curiosity and interest in STEM, which she credits her eighth-grade robotics teacher with igniting, and she plans to pursue a STEM degree in college.⁹⁷ Kiera's story highlights the danger of pervasive stereotypes and overly punitive discipline practices and their potential to push African American girls not only out of participation in STEM, but also out of school completely.

C. ACCESS TO ATHLETICS AND OTHER EXTRACURRICULAR OPPORTUNITIES

African American girls lack full access to extracurricular activities that have been shown to improve the educational success of all students. Studies have shown that after-school programs and activities improve students' engagement in school, their graduation rates and overall academic achievement. Participation in sports in particular has documented health, academic, and economic benefits for students. Thus, ensuring equal opportunities in athletics and other extracurricular activities for African American girls is critical to facilitating their success in the classroom and the workplace. Unfortunately, African American girls' access to these programs and activities is limited.

1. Sports

The life-long impact of sports participation on girls is dramatic, positively affecting girls' health, academic success, and economic well-being.⁹⁸ Research shows that young women who had opportunities to play sports as children have a lower risk of obesity,⁹⁹ higher levels of self-esteem,¹⁰⁰ lower rates of depression,¹⁰¹ and lower rates of sexual activity and pregnancy¹⁰² compared to non-athletes. Young women who play sports are more likely to graduate from high school, have higher grades, and score higher on standardized tests than non-athletes.¹⁰³ They are also more likely to do well in science classes than their classmates who do not play sports.¹⁰⁴ Minority female athletes get better grades than their non-athlete peers¹⁰⁵ — and African American female athletes in particular are 27 percent more likely than students overall to graduate from college.¹⁰⁶ There are also life-long employment and economic benefits of prior athletics participation in the school setting for women and their families. Studies



show that increased female sports participation is correlated with increased women's labor force participation and greater representation in previously male-dominated high-skill and high-wage occupations.¹⁰⁷ Moreover, more than four out of five executive businesswomen played sports growing up, and the vast majority say that the lessons they learned on the playing field contributed to their success in business.¹⁰⁸ Thus, athletic opportunities are more than just extracurricular activities — they can play a vital role in academic and professional success. These outcomes are especially true for young women of color.

Girls' participation in sports in elementary and secondary schools has skyrocketed since Title IX¹⁰⁹ was passed, but girls of color play sports at lower rates than white girls and at much lower rates than boys of all races.¹¹⁰ In fact, data from a 2012 report show that, among high school freshmen, 58 percent of white girls participate in sports, compared to only 42 percent of African American girls.¹¹¹ The problem is not attributable to a lack of interest; rather it is primarily a problem of access, due to the schools that girls of color attend. A study of racial and ethnic disparities in adolescent physical activity participation found that African American, Hispanic, and white adolescent girls who attended the same schools had similar levels of activity; however, African American and Hispanic females were more likely to attend racially segregated and poorer schools where overall rates of physical activity were lower than at schools with more ethnically diverse student bodies and higher median household incomes.¹¹² Interestingly, the picture is very different for boys of color: overall there was no difference in the activity levels of Hispanic, black, and white adolescent males, and when differences in schools attended were taken into account, black and Hispanic adolescent males had higher levels of physical activity than their white peers at the same schools, making it "clear that the influence of schools (particularly in prioritizing which sports and activities to fund) affects the genders differentially."¹¹³

Many factors contribute to the disparate physical activity rates between African American girls and white girls. African American girls are more likely to attend high-minority schools, which also tend to be high-poverty schools that "have fewer material resources (such as gymnasiums or athletic fields), human resources (coaches or physical education teachers), or programmatic support (such as fewer intramural and extramural sports programs), thus providing fewer opportunities for physical activity."¹¹⁴ In addition, African American girls, when compared to white girls, receive less support from teachers to engage in physical activity.¹¹⁵

Furthermore, financial barriers faced by African American students can contribute to disparities in physical activity rates.¹¹⁶ More research is needed, but in a nationwide survey,



MORE DATA NEEDED

A major obstacle to enforcing Title IX’s guarantee of equal athletic opportunities for African American girls is the lack of available data. The High School Data Transparency Bill, which amends the Elementary and Secondary Education Act, would require high schools to publicly report more detailed information, broken down by race and gender, about participation rates in and expenditures on their athletic programs¹²¹ — something colleges and universities are already required to do.

33 percent of parents of African American girls, compared with 18 percent of parents of white girls, said their daughters never participated in or stopped playing sports because their families could not afford to pay for associated costs of participation in sports (such as equipment, lessons, etc.).¹¹⁷ Forty-one percent of parents of African American girls, compared with 26 percent of parents of white girls, said their daughters did not play sports because their families could not afford or arrange transportation to and from the activity.¹¹⁸ Not surprisingly, then, white girls were three times as likely as African American girls to be involved in sports through a private organization (21 percent compared to 7 percent), while African American girls were more likely to participate through their schools (65 percent compared to 50 percent).¹¹⁹

Additionally, a study on youth sports in America found that, while it was not the leading reason, 16 percent of young female African American athletes who had stopped playing a sport did so because they had to care for younger brothers or sisters, compared to 9 percent of white girls (and 25 percent of Hispanic girls, 9 percent of African American boys, and 4 percent of white boys).¹²⁰

2. Other Afterschool and Extracurricular Activities

In addition to barriers to participation in sports, African American girls also struggle to participate in other after-school and extracurricular activities. While there is a need for more research, specifically on African American girls’ participation in extracurricular activities, scholars have identified several barriers to extracurricular participation that are applicable.¹²² These barriers include cost, lack of financial assistance to address participation costs, and the stigma accompanying

tuition waivers. For after-school programs that are not located on school campuses, lack of transportation is an “often an insurmountable problem,” because “only students who are within walking distance can attend.”¹²³ And even programs that are based in schools are not accessible for many students if transportation home is not provided.¹²⁴

Despite the paucity of research on barriers to extracurricular participation specific to African American girls, data on barriers disproportionately impacting girls — particularly those in low-income families — may be instructive. For instance, family responsibilities have uniquely hindered girls’ participation in extracurricular activities: “[i]n many low-income families, youth may be called upon or feel compelled to fill what is generally considered adult roles in providing large amounts of family care or working long hours in a job to help meet family expenses,” and this often serves as a dramatic deterrent to a young person’s ability to participate in extracurricular activities.¹²⁵ In addition, household responsibilities, such as caring for younger siblings, are responsibilities that disproportionately fall to girls.¹²⁶ Indeed, research shows that girls’ take on caring for family members, managing the household, and providing emotional support for family members when a parent is absent.¹²⁷

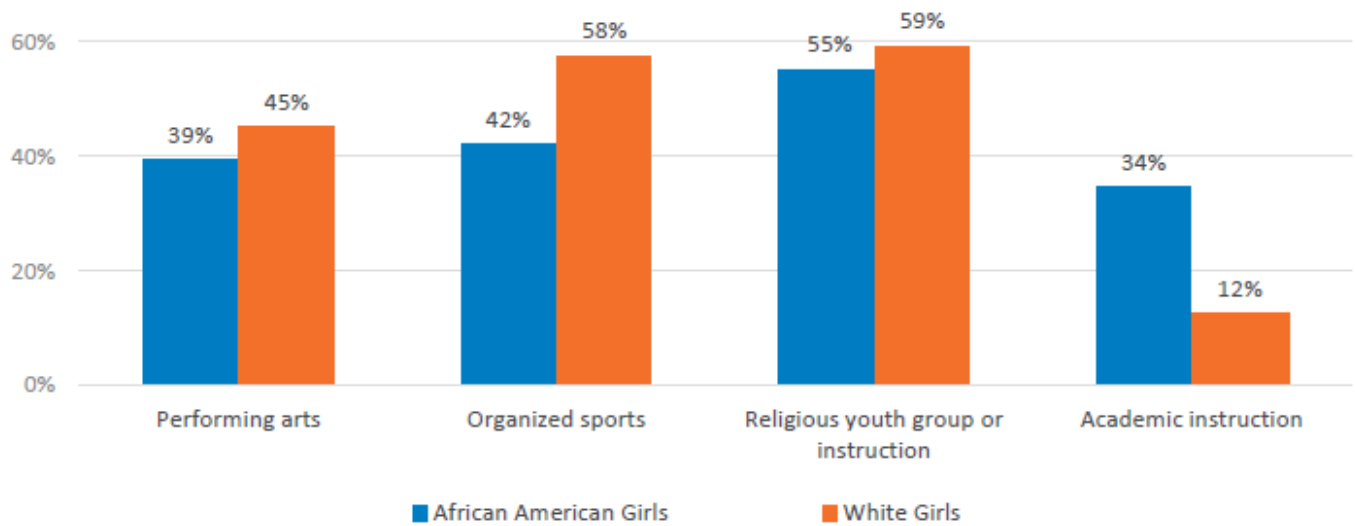
Furthermore, the need to take a paying job to supplement household income can significantly reduce some students’ capacity to participate in after school programs.¹²⁸ Twenty-seven percent of African American 12th-grade girls usually worked more than 10 hours each week.¹²⁹ This significantly limits their ability to participate in extracurricular activities.

As the chart below demonstrates, although African American 9th-grade girls were nearly three times as likely as their white female counterparts to participate in academic instruction after school, they participate in after-school organized sports, performing arts, and religious youth group or instruction activities to a lesser degree than their white counterparts.¹³⁰ Among non-school sponsored activities, the greatest percentage of African American 9th-grade girls participated in religious youth groups or religious instruction (55 percent vs. 59 percent of white girls), followed by organized sports (42 percent vs. 58 percent of white girls), performing arts (39 percent vs 45 percent of white girls), and academic instruction (34 percent vs. 12 percent of white girls).¹³¹

African American girls also participate in community service activities at a rate higher than white girls. Nearly 42 percent of African American 12th-grade girls reported participating in community affairs or volunteer work at least once or twice a month, compared to 40 percent of white girls.¹³² These participation rates may prove beneficial as engagement in community service activities has been linked to improvements in health¹³³ and employment¹³⁴ outcomes.



9th Grade Students Participating in Various Activities



Source: TERRIS ROSS ET AL., NAT'L CTR. FOR EDUC. STATISTICS, HIGHER EDUCATION: GAPS IN ACCESS AND PERSISTENCE STUDY (2012), available at <http://nces.ed.gov/pubs2012/2012046.pdf>.

To address resource disparities, policymakers should:

- **Ensure that school funding is distributed equitably; specifically, ensure that predominantly African American schools have equitable access to rigorous curricula including high-level STEM and Advanced Placement courses.**
- **Ensure that students in high-need schools are taught by qualified and experienced instructors.**
- **Support equitable implementation of academic standards, such as the Common Core so that all students are exposed to important foundational learning courses and challenged to develop critical thinking, reading, and math skills.**
- **Invest in support for students to engage in athletics and other extracurricular activities, such as transportation, supplies, and other related fees.**

While African American girls experience barriers to participation in after-school activities, they are concurrently being disproportionately pushed out of schools due to overly punitive discipline policies that result in lost learning time and early involvement with the juvenile justice system.

D. SCHOOL DISCIPLINE DISPARITIES

While racial disparities in school discipline have been documented as early as the 1970s,¹³⁶ only recently has the impact of disparate discipline policies on African American girls been documented. The origins of overly punitive policies go back decades, but there was a significant uptick in the creation and implementation of overly punitive penalties in the late 1990s, when school districts began to criminalize student misbehavior and adopted zero-tolerance¹³⁷ approaches to school code violations; some of these policies also spread more widely after tragic incidents of school violence such as the shooting at Columbine High School in Colorado.¹³⁸ Zero-tolerance policies, and accompanying features such as increased presence of law enforcement in schools, have drastically increased the number of students suspended, expelled, and arrested or referred to the juvenile justice system.¹³⁹

Many research studies have explored the strong relationship between rates of discipline and the race of the disciplined students.¹⁴⁰ Research has shown that schools with the highest rates of suspension are the schools with the highest African American student populations.¹⁴¹ And racially discriminatory policies and practices result in racial disparities in discipline: African American students are punished more frequently than their white peers, although they do not exhibit more frequent and serious misbehavior,¹⁴² and African American students receive harsher disciplinary sanctions than their white peers for the same offenses.¹⁴³ In addition, white students are more

likely to be disciplined for objective violations like smoking and vandalism, while African American students are more likely to be referred for subjective infractions like showing disrespect, loitering, or making excessive noise.¹⁴⁴

While African American males are the most likely to be disciplined in school, African American females are also disproportionately suspended and expelled. In fact, an analysis of 2006-07 data on the suspension of middle school students showed that African American girls in urban middle schools had the fastest growing rates of suspension of any group of girls or boys.¹⁴⁵ Furthermore, according to the latest Civil Rights Data Collection (CRDC), during the 2011-12 school year, 12 percent of all African American female preK-12 students received an out-of-school suspension, which is six times the rate of white girls and more than any other group of girls and several groups of boys.¹⁴⁶ Additionally, 19 percent of African American girls with disabilities received out-of-school suspensions, compared to just 6 percent of white girls with disabilities.¹⁴⁷ The state with the highest out-of-school suspension rate for African American female students during the 2011-12 school year was Wisconsin, with 21 percent of African American girls receiving out-of-school suspensions in a single year.¹⁴⁸

An analysis of data on the discipline experiences of African American female students in Ohio — one of the few states where school discipline data are disaggregated and cross-tabulated by race, gender, type of disciplinary sanction, and type of offense — may help shed light on a growing national problem.¹⁴⁹ State data for the 2012-13 school year show that African American girls in Ohio K-12 schools were disproportionately disciplined for disobedience/disruptive behavior, fighting/violence, harassment, and even truancy. “Disobedience and disruptive behavior,” the most subjective and vague category, was the category for which females overall were most often disciplined. African American females



“They have different rules for us [African American girls] than they do for White and Asian girls. White girls and Asian girls can wear anything and get away with it, but they will send us to the dean for wearing the same thing.”¹³⁵

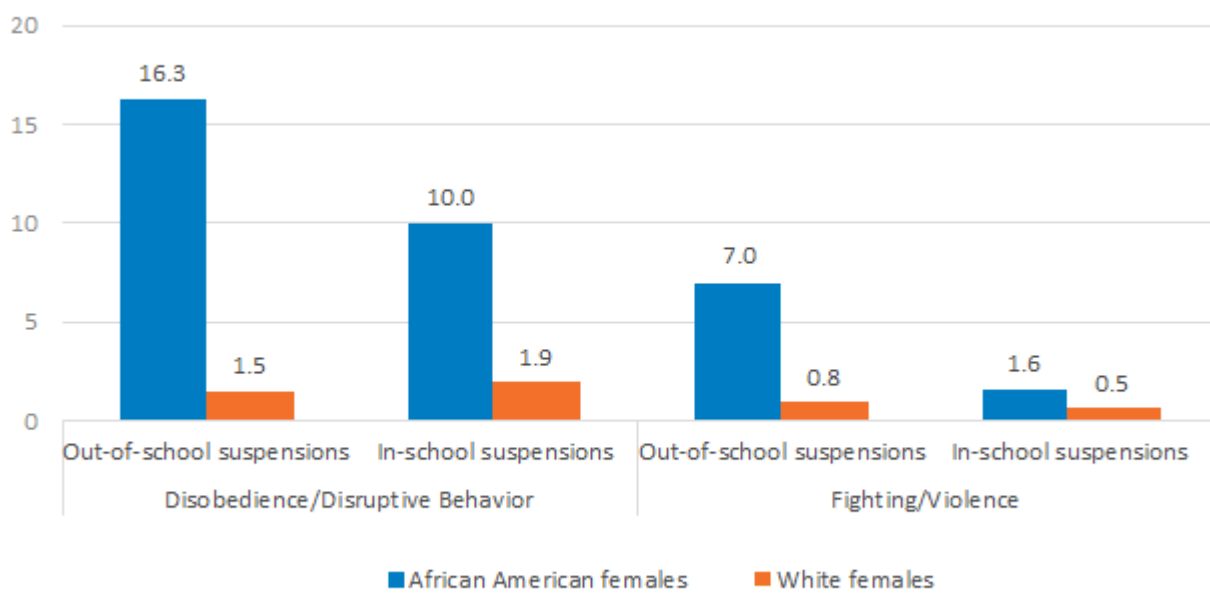
— who in Ohio make up only a small fraction of the total female student population — were more likely than other females to be disciplined for these violations.¹⁵⁰

Additionally, these patterns of disciplinary action lead to the disproportionate involvement of African American girls in the juvenile justice system. According to the 2009-10 CRDC, although African American girls represented less than 17 percent of all female students, they comprised 31 percent of girls referred to law enforcement and approximately 43 percent of girls who had experienced a school-related arrest.¹⁵¹ In fact, girls are the fastest growing segment of the juvenile justice system population.¹⁵² Between 1996 and 2011, the number of juvenile delinquency cases dropped, particularly for boys. The number of girls’ cases also declined, but their share of all delinquency cases increased from 23 percent to 28 percent. In the same time period, among female juvenile delinquency cases, African American girls’ share of 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.¹⁵³ A recent study found that “[b]lack women and girls are being incarcerated and detained at high rates as well [as black males] not because of an increase in violence among girls, but, rather, due to the criminalizing of minor violence that was ignored in the past.”¹⁵⁴ Girls are disproportionately detained for offenses that are not serious, such as technical probation violations — like violating curfew, truancy, or missing a meeting with a probation officer — and status offenses, which are only crimes when committed by a youth, such as running away or truancy.¹⁵⁵ This is particularly troubling, because status offenses, while perceived as defiant behavior, are often reflections of a girl’s unaddressed health, emotional, economic and educational needs.¹⁵⁶

As the graph on the opposite page shows, in the disobedience (or “disruptive behavior”) category, African American females received 16.3 out-of-school suspensions and 10.0 in-school suspensions per 100 African American females enrolled, while white females received merely 1.5 out-of-school suspensions and 1.9 in-school suspensions per 100 white females enrolled. And in the same disobedience category, African American females more often received out-of-school suspensions, while white females more often received in-school suspensions. In the category of fighting/violence, there was also a large disparity between African American and white females disciplined with out-of-school suspension.



Discipline Sanction Rates per 100 Female Students in Ohio, 2012-2013



Source: Jamilia J. Blake, Bettie Ray Butler & Charlotte Danielle Smith, *Challenging Middle Class Notions of Femininity: The Cause for Black Females' Disproportionate Suspension Rates*, in *CLOSING THE SCHOOL DISCIPLINE GAP: RESEARCH TO PRACTICE* (Daniel Losen ed., forthcoming).

Titles IV¹⁶⁴ and VI¹⁶⁵ of the Civil Rights Act of 1964 prohibit public schools from implementing student disciplinary policies that discriminate on the basis of race, national origin or color.

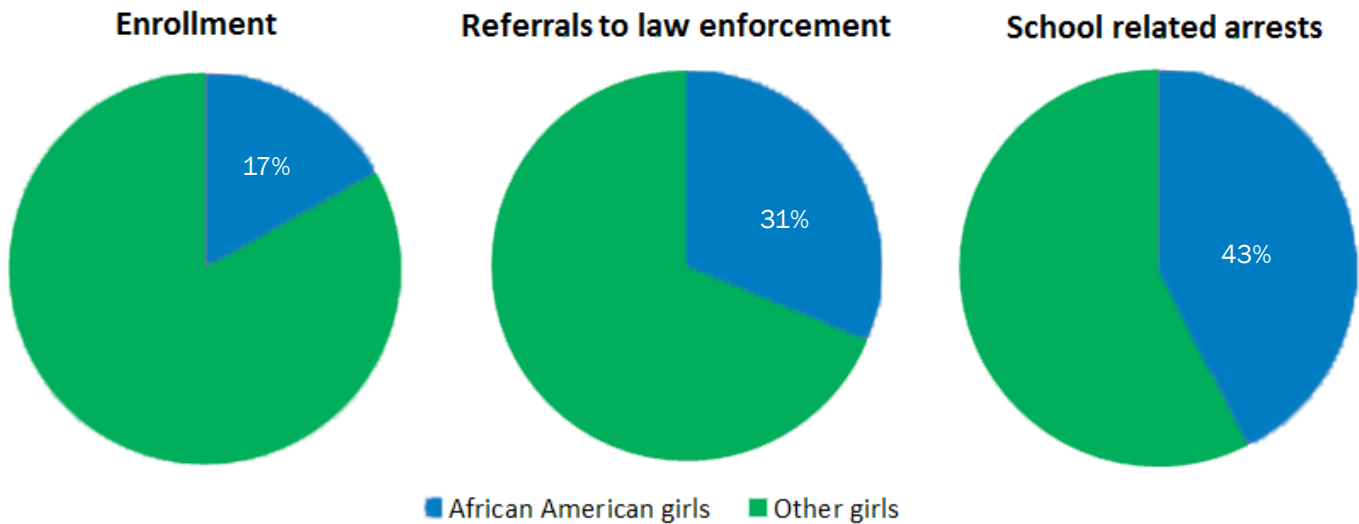
In January 2014, largely in response to community outcry and data trends showing racial and other disparities in exclusionary discipline practices, as well as research demonstrating that students of color are not misbehaving more, the U.S. Departments of Education and Justice jointly issued disciplinary guidance (“Guidance”) to assist K-12 schools in administering non-discriminatory student discipline policies and practices in compliance with federal law. The Guidance states that effective school disciplinary policies must reduce disruption and misconduct, support and reinforce positive behavior and character development, and help students succeed. 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 Title IX and discipline or the intersection of sex and race discrimination.¹⁶⁶

As discussed in greater length in the earlier section of this report on *Public Perception and Self-Esteem*, race and gender stereotypes play a significant role in the disparate discipline rates for African American girls. Stereotypes of African American women as hyper-sexualized and aggressive may “underlie the implicit bias that shape many educators’ views of Black female students,”¹⁵⁷ and “in response to Black girls’ nonconformity to gender stereotypes, educators have [perhaps] been more inclined to respond harshly to the behaviors of African American girls.”¹⁵⁸ As a result, African American girls are more likely than white girls to be penalized for behaviors that challenge our society’s dominant stereotypes of what is appropriate “feminine” behavior — such as being candid or assertive and speaking up and expressing the belief that something is unfair or unjust. The same implicit bias leads to more severe punishments for African American girls than for other girls, and higher proportions of African American girls being referred to the juvenile justice system for minor disciplinary infractions. Once in the juvenile justice system, too, police, prosecutors, judges, and probation officers harbor stereotypes that can play a role in their decision-making.¹⁵⁹ The intersection of race, gender, and class create a “distorted image” of girls of color, making adults in the juvenile justice system more likely to see girls of color, particularly African American girls, “as delinquents — as social problems themselves rather than as young girls affected by social problems.”¹⁶⁰

Tragically, school system and juvenile justice system responses to African American girls’ allegedly “defiant” or “bad” attitudes typically do not consider the lived experiences of African American girls and the underlying causes of the conduct at issue, including for some girls exposure to trauma, violence, abuse, or other toxic stress.¹⁶¹ Rather than providing services and support, African American girls and other students get excluded from school and sometimes re-victimized during the disciplinary process or pushed into the juvenile justice system. But, as previously referenced, some African American girls who are sanctioned for discipline infractions are in fact responding to harassment or trauma. And histories of trauma; abuse and neglect; parental incarceration, substance abuse, or death; and residential instability are very common among girls in juvenile justice detention.¹⁶² Studies show that girls most involved in the delinquency system tend to be girls who have experienced physical, sexual, or psychological abuse.¹⁶³ Understanding the impact of exposure to and experiences of harassment, violence, and trauma is central to understanding African American girls’ educational experiences and outcomes.



African American Girls' Share of Female Students, Overall and by School Discipline



Source: U.S. Department of Education, Civil Rights Data Collection, 2009-10 National and State Estimations, National total, <http://ocrdata.ed.gov/downloads/projections/2009-10/2009-10-Estimations-Nation.xls>. Data are for students without disabilities.

Race/Gender-Specific Disciplinary “Infractions”



HAIR In 2013, two young African American girls were warned by their schools that their natural hair styles were unacceptable. Seven-year old Tiana Parker in Tulsa, Oklahoma was sent home from school and told by officials at her predominantly African American charter school that her hairstyle was not “presentable” and violated the dress code, which termed “dreadlocks” and “afros” to be “faddish” and “unacceptable.” Tiana’s father pulled her out of the school when administrators refused to adjust or amend the policy. Tiana would have had to cut off her locks in order to comply with the policy, which she did not want to do. Her parents transferred her to another elementary school where her hairstyle was accepted. The original school later amended its policy, removing prohibitions on any specific hairstyles, but retaining the school’s right to consult with parents about student hygiene or dress. Months later, Vanessa VanDyke, age 12, a student in Orlando, Florida was threatened with suspension in response to her complaints that other students were bullying her about her “puffy” hairstyle. School officials said her hair was a “distraction” and recommended that she “shape” or cut her hair to comply with their dress code.¹⁶⁷

PROM DRESS In 2010, Erica DeRamus went to her prom in a knee-length strapless dress which her Oxford, Alabama school said violated its dress code because it was too short and too revealing “up top.” The school then offered her and 17 other students who similarly violated the dress code an option of paddling or suspension; Erica chose suspension because she felt she was too old to be paddled.¹⁶⁸ That school year, African American students were 22 percent of the student population at Erica’s school, but 37.6 percent of students receiving out-of-school suspensions; African American girls were nearly one-quarter of female students, but half of female students who received one or more out-of-school suspensions.¹⁶⁹

To address discipline disparities, policymakers and schools should:

- Require accurate annual public reporting of school discipline data broken down by race, sex, and disability to allow for cross-sectional analysis. Data should also include type of offense and length of sanction.
- Implement positive behavior interventions and culturally-responsive supports, social and emotional learning, peer mediation, conflict resolution, and restorative practices as alternatives to punitive discipline practices and police in schools, which are shown to negatively impact African American girls through increased arrests, involvement with the juvenile justice system, and lost learning time.
- Train school personnel to recognize the signs of trauma that may underlie perceived “defiant” or “disrespectful” behavior, and to appropriately respond to and support students impacted by violence or trauma without re-victimizing them.

Discipline disparities also highlight the issues affecting African American girls of color who have been victims of violence, trauma, and harassment, as their behavior can be a predictable response to victimization, but incorrectly labeled as aggression.¹⁷⁰ This inadequate and inappropriate response to and treatment of African American girls who have experienced trauma contributes to poor educational outcomes.

E. VIOLENCE, TRAUMA, AND HARASSMENT

1. Violence and Trauma

Practitioners and researchers almost universally note that more research on the relationship between trauma and its impact on education is necessary. Furthermore, the research which has been done largely fails to look specifically at the intersection of gender and race and, especially, African American girls. That said, available research strongly suggests that experiences of trauma correspond with decreased school engagement and reduced educational achievement.

While not specific to African American girls, there is research linking children’s reports of exposure to violence to poor academic performance.¹⁷¹ One study of elementary school students in Los Angeles found a “moderately strong” relationship between community violence and depressive tendencies, which “in turn . . . were associated with deficient academic performance.”¹⁷² Biological research also demonstrates a link between trauma and school failure.¹⁷³ Trauma — from sexual harassment and assault, community violence, and the daily stressors of racism and sexism — can have a negative effect on academic performance for any child; for African American girls, the build-up of overlapping forms of trauma may have an even more negative effect. This is a very real concern given that among female students, African



The modern-day experiences of trauma and violence impacting African American girls and their educational experiences

cannot be adequately addressed without acknowledging African American women's historical experiences with sexual assault and its role as a catalyst for the Civil Rights Movement. In that era (and even today), issues of race and gender intersected to perpetuate stereotypes of black female sexuality, to justify sexual assault and to preserve racially-biased social and power structures that discounted sexual violence against black women and allowed such assaults to persist unpunished. In fact, the problem was so pervasive that African American organizations and communities mobilized around the repeated sexual assaults of black women. The infrastructure of those responses was used as the basis of the Civil Rights Movement's struggle for educational and social equality.¹⁷⁵

American girls report the highest rates of "being threatened or injured with a weapon on school property."¹⁷⁴

Harmful racial stereotypes that perpetuate images of African American women as deviant or promiscuous, and somehow culpable in their own victimization, are at the root of the indifference by which reported assaults of African American women are often met. For instance, in the Jim Crow south, African American women were routinely sexually assaulted, but because of social hierarchies and power structures built upon notions of racial superiority, their attacks were often unacknowledged and their attackers were not held culpable.¹⁷⁶ It is critical to understand how the vestiges of segregation and racial violence still influence institutionalized racism and both the educational and legal system responses to the sexual assault of African American women.



A compelling example of this was the response to the 1944 assault of 24-year-old sharecropper and mother, Recy Taylor, who was brutally raped, assaulted, and left for dead by seven white men as she walked home from church one night in Abbeville, Alabama. Local law enforcement did a cursory investigation, but took no proactive efforts to bring her attackers to justice. However, African American communities began to mobilize to coordinate responses to assaults on

Recognizing that school is a key intervention opportunity, some districts around the country are taking action to help children by implementing curricula to train educators, children, and caregivers to recognize the signs of sex trafficking.

African American women. In response, the NAACP sent its best investigator, a woman named Rosa Parks, to follow up on Mrs. Taylor's attack. Parks and others organized the "Committee for Equal Justice for Mrs. Recy Taylor." The Civil Rights Movement can be attributed in part to responses of African American communities to the repeated attacks on African American women and the impunity of their attackers; the movement was in part a reaction to dismantle the social structures and institutionalized racism that allowed such violence to persist unpunished. The infrastructure established to organize community members in protest against such attacks became the community organizing framework for the Civil Rights Movement.¹⁷⁷

Although it has been seventy years since the violent attack on Mrs. Taylor, many African American girls' experiences of assault and violence are still met with indifference rooted in racism and lack of proper supports and services. This response has a detrimental effect on the academic outcomes of African American girls, especially when the violence is taking place in schools.

Additionally, African American women and girls experience higher rates of sexual violence and intimate partner violence than their white counterparts. This disparity is also true in school settings; 12 percent of African American female high school students reported having experienced dating violence, compared to 8 percent of white female high school students.¹⁷⁸ Related barriers — such as environmental vulnerabilities like dangerous neighborhoods, indifferent school responses to trauma, and lack of mental health services and other supports within schools — all may contribute to the perpetuation of violence and harassment of African American girls in schools.

2. Trafficking

These same vulnerabilities — environmental dangers, concentrated poverty, lack of access to social services, indifference of school administrators — also contribute to African American girls' disproportionate vulnerability to involvement in the child sex trafficking industry. While trafficking can impact victims of all races, socio-economic classes, and ages, available data suggest that the victims of child and teenage sex trafficking in the United States are overwhelmingly: (1) female; and (2) members of racial and ethnic minorities.¹⁸² In fact, according to the Human Trafficking Reporting System, 94 percent of confirmed victims of sex-trafficking were female and 40 percent were African American between January 2008 and June 2010.¹⁸³ The confluence of race and sex make African American girls particularly vulnerable to involvement in and prosecution for involvement in this underground economy. Unfortunately, when trafficking is discussed in this country, the rhetoric is often misinformed:

Americans often visualize a foreign female who was deceived upon arriving in the U.S. and finds herself being sexually exploited. They do not imagine a [United States Citizen (USC)] child or adult who was kidnapped or lured from home and is prostituted

Sex trafficking is defined as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age."¹⁷⁹ The sex trafficking trade in the United States involves as many as 300,000 children, with an average age of 13 or 14,¹⁸⁰ and human trafficking generates an estimated \$9.5 billion in the United States each year.¹⁸¹

at a local truck stop. Sadly, Americans tend to refer to USC trafficking victims as anything but victims. They are referred to as criminals, prostitutes, child prostitutes, runaways, throwaways, addicts, or juvenile delinquents.¹⁸⁴

Domestic sex trafficking significantly impacts school-age girls, therefore schools can be particularly critical points of intervention for those both at-risk and involved in child sex trafficking, and can offer individualized support to help those who are susceptible to involvement in child sex trafficking.



Oakland is a particularly strong example, as it has become a hub for child sex trafficking, with an estimated 100 children being sold for sex per night, including girls as young as 12 years old.¹⁸⁵ The Oakland Unified School District (OUSD) has adopted and implemented an innovative curriculum to help prevent involvement in child sex trafficking. The curriculum is offered to children as young as seventh-graders,¹⁸⁶ and focuses on teaching students about self-esteem, the dangers of running away from home, sexual abuse, and healthy relationships.¹⁸⁷ Students who are identified as being more at-risk for trafficking, including those with prior reported abuse or involvement with the child welfare system, are eligible for individual mentoring services as well.¹⁸⁸ Education by the OUSD extends beyond students, and outreach efforts are made to educate parents (including foster parents) about child sex trafficking.¹⁸⁹

In Northern Virginia, educators at Herndon High School and community advocates hosted a public forum on child sex trafficking to raise awareness about trafficking in the Northern Virginia suburb, where gang members recruit and lure high-school aged girls into the sex trade. The purpose of the event was to help parents understand the potential risks of sex trafficking and the dangers their children could face.¹⁹⁰ The event also highlighted how social media tools, such as Facebook, fake accounts, and mass messaging, are abused by traffickers to lure young girls into child sex trafficking.¹⁹¹ Herndon High School also recognized the importance of reaching across community sectors, including schools, churches, and businesses, to address child sex trafficking.¹⁹²

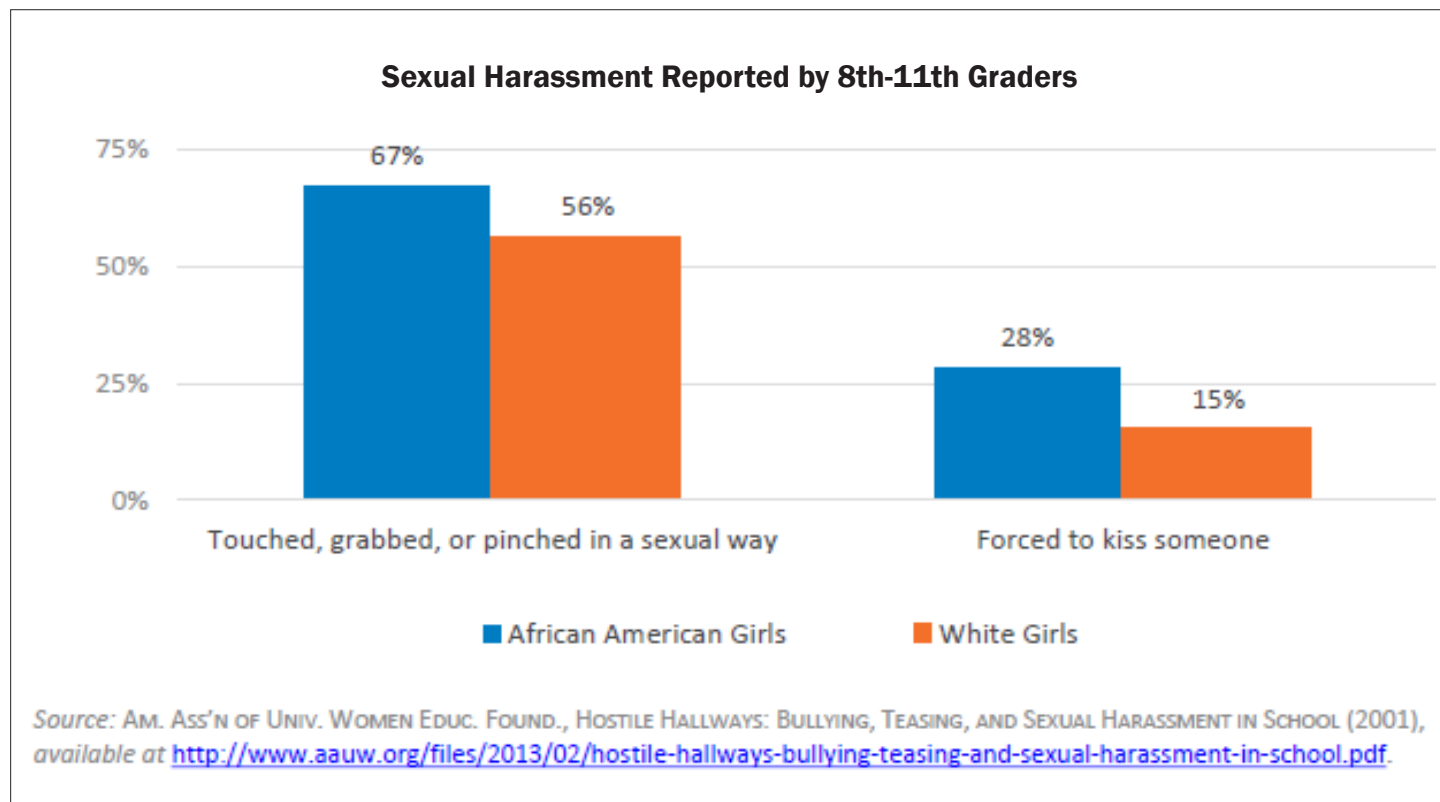
Identifying key intervention points and factors for vulnerability to involvement in sex trafficking and providing age-appropriate education for students holds significant promise for helping to curb youth involvement in the sex trade.

Data on the exposure of African American girls to sexual violence are especially troubling when we take into account that African American women access counseling at lower rates than white women and that “exposure to trauma appears to influence how much Black girls internalized the cultural expectation of being emotionally tough (‘strong black woman’).”¹⁹³ For example, some young African American women report feeling pressure not to share their experiences of sexual assault with anyone.¹⁹⁴ Reporting violence against African American women and girls also raises concerns of “implicat[ing] Black men and boys as perpetrators” which could result in their becoming a part of the criminal justice system.¹⁹⁵ Not processing this trauma and feeling pressure to face it without help, especially when the assailants may be peers and classmates at school, may lead students to experience toxic stress that impedes learning and trigger behaviors that can lead to disciplinary action and even to involvement in the juvenile justice system.¹⁹⁶ Therefore,

proper screening for victims of violence and trauma and trauma-sensitive responses by school personnel are essential to accurately identifying and providing proper support for victims of violence and trauma, so that they can succeed in school and beyond.

3. Sexual Harassment

As previously documented, access to a safe and healthy school environment conducive to learning is essential for academic success. In addition to violence and trauma, sexual harassment is a barrier to learning that disproportionately impacts girls and their academic achievement. African American girls report widespread sexual harassment in school. According to one survey, 56 percent of school-aged girls report experiencing sexual harassment.¹⁹⁷ The same study found that African American students were more likely than white students to “change the way they go to or from schools,” or even change to a new school, in response to sexual harassment.¹⁹⁸ Additionally, some qualitative studies have observed differences in the ways African American and white girls experience harassment. For example, in a 2001 national survey of 8th- through 11th-graders, 67 percent of



African American girls reported being “touched, grabbed, or pinched in a sexual way,” compared to 56 percent of white girls, and 28 percent of African American girls reported being “forced to kiss someone,” compared to 15 percent of white girls.¹⁹⁹

Furthermore, research 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. In fact, “[s]chool administrators, teachers, and people working for the criminal justice system often misidentify Black girls who physically defend themselves against their harassers as the aggressors.”²⁰⁰ Such responses ultimately blame African American girls for the harassment they experience, fail to address the school climate that allows the harassment to occur, and can lead to unjust disciplinary action. It is therefore not surprising that a study of African American female students in St. Louis found that experiencing sexual harassment at school had “tangible



African American women, both as student plaintiffs and lawyers, led critical challenges to school sexual harassment in the U.S. Supreme Court.

LaShonda Davis was only in fifth grade when her school refused to address the prolonged sexual harassment to which she was subjected by a boy in her Monroe County, Georgia class.²⁰⁷ In LaShonda’s case, which was successfully argued by Verna Williams who was then a Vice President at the National Women’s Law Center,²⁰⁸ the Court established that a school can be found liable for student-on-student sexual harassment under Title IX. The decision has since been extended to peer harassment based on other protected bases.

In 2009, a 16-year-old female student at Richmond High School in Richmond, CA was brutally raped and assaulted

in the campus courtyard during her school’s homecoming dance. The assault lasted for over two hours and was witnessed by several bystanders, none of whom intervened. After an investigation that revealed that sexual harassment and assault “permeated the educational environment” at several schools in the district, the West Contra Costa Unified School District was found to have violated Title IX. The Department entered into a resolution with the District in 2013 requiring it to ensure that its schools come into compliance.²⁰⁹

In April 2011, the Department of Education’s Office for Civil Rights (OCR)

issued extensive guidance on the rights of students and the obligations of schools — at both the K-12 and post-secondary levels — to respond promptly and effectively to student-on-student sexual harassment and sexual violence in accordance with the requirements of Title IX.²¹⁰ In March 2014, OCR issued a “Questions and Answers” document further clarifying the application of Title IX to sexual violence cases and launched Notalone.gov, a website with resources to respond to and prevent sexual assault in schools.²¹¹

negative outcomes . . . including harmful effects on school performance, the curtailment of social networks, peer rejection, and negative emotional outcomes.”²⁰²

In addition, although researchers are only beginning to document the experiences of Lesbian, Gay, Bisexual and Transgender (LGBT) students of color in schools, there is a strong need for more data on the experiences of African American LGBT girls and gender nonconforming girls. The data that are available on African American LGBT youth (male and female) illustrate the challenges these students face when simply showing up at school, and the serious repercussions for their educational success. According to a 2011 survey, 56 percent of LGBT African American students experienced verbal harassment based on sexual orientation at school, and 43 percent experienced the same based on gender expression.²⁰³ Over half (54 percent) of African American LGBT students felt unsafe at school because of their sexual orientation and 36 percent felt unsafe because of their gender expression.²⁰⁴

Overall, the prevalent sexual harassment of African American girls in schools and the failure of many schools to seriously address it harms African American girls and interferes with their education, in violation of Title IX of the Education Amendments of 1972²⁰⁵ and possibly also Title VI of the Civil Rights Act.²⁰⁶

F. EARLY PREGNANCY AND PARENTING

In addition to the previously described educational barriers, early parenting has a significant impact on academic progress for many African American girls. While birth rates for African American teens between 15 and 19 years old decreased by 7 percent from 2011 to 2012, African American young women experience unintended pregnancies at three times the rate of young white women.²¹² For African American young women trying to secure an education, teen pregnancy can be a particularly challenging obstacle to the completion of a program or the finishing of a degree.

While many pregnant teens speak of having children as motivating them to stay in school, graduate, and attain their educational and professional goals, the negative messages and discouragement they receive from others can undermine their efforts to do so.²¹³ Work demands, child care responsibilities

Schools across the country continue to unlawfully bar pregnant and parenting students

from school activities, expel them from school, pressure them to attend often sub-par alternative programs, and penalize them for pregnancy-related absences, in violation of Title IX and the U.S. Constitution. For example, when schools rigidly apply attendance policies without regard for the underlying reasons for students' absences, pregnant students end up experiencing discriminatory discipline;²¹⁵ many students are sent to truancy court based on pregnancy-related absences, which, under Title IX, schools must excuse for as long as it is deemed by a student's doctor to be medically necessary.²¹⁶ In 2013, the Department of Education's Office for Civil Rights issued guidance reminding schools of their obligations and clarifying, in the form of answers to Frequently Asked Questions, how the Title IX regulations pertaining to schools' treatment of pregnant and parenting students must be interpreted.²¹⁷

Illustrating bias against African American teen moms:

Kymberly Wimberly, a black female student in McGehee, Arkansas, gave birth to a child during her junior year of high school, took a full load of Advanced Placement courses her senior year, and finished at the top of her class. The response to her accomplishment? Staff members at the school characterized her achievement as a “big mess,” and the next day the school's principal named a white student as Kymberly's “co-valedictorian.”²²⁵

Schools that provide support for pregnant and parenting students

— such as assistance finding child care and transportation, flexible schedules, access or referrals to wraparound services, and ongoing academic support to help promote completion — make a big difference in the success rates of student parents and their children.

and educational barriers — including stigmatization and harassment by administrators, teachers, and fellow students — can prevent African American young women from realizing their potential, forcing them to reluctantly leave school.²¹⁴

Nearly half (45 percent) of non-Hispanic African American girls and young women will become pregnant at least once by age 20, which is more than one and a half times the national average.²¹⁸ Although data do not show what percentage of these girls and young women will become parenting students, without the proper support to stay in school or access to vital family support programs, African American teen mothers and their children are likely to continue to experience poverty and poor educational outcomes.²¹⁹ Overall, only about half (51 percent) of teen mothers get a high school diploma by age 22, compared to 89 percent of women who do not have a

child during their teen years.²²⁰ One-third (34 percent) of teenage mothers never obtain a GED nor a diploma by age 22,²²¹ and less than 2 percent of young teenage mothers attain a college degree by the age of 30.²²² However, with the right support and encouragement, teen parents can — and do — succeed.²²³ Interestingly, white girls have lower teen birth rates than African American girls, but more than 67 percent of African American girls who give birth before the age of 18 get a high school diploma or GED by age 22 — while the same is true for only 55 percent of white girls.²²⁴ Additional research regarding this perseverance by African American girls may serve to help increase the rates of white and other girls who give birth before 18 who ultimately get their high school diploma or GED by age 22.

While the preceding section of this report explains the root causes of poor educational outcomes, the report now reviews the available research detailing the current state of education for African American girls. These data illustrate the critical importance of eliminating the root causes of educational disparities in order to ensure the success of African American girls.

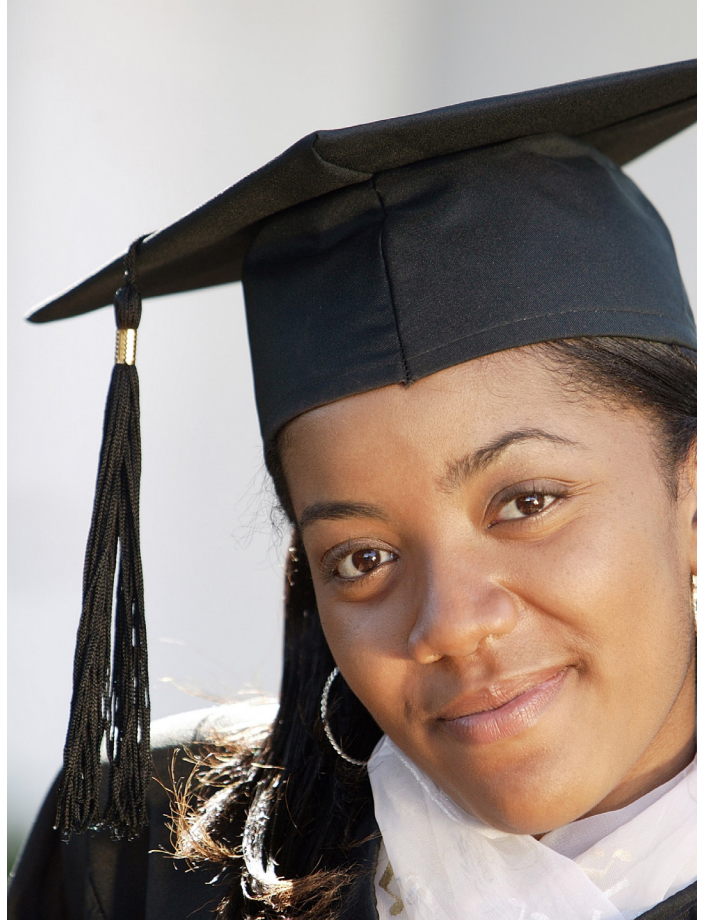
5 DATA ON ACADEMIC INDICATORS AFRICAN AMERICAN GIRLS LEFT BEHIND

As a result of the many impediments to African American girls' educational opportunities and success, African American girls lag behind all other girls on almost all indicators of academic success, including high school graduation rates. This section presents the data documenting the academic challenges facing African American girls, including test scores, grades, grade promotion and retention, enrollment in AP courses and AP exam scores, and college enrollment and completion. This section also highlights the pressing need for additional research and data collection on the educational attainment of African American girls. Together, the data demonstrate that the effort to ensure that African American girls have equal access to educational opportunities is nothing short of imperative.

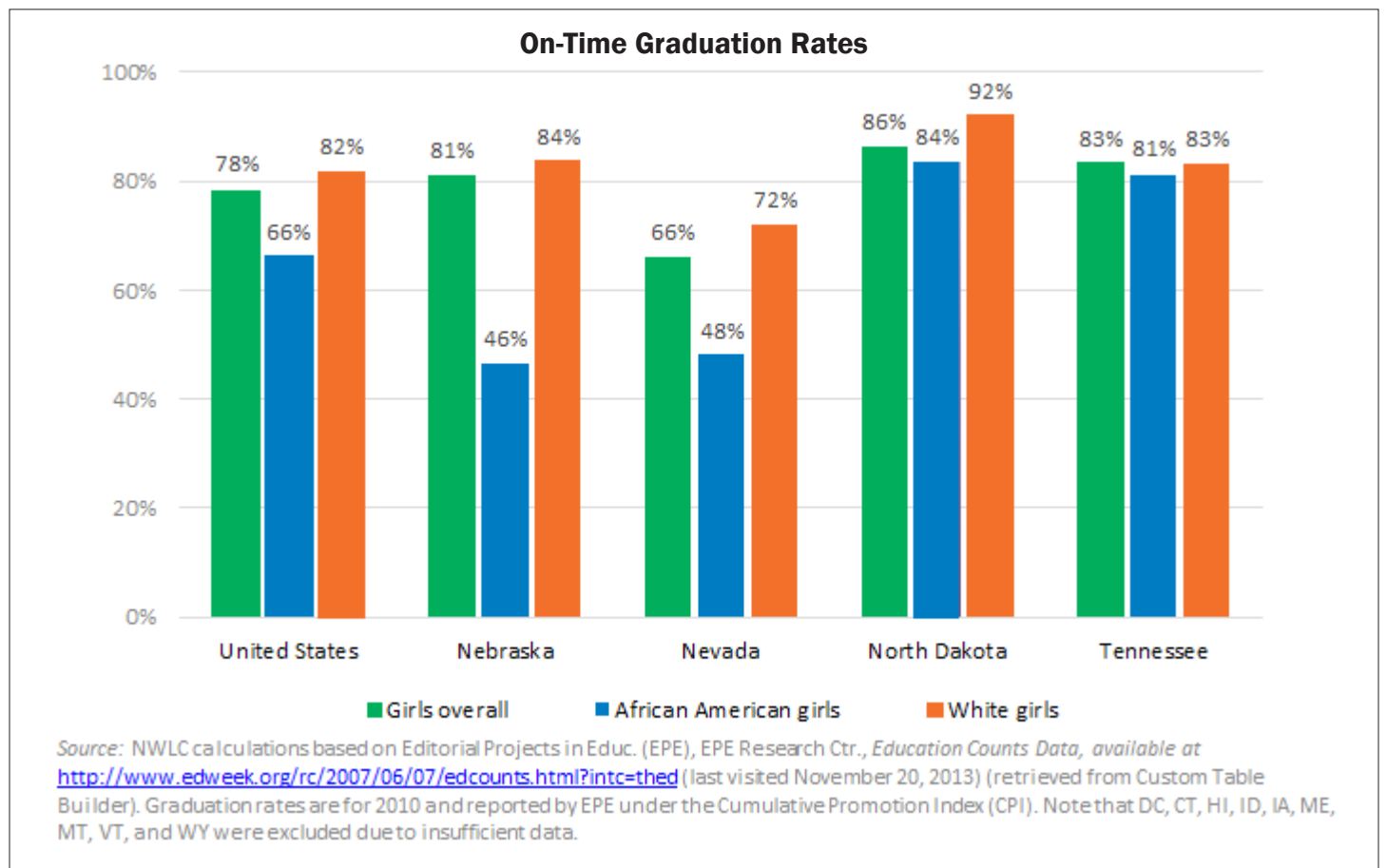
A. HIGH SCHOOL GRADUATION RATES

High school completion is a basic indicator of academic success and a lens through which to view African American girls' educational disparities. And, on this measure, African American girls are falling behind. They are less likely than other girls to complete high school on time (within 4 years). In fact, in 2010, over one-third (34 percent) of African American female students did not graduate on time, compared to only 19 percent of white female students and 22 percent of all female students.²²⁶ The graduation rate for African American girls is lower than all other groups of girls, except American Indian girls.²²⁷ In almost all states with available data, the high school on time graduation rate for African American girls was below the national average for girls overall. In some states the on time graduation rates for African American girls were abysmal.

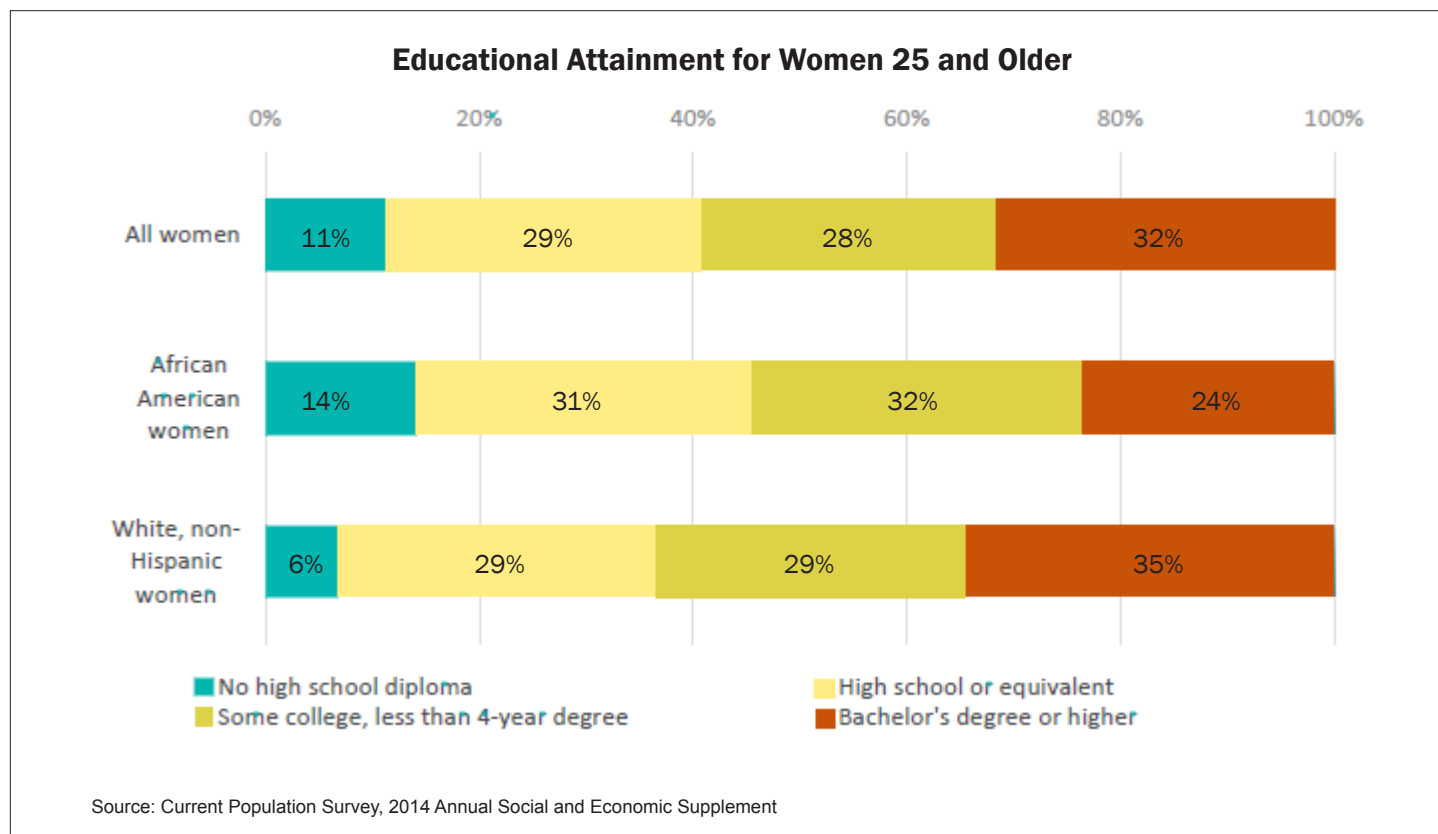




For example, as the graph below illustrates, only 46 percent of African American girls graduated from high school on time in Nebraska (compared to 81 percent for girls overall in Nebraska) and only 48 percent graduated on time in Nevada (compared to 66 percent for girls overall in the state). The picture is very different in the top two states for African American girls' graduation rates, North Dakota and Tennessee: 84 percent of African American girls in North Dakota graduated from high school on time (still lower than the rate of 86 percent for girls overall in North Dakota) and 81 percent did so in Tennessee (compared to 83 percent for girls overall in the state).²²⁸



As the graph below shows, the disparity in educational outcomes extends beyond high school completion. In 2013, almost half (45 percent) of African American women age 25 and older had only a high school diploma or less, compared to 36 percent of white women and 40 percent of women overall,²²⁹ and less than one-quarter (24 percent) of African American women age 25 and older had a bachelor's degree, compared to about one-third each of women overall (32 percent) and of white, non-Hispanic women (35 percent).²³⁰

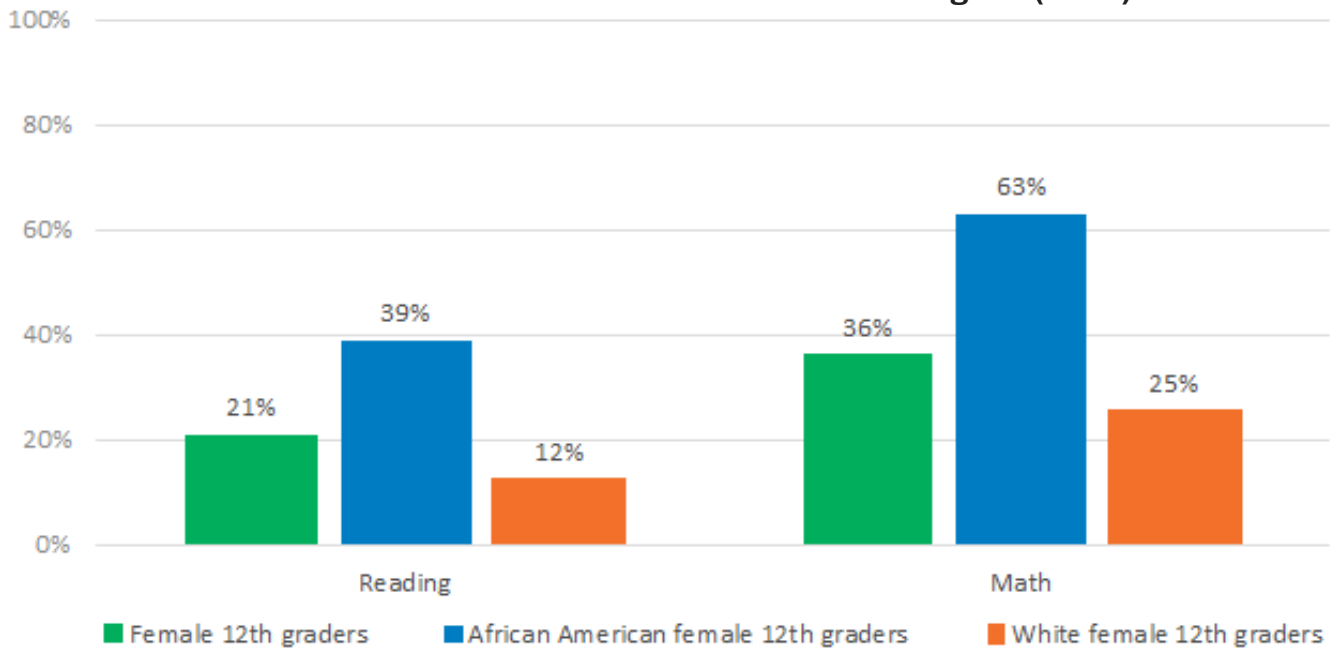


B. ACHIEVEMENT TEST SCORES AND GRADE POINT AVERAGES

In addition to high school completion, academic performance in high school and on standardized achievement tests are also indicators of the educational status of African American girls. The National Assessment of Educational Progress (NAEP) measures student proficiency in mathematics, reading, science, and other subjects for students in grades 4, 8 and 12.²³¹ Across all grades in 2013, African American girls consistently had the largest percentage of students scoring below the Basic achievement level (or “below Basic”) in mathematics and reading when compared to all other groups of girls, with the exception of American Indian/Alaska Native girls.²³² In 2013, almost two-thirds (63 percent) of female African American 12th-graders scored “below Basic” in mathematics and nearly four in ten (39 percent) scored “below Basic” in reading.²³³ In 2009, when 12th-graders were last tested in science, almost three-quarters (73 percent) of female African American 12th-graders scored “below Basic.”²³⁴

In 2013, African American girls in their senior year of high school scored lower than every other group of girls on both math and reading NAEP assessments. This pattern held across grade levels: African American girls in grades 4 and 8 were more likely to score “below Basic” in mathematics and reading than all other groups of girls.²³⁵ Grades earned on regularly assigned class work followed a similar pattern: in 2009, non-Hispanic African American female 12th-graders had the lowest overall grade point averages when compared to girls of any other racial or ethnic group.²³⁶

Percentage Of Female High School Seniors Scoring below the Basic Achievement Level on the National Assessment of Educational Progress (NAEP)

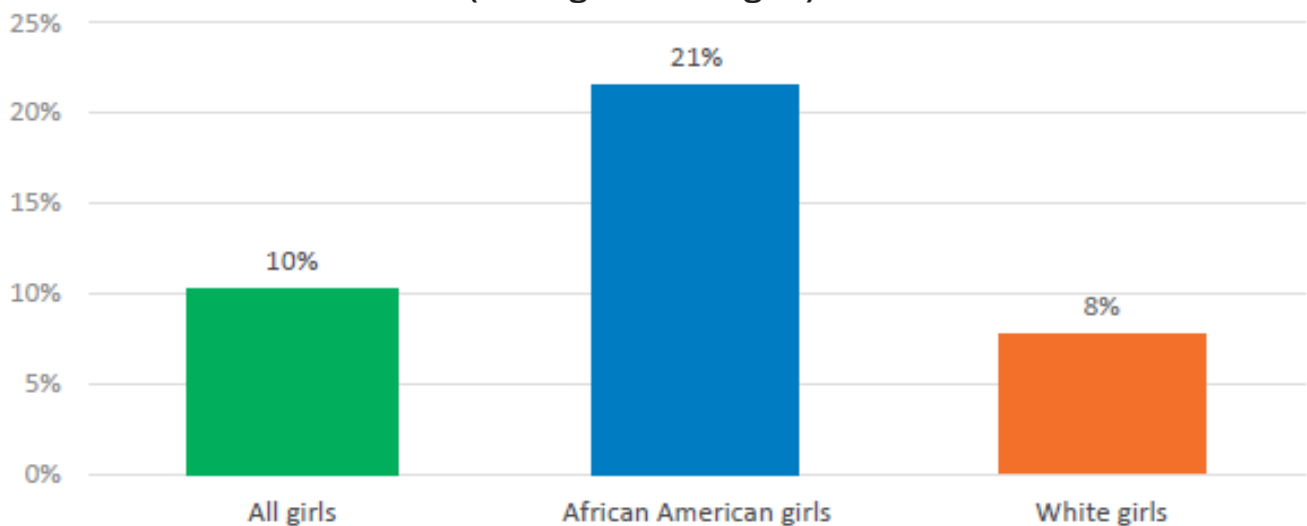


Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 2013 Reading and Mathematics Assessments.

C. GRADE RETENTION

There are also disparities relating to grade retention for African American girls. From kindergarten through 9th-grade, African American girls are “held back” a grade or “retained” at a rate of 21 percent, which is far higher than the rate for any other group of girls — particularly white girls who are retained at a rate of only eight percent — and more than twice as high as the 10 percent rate for girls overall.²³⁷

Percentage of 9th Grade Female Students Who Had Ever Been Retained in a Grade (Kindergarten through 9)



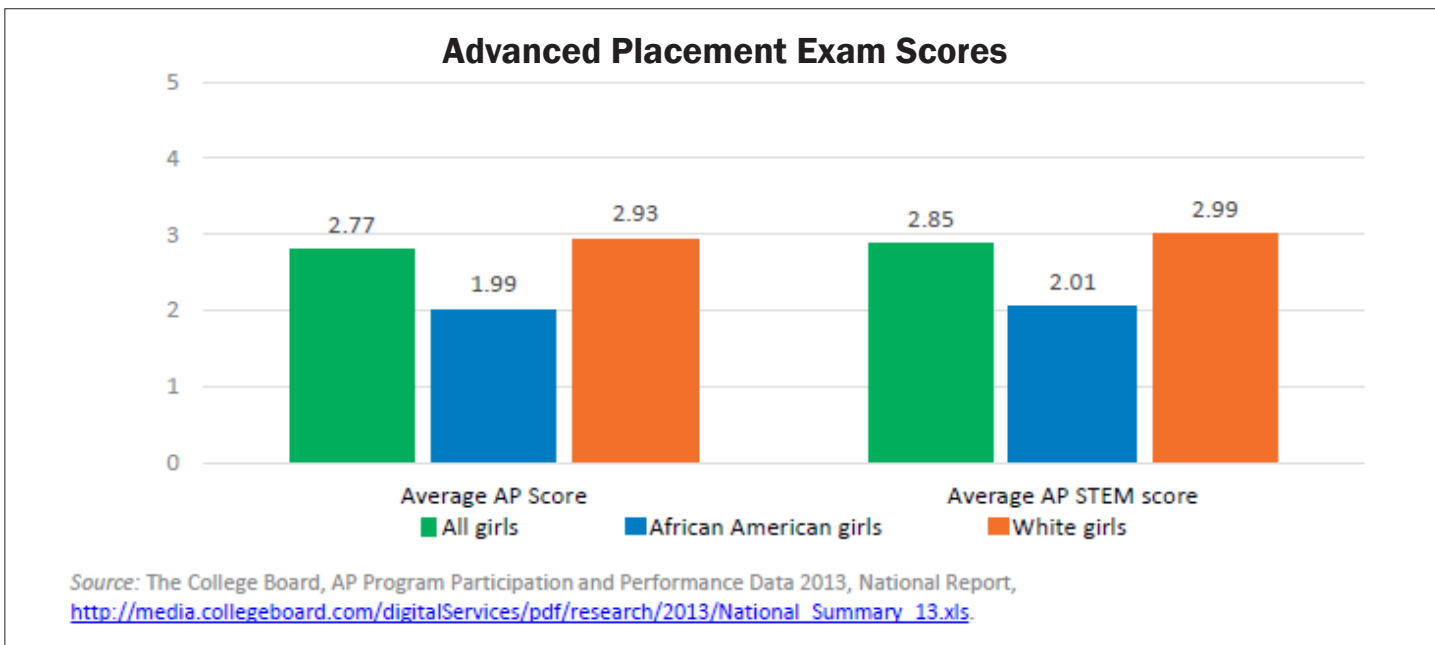
Source: TERRIS ROSS ET AL., NAT'L CTR. FOR EDUC. STATISTICS, HIGHER EDUCATION: GAPS IN ACCESS AND PERSISTENCE STUDY (2012), available at <http://nces.ed.gov/pubs2012/2012046.pdf>.

Although evidence of the impact of grade retention is mixed,²³⁸ the alarmingly high rates of grade retention among African American students, including girls, is troubling and illustrates the extent to which schools are failing to meet their needs.

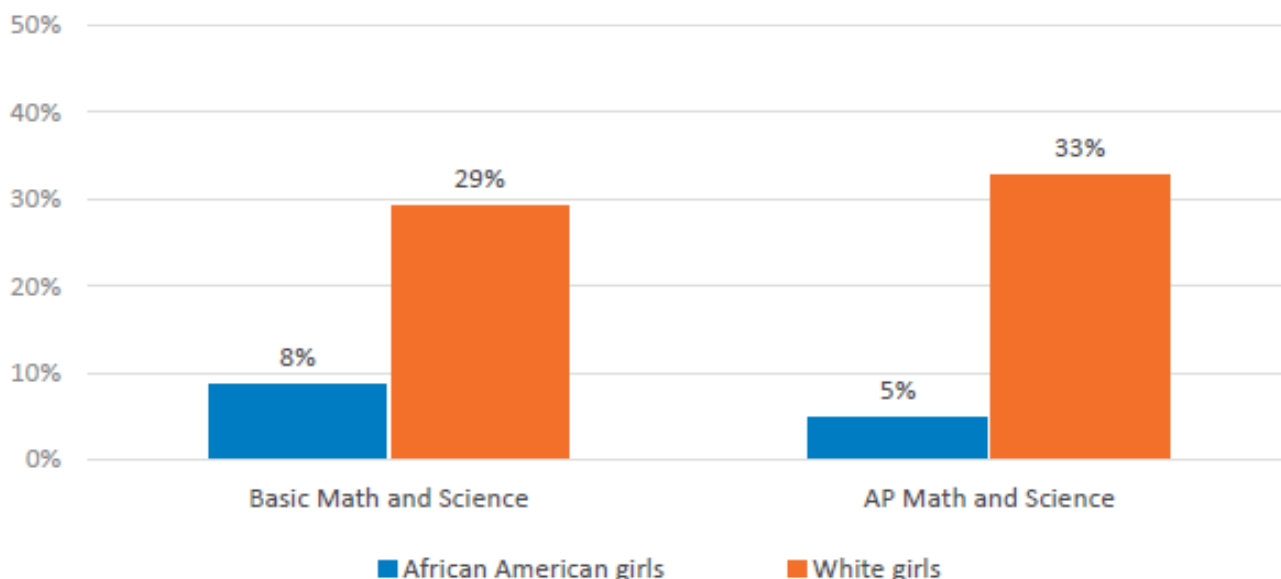


D. AP CLASSES AND EXAMS

Another indicator of academic achievement is enrollment in Advanced Placement (AP) classes and successful scores on AP exams. African American girls are the least likely group of girls to graduate from high school with college credit and the least likely to earn high scores on college entrance exams. Part of the issue is access to and performance in AP-level or college-credit courses. Recent data show that African American students comprise 16 percent of high school enrollment, but 9 percent of students enrolled in at least one AP course, and 4 percent of students with a qualifying score on at least one AP exam.²³⁹ National data shows that African American girls are underrepresented in AP classes for STEM subjects, making up only 5 percent of AP math and science students, despite comprising over 8 percent of students enrolled in basic math and science classes.²⁴⁰ Meanwhile, white girls comprised one-third of AP math and science students, which is slightly higher than their share of students in basic math and science classes.²⁴¹



Share of All Students in High School Math and Science Classes



Source: U.S. Department of Education, Civil Rights Data Collection, 2009-10 National and State Estimations, National total, <http://ocrdata.ed.gov/downloads/projections/2009-10/2009-10-Estimations-Nation.xls>.

AP exams are designed as college-level exams that give students the opportunity to earn college credit while still in high school. The exam is scored on a scale of 1 to 5, and a score of 3 is the typical minimum accepted by colleges for credit.²⁴² According to data from the College Board, which administers the exam, although the average exam score for girls fell below 3, of the female students who took an AP exam, African American girls had the lowest average exam score (1.99), far lower than girls overall (2.77) and white girls (2.93).²⁴³ Only 28 percent of African American girls who took an AP exam scored a 3 or higher compared to 56 percent of all girls and 62 percent of white girls.²⁴⁴ And African American girls who take AP tests in STEM subjects get lower scores than other girls too: in 2012, for example, black girls had a national average AP STEM score of 2.01, compared to 2.99 for white girls and 2.85 for all girls.²⁴⁵ A recent analysis found that in some states between 2006 and 2013, no African American students and no female students took a computer science AP exam.²⁴⁶ In Mississippi, Montana, and Wyoming, no girls took the computer science AP exam, and in 11 states no African American students took the computer science AP exam at all.²⁴⁷



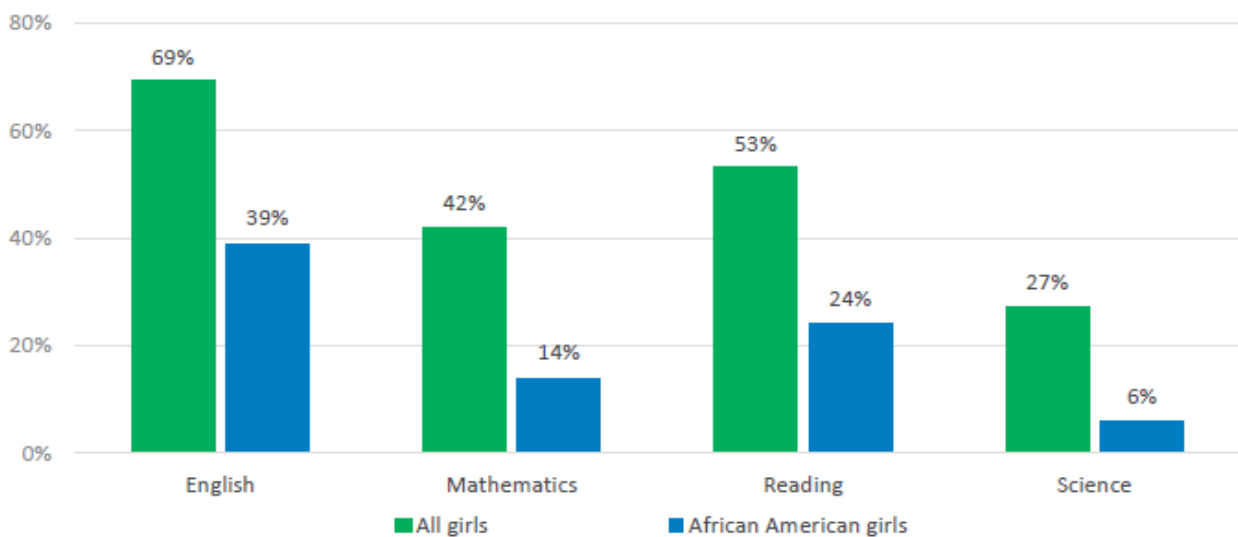
E. SAT AND ACT SCORES

Although there are many legitimate questions about over-reliance on high-stakes tests, almost all colleges and universities in the U.S. require students to take and submit scores from a standardized test as part of the college admissions process, with higher test scores necessary for admission to the best universities. There are two dominant exams used by post-secondary schools for college admission in the U.S. — the SAT and the ACT. Among college-bound seniors in 2013, African American girls had the lowest average SAT scores of any group of girls for critical reading, mathematics and writing.²⁴⁸ And African American girls in the graduating class of 2012 scored lower on the ACT than girls overall: their average composite score of 17 out of 36 was lower than the average score for girls overall (21 out of 36).²⁴⁹ This pattern held true for their scores in English, reading, mathematics, and science.²⁵⁰



African American girls had lower scores on the STEM portions of the ACT college entrance exam. In 2012, only 6 percent of African American girls met the ACT science college readiness benchmark compared to 27 percent of girls overall; and 14 percent of African American girls met the math benchmark, compared to 42 percent of girls overall.²⁵¹ African American girls also lag on the math section of the SAT exam, scoring an average of 423, while white girls scored an average of 519 out of 800.²⁵²

Percentage of Students Meeting College Readiness Benchmark Scores on the ACT



Source: THE ACT, ACT PROFILE REPORT – NATIONAL: GRADUATING CLASS 2012 NATIONAL (2012), available at <http://www.act.org/newsroom/data/2012/pdf/profile/National2012.pdf>; THE ACT, ACT PROFILE REPORT – NATIONAL: GRADUATING CLASS 2012 – BLACK/AFRICAN AMERICAN STUDENTS NATIONAL (2012), available at <http://www.act.org/newsroom/data/2012/pdf/profile/AfricanAmerican.pdf>.

F. ACCESS TO AND COMPLETION OF POST-SECONDARY EDUCATION

Another indicator of academic preparation and achievement is enrollment in post-secondary education. Here, the news is improving for African American young women. Recent data show that from 1994 to 2012, the share of African American female high school completers enrolling in college increased from 48 to 69 percent.²⁵³ However, African American female students are less likely than other female students to enroll in a four-year program.²⁵⁴ African American women, who make up just 15 percent of female high school graduates between the ages of 15 and 24, are slightly overrepresented in two-year colleges (where they are 16 percent of female students) and are underrepresented at four-year institutions (where they are only 13 percent of female students).²⁵⁵

Additionally, data show that even when African American women do enroll in college, their completion rates are lower than those of other female students and they are less prepared upon entering these programs: 45 percent of African American female first-year college students reported having to take remedial classes, compared to 34 percent of white female students and 39 percent of female students overall.²⁵⁹ Among first-time postsecondary students who started a full-time program at a four-year institution in 2006, only 44 percent of African American female students had received their bachelor's degree six years later in May 2013, compared to 65 percent of white female students, and 61 percent of all female students.²⁶⁰ Completion rates were lower across all groups for associate's degrees or certificate programs, and in these shorter programs too, African American female students

AFRICAN AMERICAN WOMEN PLAYED A SIGNIFICANT ROLE IN DESEGREGATING INSTITUTIONS OF HIGHER EDUCATION.

NAACP LDF lawyers argued critical higher education desegregation cases.



Constance Baker Motley, an African American female civil rights attorney and judge, wrote the original complaint in *Brown* while working with the NAACP Legal Defense and Educational Fund, Inc. following her graduation from Columbia Law School. In 1962, Motley was the first African American woman to argue before the U.S. Supreme Court when she successfully argued for James Meredith's admission as the first black student at the University of Mississippi. She later became the first African American woman elected to the New York State Senate in 1964 and the first African American female federal court judge, a position she held until her death in 2005.²⁵⁶



African American women also served as plaintiffs in higher education cases challenging the "separate but equal" doctrine. In 1948, before *Brown* was decided, **Ada Lois Sipuel** challenged her denial of admission to the all-white law school at the University of Oklahoma. When the Supreme Court held that Ms. Sipuel was entitled to receive a legal education provided by the state and that Oklahoma was required to provide African Americans instruction equal to that of whites, Ms. Sipuel became the first African American woman to attend the law school. She graduated in 1951 and later returned to the University to serve as a member of the Board of Regents.²⁵⁷



In 1955, the Supreme Court ruled in *Lucy v. Adams*, a case brought on behalf of **Autherine Lucy** and Polly Anne Myers, that the University of Alabama could not deny admission to students solely on account of race. Lucy became the first African American student to attend the University of Alabama in 1956 (Myers was denied admission). Riots followed Lucy's admission, and she was expelled on grounds of slandering the university (an expulsion that was not overturned until 1988). The following year, Lucy and her daughter enrolled at the University, earning their degrees in 1992.²⁵⁸

fared worse than females of most other racial groups. An analysis of two-year institution completion rates reveals that only 29 percent of African American female students who started a full-time degree-seeking program in 2009 completed a certificate or associate's degree within 150 percent of the normal time, compared with 32 percent of white female students and 34 percent of all female students.²⁶¹ There is a need for more research on what accounts for these lower completion rates, which may be attributable to lack of support systems within universities, lack of preparation for college-level work and/or lack of needed educational supports.

Enrollment in and completion of post-secondary education is particularly important, as it is an indicator of future earnings. While college completion is a predictor of future earnings, women overall make less than men and African American women make less than white, non-Hispanic women among full time, year-round workers, at almost every education level, a fact that demonstrates the continuing role of race and gender bias.²⁶² There also is an overall earnings gap between workers with two-year and four-year degrees. Looking at highest level degrees attained, full-time workers with a bachelor's degree typically make \$331 more per week than those with an associate's degree;²⁶³ not surprisingly, however, those with associate's degrees in technical fields can out-earn those with bachelor's degrees.²⁶⁴ Therefore, while African American women are uniquely impacted by both race and gender

in terms of earnings potential, additional post-secondary education can still positively impact future earnings.

In undergraduate STEM programs, African American women are relatively less underrepresented than white women, but they are still underrepresented. Thirty-five percent of African American female undergraduate freshmen intend to major in STEM fields, compared with 31 percent of white female freshmen and 34 percent of female freshmen overall.²⁶⁵ In 2012, only 6 percent of associate's degrees awarded to African American women were in STEM fields, compared to 5 percent for white women and 6 percent for women overall.²⁶⁶ Additionally, 28 percent of bachelor's degrees awarded to African American women were in STEM fields, compared to 27 percent for white women and 29 percent for women overall.²⁶⁷



All of the data above defy the widely held assumption that all girls are succeeding in school. On a wide range of measures of academic achievement – graduation rates, grade retention, proficiency in core courses, and access to and completion of post-secondary education – too many African American female students are not leaving school ready for college and careers, and as a result, they and their families face tremendous economic consequences.



6

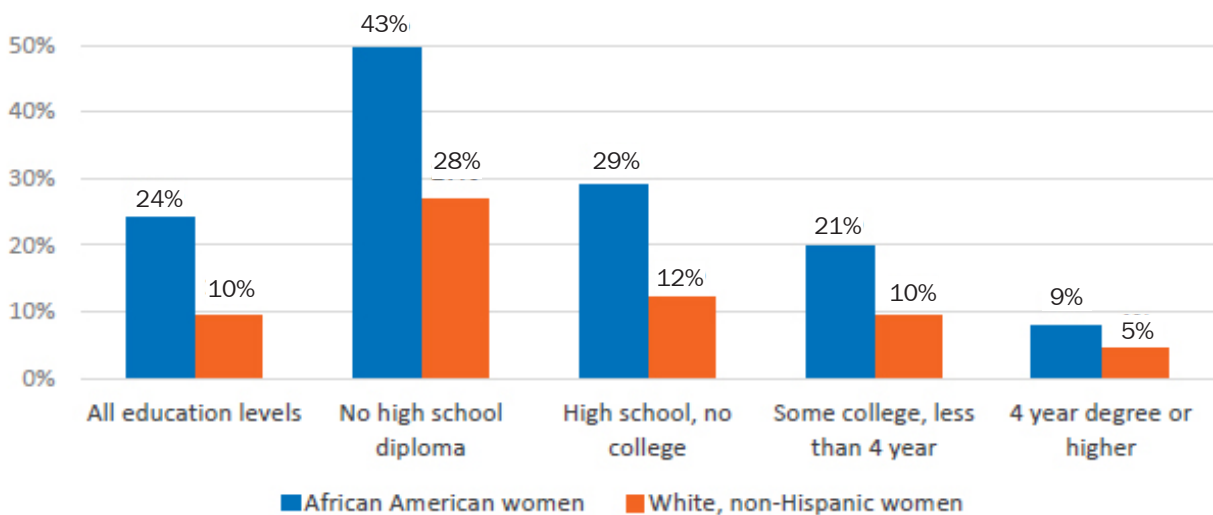
ECONOMIC OUTCOMES
THE CONSEQUENCES OF EDUCATIONAL DISPARITIES

The educational outcomes of African American girls get little attention despite the stark connection between education and future income level and economic well-being. The ability of women of all races and ethnicities to provide for their families at levels above the poverty line is directly tied to their educational attainment. For example, a female African American college graduate with a bachelor’s degree can typically expect an increase of about \$657,000 in lifetime earnings over a female African American high school graduate.²⁶⁸

Education levels have an extraordinary impact on poverty; in 2013, while African American women overall had higher rates of poverty than their male and female white, non-Hispanic counterparts at every level of educational attainment, 43 percent of African American women ages 25 and older without a high school diploma were living in poverty, compared to 29 percent with a high school diploma and 9 percent with a bachelor’s degree or higher.²⁶⁹ The much higher rates of poverty for African American women without a high school degree underscores the importance of addressing and eliminating the barriers they face to educational achievement.

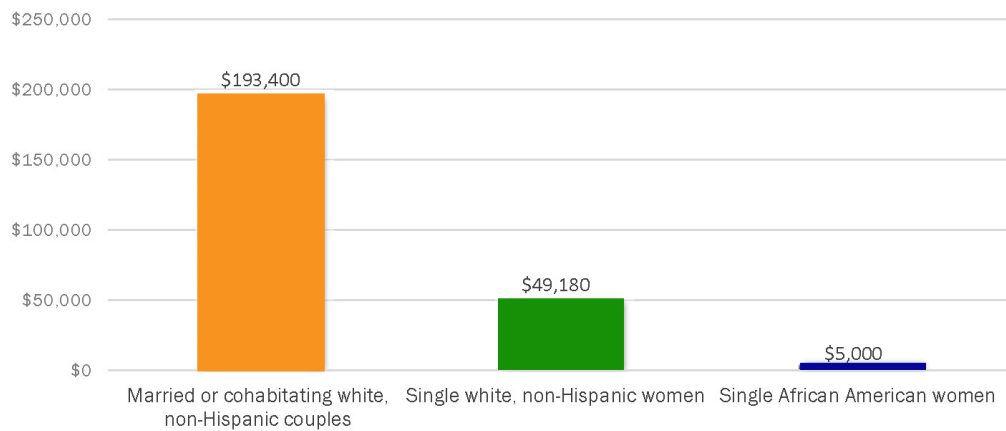


Poverty by Educational Attainment



Source: U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement, 2013 Poverty Table of Contents, POV29, http://www.census.gov/hhes/www/mstob/cs/032014/pov/pov29_100.htm. Figures are for adults 25 and older who are of a single race.

Median Household Wealth



Source: Mariko Chang, Insight Ctr. for Cmty. Econ. Dev., *Lifting as We Climb: Women of Color, Wealth, and America's Future*, Insight, Center for Community Economic Development 7 fig.1 (2010), available at <http://www.insightcced.org/uploads/CRWG/LiftingAsWeClimb-WomenWealth-Report-InsightCenter-Spring2010.pdf>.

All of these factors contribute to the stagnant wage gap for African American women. African American women who work full time, year round typically are paid only 64 cents for every dollar paid to white, non-Hispanic men and 82 cents for every dollar paid white, non-Hispanic women. The gap in wages between African American women and white men translates into a loss of \$19,399 per year and over the course of a 40-year career, this gap costs African American women an average of \$776,000 – more than three-quarters of a million dollars.²⁷⁴

The low federal minimum wage also contributes to economic insecurity. A woman working full-time, year-round at the current federal minimum wage will earn only \$14,500 annually, which is more than \$4,000 below the federal poverty line for a single woman with two children.²⁷⁰

African American women in particular are overrepresented in some of the most poorly paid jobs in the nation. African American women make up 12 percent of the low-wage workforce, which is double their share of the overall workforce (6 percent). White, non-Hispanic women are also overrepresented in the low-wage workforce, but to a much smaller extent—they make up 34 percent of the low-wage workforce compared to 31 percent of the overall workforce. White, non-Hispanic men, in contrast are significantly underrepresented in the low-wage workforce—they make up 35 percent of the overall workforce compared to only 16 percent of the low-wage workforce.²⁷²

Furthermore, the less education a woman receives, the more likely she is to earn the minimum wage or less. African American women without a high school diploma make up a share of the low wage workforce that is 4.5 times their share of the overall workforce; those with a high school diploma or its equivalent make up a share of the low-wage workforce that is 2.9 times their share of the overall workforce; even those with some college education or an associate's degree are disproportionately represented in the low-wage workforce. It isn't until an African American woman has a bachelor's degree or more that she is no longer disproportionately represented in the low-wage workforce.²⁷³

Moreover, lower wages over the course of a lifetime compound in a “wealth gap” for African American women. Close to half (46 percent) of single African American women had zero or negative wealth in 2007, compared with 23 percent of single white, non-Hispanic women, and 15 percent of married or cohabitating white, non-Hispanic couples.²⁷⁵ Single African American women had a median household wealth (including vehicles) of just \$5,000, compared with \$49,180 for white, non-Hispanic single women and \$193,400 for married or cohabitating white, non-Hispanic couples.²⁷⁶ According to the Institute on Assets and Social Policy (IASP), college education alone accounts for five percent of the racial wealth gap. IASP found that highly educated households tend to have more wealth and that comparable college degrees led to more wealth for whites than for African Americans.²⁷⁷

The economic success and wages of African American women are increasingly important to them and their families. More women now than ever are the primary breadwinners for their families. For example, in 2012, more than four in ten households with children under 18 had mothers who were the sole or primary provider for the family and an additional 22 percent of households with children had mothers who were co-breadwinners, earning between 25 and 50 percent of the family's earnings.²⁷⁸ And in 2010 over half (53 percent) of African American working wives earned as much or more than their husbands.²⁷⁹ Addressing the educational outcomes – and the many barriers that undermine them – is crucial to the economic security for African American women, their families and communities.

7

A CALL TO ACTION TO ELIMINATE EDUCATIONAL DISPARITIES FOR AFRICAN AMERICAN GIRLS



As this report demonstrates, there is a great need to develop and implement culturally responsive interventions to support the educational and career success of African American girls and women.

A number of recent proposals would help improve educational outcomes for African American children — boys and girls. Examples of such proposals include:

- **Expanding access to affordable, high-quality child care and early education** through increased investments in child care, Head Start, universal, full-day prekindergarten, and other early learning initiatives; and through improved policies that reflect the diverse needs of families, including families with parents working full time, parents in school, and parents working variable or non-traditional schedules;
- **Increasing access to educational opportunities** that promote diversity and reduce racial isolation, such as magnet schools;
- **Ensuring access to curricula that will help students build strong academic foundations** and be college and career ready, such as Science, Technology, Engineering, and Mathematics (STEM) courses and courses that will help students develop critical-thinking, reading, and math skills, such as equitably implemented Common Core academic standards;
- **Investing in initiatives that improve school engagement and academic achievement** such as extended learning time, mentoring programs, and support services responsive to the needs of students and their families;
- **Ensuring that students in high-need schools are taught by credentialed teachers** who have degrees in their assigned teaching areas;
- **Ensuring that federal funding is fairly distributed** and schools with limited resources receive targeted federal support; and
- **Ensuring that state, local, and federal funds** are used to help schools reduce racial and gender disparities in education.

The recommendations below describe in more detail ways to further identify and address the particular challenges faced by African American girls and improve their rates of high school graduation and completion of post-secondary education.

More research is needed to identify practices and programs that will best improve outcomes for African American girls and women, but the existing research should encourage educators, policymakers, and funders to invest significant resources to improve educational outcomes for African American girls. The following recommendations provide a roadmap for such action.



1

ADDRESS OVERLY PUNITIVE DISCIPLINARY PRACTICES THAT DISPROPORTIONATELY IMPACT AFRICAN AMERICAN GIRLS AND PUSH THEM OUT OF SCHOOL.

As a general matter, policymakers, schools, parents and community advocates should have access to educational data — including data on school discipline — disaggregated and cross-tabulated by sex, race, ethnicity, status as an English Learner, and disability status, so that they may make informed decisions, address disparities and work to secure access to equal educational opportunities for all children.

To tackle the specific challenges facing African American girls, we recommend the following:

Policymakers

- Encourage the U.S. Department of Education’s Office for Civil Rights to investigate the extent to which school discipline policies disproportionately impact girls of color and conduct compliance reviews of school disciplinary practices that specifically involve the intersection of race and gender discrimination or stereotypes, implicating both Title VI of the Civil Rights Act and Title IX of the Education Amendments of 1972.
- Allocate funding for the annual collection and reporting of educational data, such as the Civil Rights Data Collection.
- Allocate funding for the U.S. Department of Education to routinely conduct compliance reviews, resolve complaints, and enter into resolution agreements to eliminate racial and gender discrimination and disparities in schools and districts.

Schools and Districts

- Provide educators and school personnel with gender and racial bias training to root out discriminatory discipline practices and ensure that schools are encouraging and supporting, not undermining, the academic success of African American female students.
- Conduct universal screening for students’ academic, social and emotional, mental health and other needs, and ensure that proper culturally-responsive supports are in place, such as counseling, to assist students who may have been exposed to trauma or violence.
- Provide teachers, staff and administrators with training to recognize signs of the trauma that may be underlying perceived “defiant” or “disrespectful” behavior, understand the effects of trauma on children, and to learn ways to appropriately address trauma and not re-victimize students.
- Provide girls — particularly those with a history of trauma — with culturally appropriate social and emotional learning programs that teach them skills for responding to conflict.
- Track and share effective school discipline practices and adopt and implement practices that not only reduce suspension and expulsion but also reduce the disproportionate impact of practices on children of color.

- Annually report discipline data to the public, including specific reasons for disciplinary action, length of time and nature of disciplinary intervention used, and number of instruction days lost.
- Conduct regular audits of discipline policies and data to identify and address disparities, limit the use of exclusionary discipline practices, support inclusive, culturally-responsive alternatives to exclusionary discipline practices to help reduce racial and gender disparities, such as restorative justice.
- Reduce the presence of law enforcement in schools, such as School Resource Officers (SROs), who have been shown to foster a climate of distrust and increase youth involvement with the juvenile justice system, particularly for students of color, often for minor offenses.

Parents, Caregivers and Community Advocates

- Request participation in the development and implementation of school discipline rules and policies. Encourage schools and districts to use tools like the federal joint discipline guidance, issued by the Departments of Education and Justice, to develop alternatives to overly punitive discipline practices.
- Highlight community-based and culturally-responsive services and resources available, and ensure that schools are connecting students and families with these resources to support and address their social, emotional, mental health and other needs.
- Report to the U.S. Office for Civil Rights, school board, and other appropriate local and state officials, any failure on the part of schools to give parents proper notification of disciplinary actions and the opportunity to participate in the disciplinary process.
- Hold community forums and public meetings to discuss civil rights protections related to school discipline and develop community responses to schools or districts that continue discriminatory practices and policies.

2 | SUPPORT PROGRAMS AND ALTERNATIVES THAT PREVENT AND REDUCE AFRICAN AMERICAN GIRLS' INVOLVEMENT WITH THE JUVENILE JUSTICE SYSTEM.

Policymakers

- Eliminate legal loopholes that permit youth, and girls in particular, to be detained for status offenses and technical probation violations, such as truancy and running away.
- Require juvenile justice systems to conduct universal, gender-responsive, trauma-informed screening to determine the physical and mental health, economic and educational needs of girls who commit offenses, to better understand their conduct as well as the services they need to heal, reform their behavior, and continue their education.

Juvenile Justice Systems

- Increase referrals of eligible juveniles for diversionary treatment, as an alternative to incarceration, to ensure that they are able to complete their education and access available community-based supports and services to improve their educational outcomes.
- Conduct universal, gender-responsive, trauma-informed screening for all detainees, and provide access to gender-responsive, trauma-informed, culturally relevant services to address the often very serious unmet mental health and other needs of girls who are detained.
- Provide training to decision-makers — including police, prosecutors, judges, and probation officers — especially regarding implicit bias, the role stereotypes may play in their decision-making, the prevalence of trauma histories among girls in the system, and how to best use their discretion to support and improve outcomes for girls who are in or at risk for involvement in the juvenile justice system.
- Ensure that girls in juvenile justice facilities have equal access to quality educational opportunities, including career and technical training for jobs in high-skill, high-wage fields.

Schools and Districts

- Reduce school-based discipline referrals of African American girls and other children of color to the juvenile justice system by reducing the involvement of police in the handling of minor school disciplinary matters.
- If police or School Resource Officers (SROs) are in schools, ensure that Memoranda of Understanding (MOUs) are executed that clearly define their role, ensuring that they are not handling routine or minor disciplinary matters and working collaboratively with school education officials.
- Ensure that any law enforcement officers in schools are culturally competent and receive frequent training on youth development, implicit bias, and race and gender bias.
- Conduct community-based trainings for law enforcement on best practices and culturally and age-appropriate discipline practices.



3 | COMBAT GENDER-BASED HARASSMENT AND VIOLENCE AND ENSURE THAT AFRICAN AMERICAN GIRLS GET THE SUPPORT THEY NEED TO HEAL FROM TRAUMA THEY EXPERIENCE.

As a general matter, in order for African American girls and all students to succeed, policymakers, schools, parents and community advocates must work to create and maintain safe and respectful environments where students can learn and have the support they need to overcome obstacles. School communities must not tolerate harassment or violence of any kind.

To address the specific challenges facing African American girls, we recommend the following:

Policymakers

- Encourage the U.S. Department of Education's Office for Civil Rights to provide recipients of federal education funding with specific guidance on cyber-harassment, to clarify the responsibilities of school districts and colleges, in light of technological developments that affect the severity and pervasiveness of bullying and sexual harassment, and inform them about how to address the problem without resorting to zero-tolerance discipline policies.
- Align legal standards for sexual harassment in schools with those for harassment in the workplace, to help prevent and address school-based harassment and violence.
- Enact laws and policies that protect students from unfair treatment based on their actual or perceived sexual orientation and gender identity by providing more explicit legal protections from discrimination and harassment for students at both the K-12 and higher education levels.

Schools and Districts

- Regularly collect and make public, in a way that protects student privacy and confidentiality, disaggregated and cross-tabulated data on incidents of harassment based on sex, race, sexual orientation, and actual or perceived gender identity.
- Annually provide students and school personnel with mandatory, age-appropriate, gender identity-sensitive training on bullying, harassment and violence, including

the definition of consent, healthy relationship skills, and bystander intervention.

- Annually provide mandatory training for educators and administrators on appropriately identifying, interacting with, and supporting sexual assault and sex trafficking survivors.
- Annually provide mandatory culturally and community-responsive training for school personnel and administrators on supporting students impacted by harassment or bullying based upon actual or perceived LGBTQ status or gender identity.
- Ensure that schools have adequate staff, including counselors, to provide students with (or refer them to community-based) culturally-responsive, gender-responsive, trauma-informed support, such as mental health services.
- Regularly review school responses to student needs and student outcomes and evaluate whether schools have the resources or relationships with community-based organizations necessary to provide needed support services.

Parents, Caregivers and Community Advocates

- Develop partnerships with schools and districts to ensure that they are aware of appropriate and responsive community-based social service organizations and can refer students when appropriate.
- Hold community forums on the identification of and appropriate responses to and treatments for victims of trauma or violence, including victims of sex trafficking.

4 | FUND AND INCENTIVIZE STATES TO IMPLEMENT PROGRAMS TO SUPPORT AND IMPROVE HIGH SCHOOL COMPLETION RATES AND EDUCATIONAL OUTCOMES FOR PREGNANT AND PARENTING STUDENTS.

Policymakers

- Enact laws and policies to require school districts and post-secondary institutions to provide academic and related support to pregnant and parenting students, such as affordable, school-based, high-quality child care. Require states and districts to collect data and report on supports provided to and outcomes of pregnant and parenting students.
- Support legislation like the Pregnant and Parenting Students Access to Education Act, which would create a federal grant program to provide states and school districts with resources to appropriately support pregnant and parenting students.
- Encourage the U.S. Department of Education's Office for Civil Rights to conduct proactive compliance reviews to identify educational barriers for pregnant and parenting students at both the secondary and post-secondary levels and improve schools' compliance with Title IX.
- Direct and fund the U.S. Department of Education to conduct research to evaluate the most promising school-based service delivery models for pregnant and parenting students and identify programs that are most effective at improving their educational outcomes and long-term success.
- Support culturally-relevant and medically-accurate primary and secondary teen pregnancy prevention and sex education efforts that are comprehensive, age-appropriate, and LGBTQ-inclusive — and that do not use shaming tactics that stigmatize young mothers and fathers.

Schools and Districts

- Collect non-personally identifiable data on pregnant and parenting students, including educational outcomes, and use that data to identify the scope of services needed and to hold accountable schools with a pattern of pushing out students in violation of Title IX.

- Eliminate discriminatory barriers that push out pregnant and parenting students, including harassment and discriminatory attendance policies.
- Provide academic and related support and flexibility to pregnant and parenting students, so they can stay engaged in school and on track for graduation.

5 | IMPROVE EXTRACURRICULAR OPPORTUNITIES AND PARTICIPATION AMONG AFRICAN AMERICAN GIRLS.

Policyholders

- Hold districts and schools accountable for reporting and justifying distribution of sports and extracurricular funding and spending and enforce equitable funding for girls in compliance with Title IX. Ensure that the U.S. Department of Education's Office for Civil Rights uses its enforcement power to hold non-compliant states and districts accountable.
- Promote increased transparency regarding high school athletics participation opportunities. Support bills like the High School Data Transparency Act, introduced in both the U.S. House and the Senate, which would require high schools to publicly report detailed information about, participation rates in, and expenditures on their athletics programs, broken down by race and gender.

Schools and Districts

- Engage in outreach and recruitment to encourage African American girls to participate in sports and other extracurricular opportunities in which they historically have been underrepresented.
- Provide financial and other supports, such as transportation, to address and eliminate the barriers that limit African American girls' access to athletics and other extracurricular activities.

6 | SUPPORT LEADERSHIP DEVELOPMENT AMONG AFRICAN AMERICAN GIRLS.

To address the leadership opportunity gap for girls and to support the continued leadership of African American girls and women:

Policyholders

- Create opportunities to help amplify the voices of African American girls who are marginalized — such as those who are unfairly disciplined in school; those who get pushed into the juvenile justice system; those who are victims of sexual violence; those who become mothers at a young age; and those who are discouraged from succeeding in school — and ensure that their perspectives and their needs are visible, supported, and prioritized at every level in the public, private and nonprofit sectors.

Schools and Districts

- Expose African American girls to African American women in leadership positions — through ongoing mentoring programs, field trips, and guest speakers — so that they know they can achieve their goals and grow to be successful women.
- Help girls develop resilience and leadership skills like conflict resolution, healthy communication, and problem-solving.

7 | IMPROVE STEM OPPORTUNITIES AND ACHIEVEMENT FOR AFRICAN AMERICAN GIRLS.

As a general matter, policymakers, schools, parents and community advocates should be encouraged to secure and provide increased access to rigorous course offerings, including early Science, Technology, Engineering, and Mathematics (STEM) learning opportunities and informal education programs, that provide students with hands-on learning opportunities during school, after school, and over the summer.

To enhance learning opportunities for African American girls, we recommend the following:

Policymakers

- Support and enact policies and initiatives to increase numbers of underrepresented students in Science, Technology, Engineering, and Mathematics (STEM) fields.
- Encourage federal agencies that grant funds to educational institutions to increase oversight and auditing of grantees to ensure compliance with Title IX in the STEM area, to ensure that girls and young women have equal access to STEM programs and curricula.
- Require schools and districts to annually report enrollment in STEM courses, disaggregated by race/ethnicity, grade level, special education status, and English Learner status.

Schools and Districts

- Engage in targeted outreach and recruitment of African American girls and other underrepresented students for high-level STEM programs.
- Offer mentoring programs, field trips, and other opportunities to increase students' regular exposure to female STEM professionals, as well as other career professionals.
- Offer informal education programs that offer hands-on learning opportunities and academic support, including tutoring, during school, after school, and over the summer.
- Educate students and school personnel about stereotypes and the ability of individuals to learn and change based on their experiences, so they understand that everyone has the potential to understand increasingly complex concepts over time.
- Provide educators and other school personnel with training on recognizing and overcoming implicit bias, so they can work to ensure they are not subconsciously discouraging female students from excelling in STEM subjects and pursuing STEM fields.
- Promptly address sexual harassment in schools, particularly in classrooms where female students are underrepresented and are likely to feel unwelcome even absent negative messages from their teachers or peers.

8 REQUIRE THE REPORTING OF DATA THAT REFLECT THE NEEDS OF AFRICAN AMERICAN GIRLS.

Policymakers

- Require states and districts to report and make publicly-accessible student academic and school climate data, including school discipline data, cross-tabulated by race, gender, and disability.
- Provide funding and infrastructure support to the U.S. Department of Education, so that it can annually release the universal Civil Rights Data Collection and ensure that all school districts report accurate data disaggregated by race, gender, age, special education status, and English learner status.
- Hold districts and schools accountable for timely reporting of data. Ensure that the U.S. Department of Education's Office for Civil Rights holds non-compliant districts accountable (including those that refuse to timely make data available upon request).
- Use reported data to develop improvements and highlight disparities (i.e. resources, discipline disparities), ensure that schools/districts are taking action to remedy disparities and, where they are not, ensure enforcement by the Office for Civil Rights.
- Encourage federal agencies to assess and report on existing federal programs and their impact on women and girls of color, and make recommendations for improvement.

Schools and Districts

- Require that all collected student academic data be cross-tabulated, so the data address race, ethnicity, and gender to ensure that the academic needs of all boys and girls are not masked and interventions can be better targeted.

9 | INVEST IN THE FUTURE OF AFRICAN AMERICAN GIRLS.

The recent, unprecedented level of commitment from organized philanthropy to improve outcomes for boys and men of color is laudable. It signals an understanding that the challenges facing boys and men of color are serious and will only be conquered with a strong and focused effort. This report complements those efforts and calls for a significant commitment to improve outcomes for girls and women of color. The data in this report lays the groundwork for philanthropic organizations to develop an agenda and target funding to address the needs of women and girls of color in the United States. Funding must be directed towards the social services, support systems, and programs that will help address the needs of all African American girls, including the most vulnerable — those who are low-income, in the child welfare system, victims of child sex trafficking, struggling to complete school, or in the juvenile justice system.

Among other things, philanthropic support for African American girls and women could be directed to:

- Host a series of convenings and focus groups, involving youth and community members, to identify community and culturally-responsive strategies to address issues facing women and girls of color.
- Support organizations providing services and mentorship programs for African American girls, including culturally-appropriate, gender-responsive, trauma-informed mental health services and sexual violence support groups, services for pregnant and parenting students, educational opportunities that enhance African American girls' exposure to Science, Technology, Engineering, and Mathematics (STEM), programs that give African American girls access to athletics and other extracurricular opportunities, and programs that nurture leadership development for African American and other girls of color.
- Support federal, state and local advocacy efforts to implement gender-responsive, trauma-informed, culturally-responsive discipline practices and counseling services for youth in schools, as well as policies and programs that improve outcomes for pregnant and parenting students and their children.
- Fund research projects to examine and identify interventions that hold promise for best improving educational outcomes for African American girls.
- Fund projects to document and address the dearth of research regarding the educational experiences of lesbian, bisexual, transgender, and questioning African American girls, and help to target resources and supports to improve school environments and their educational outcomes.



{ENDNOTES}

¹ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) [hereinafter *Brown I*], supplemented by 349 U.S. 294 (1955) [hereinafter *Brown II*].

² Pub. L. No. 88-352, 78 Stat. 241. Enacted July 2, 1964, the Civil Rights Act made discrimination based upon race, color, religion, sex, or national origin unlawful.

³ BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION 326 (2003). See also Marcia Watson, *Freedom Schools Then and Now: A Transformative Approach to Learning*, 12 J. CRITICAL EDUC. POL'Y STUD. 170, 174-175 (2014), available at <http://www.jceps.com/wp-content/uploads/PDFs/12-1-07.pdf>.

⁴ Throughout this report, the term “girls” is used to refer to African American females under age eighteen. When referring to African American females of majority age, the term “young women” or “women” is used. The term “African American” is used to refer to those of African origin living in the United States (no distinction is made between descendants of those who were brought against their will and more recent immigrants. The authors acknowledge that there are within-group variations that exist in African American communities (e.g., socioeconomic status, country of origin, multiracial members) and note that variations between U.S.-born African American and immigrant or foreign-born African Americans is beyond the scope of this report.

⁵ *Brown I*, 347 U.S. at 495. Approximately a decade later, the United States Congress enacted the Civil Rights Act of 1964 — key legislation which prohibited discrimination on the basis of race in schools and race and sex in the workplace. Title IV of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000c to 2000c-9 [hereinafter Title IV] (subsequently amended in 1972 by the Education Amendments of 1972, Pub. L. No. 92-318, § 906(a), 86 Stat. 235, 375, to include a prohibition on sex discrimination); Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 [hereinafter Title VI]; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 [hereinafter Title VII]. Several years after that, Congress passed Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally funded education programs or activities. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 [hereinafter Title IX].

⁶ CHARLES J. OGLETREE, *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION 5* (2004).

⁷ Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the country's first and foremost civil and human rights law organization. LDF was initially the legal arm of the NAACP, and its first Director-Counsel was Thurgood Marshall, the first African American Justice of the United States Supreme Court. However, LDF has been a wholly independent organization, with its own Board of Directors, since 1957. Today, LDF continues to litigate approximately 100 school desegregation cases.

⁸ The *Brown* decision overturned *Plessy v. Ferguson*, which allowed state-sponsored segregation in public facilities — including education. 163 U.S. 537, 547 (1896). *Brown* was a class action lawsuit filed by thirteen Topeka, Kansas parents on behalf of their twenty children. *Brown* combined five cases: *Brown v. Bd. of Educ.*, 98 F. Supp. 797 (D. Kan. 1951); *Briggs v. Elliott*, 342 U.S. 350 (1952); *Davis v. County Sch. Bd.*, 103 F. Supp. 337 (E.D. Va. 1952); *Gebhart v. Belton*, 91 A.2d 137 (Del. 1952); and *Bolling v. Sharpe*, 347 U.S. 497 (1954). *Bolling* was supplemented by the *Brown II* decision, which urged desegregation with “all deliberate speed.” *Brown II*, 349 U.S. at 301. The cases, brought on behalf of African American plaintiffs, originated in Virginia, South Carolina, Delaware, Kansas, and Washington, DC. All were litigated by the NAACP LDF with Thurgood Marshall serving as Chief Counsel. The *Davis* case was inspired by sixteen year-old Barbara Rose Johns who organized and led a 450-student walkout of Moton High School. See generally TERI KANEFIELD, *THE GIRL FROM THE TAR PAPER SCHOOL: BARBARA ROSE JOHNS AND THE ADVENT OF THE CIVIL RIGHTS MOVEMENT* (2014).

⁹ Mrs. Nettie Hunt, sitting on steps of Supreme Court, holding newspaper, explaining to her daughter Nikie the meaning of the Supreme Court's decision banning school segregation (photograph, 1954), in Library of Congress, N.Y. World-Telegram & Sun Newspaper Photograph Collection, available at <http://www.loc.gov/pictures/item/00652489/>.

¹⁰ *Brown I*, 347 U.S. 483.

¹¹ *Id.* at 493. Although the Supreme Court in *Brown* ordered the desegregation of schools, there was staunch resistance to school desegregation throughout the country, and schools remained segregated for nearly a decade following the decision. ERICA FRANKENBERG, CHUNGMEI LEE & GARY ORFIELD, *THE CIVIL RIGHTS PROJECT, A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM? 17-18* (2003), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/a-multiracial-society-with-segregated-schools-are-we-losing-the-dream/frankenber-multiracial-society-losing-the-dream.pdf>. The Civil Rights Act of 1964 marked another critical step towards desegregation in schools, as the enactment and enforcement of the Act had a positive impact — significantly raising the percentage of African American students attending integrated schools in the South in only the first four years following its enactment from 2 percent in 1964 to 20 percent in 1968. This includes schools in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. National Women's Law Center calculations based on U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES: 1965 122 tbl.163* (86th ed. 1965), available at <http://www2.census.gov/prod2/statcomp/documents/1965.zip>; U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES: 1969 117 tbl.169* (90th ed. 1969), available at <http://www2.census.gov/prod2/statcomp/documents/1969.zip>. SANDRA ADICKES, *THE LEGACY OF A FREEDOM SCHOOL 29-30* (2005). See also Marian Wright Edelman, *From Freedom Summer to Freedom Schools*, HUFFINGTON POST, May

16, 2014, http://www.huffingtonpost.com/marian-wright-edelman/from-freedom-summer-to-fr_b_5340364.html.

¹² See generally WILLIAM C. SYMONDS ET AL., HARVARD GRADUATE SCH. OF EDUC., PATHWAYS TO PROSPERITY: MEETING THE CHALLENGE OF PREPARING YOUNG AMERICANS FOR THE 21ST CENTURY, HARVARD GRADUATE SCHOOL OF EDUCATION 2 (2011), available at http://www.gse.harvard.edu/news_events/features/2011/Pathways_to_Prospersity_Feb2011.pdf.

¹³ *Roberts v. City of Boston*, 59 Mass. 198 (1850). See also THOMAS H. O'CONNOR, CIVIL WAR BOSTON: HOME FRONT & BATTLEFIELD 21, 271 (1997).

¹⁴ See Massachusetts Foundation for the Humanities, Document HS I-14: *The Legislature Takes Action: Massachusetts Chapter 256, Desegregating Public Schools*, 1855, <http://www.massmoments.org/teachers/primedoc.cfm?pid=47> ("Section 1: In determining the qualifications of scholars to be admitted into any public school, or any district school in this Commonwealth, no distinction shall be mad on account of race, color, or religious opinions of the applicant or scholar.").

¹⁵ PAUL ROBERT WALKER, REMEMBER LITTLE ROCK: THE TIME, THE PEOPLE, THE STORIES 58-59 (2009).

¹⁶ RAWN JAMES, JR., ROOT AND BRANCH: CHARLES HAMILTON HOUSTON, THURGOOD MARSHALL, AND THE STRUGGLE TO END SEGREGATION 221 (2010). Mr. Clark wrote a paper for the White House Mid-Century Conference on Children and Youth summarizing this research and the related work attracted the attention of Robert Carter of the NAACP LDF. Clark also co-authored a summation of the social science testimony delivered during the trials that was endorsed by thirty-five leading social scientists. Library of Congress, *Brown v. Board at Fifty: With an Even Hand*, <http://www.loc.gov/exhibits/brown/brown-brown.html>.

¹⁷ NAACP Legal Defense and Educational Fund, Inc. *Brown at 60: The Doll Test*, <http://www.naacpldf.org/brown-at-60-the-doll-test> [hereinafter *The Doll Test*].

¹⁸ *Id.*

¹⁹ JAMES, *supra* note 16, at 221. See also *The Doll Test*, *supra* note 17.

²⁰ JAMES, *supra* note 16, at 221.

²¹ *Id.*

²² *Brown v. Bd. of Educ.*, 347 U.S. 483, 494-95 (1954).

²³ *Id.* at 494.

²⁴ *The Doll Test*, *supra* note 17.

²⁵ ELLIE L. YOUNG & LAURA L. HOFFMAN, NAT'L ASS'N OF SCH. PSYCHOLOGISTS, HELPING CHILDREN AT HOME AND SCHOOL II: HANDOUTS FOR FAMILIES AND EDUCATORS, SELF-ESTEEM IN CHILDREN: STRATEGIES FOR PARENTS AND EDUCATIONS S5-87 (2004), available at http://www.nasponline.org/communications/spawareness/selfesteem_ho.pdf.

²⁶ AVIS A. JONES-DEWEEVER, INST. FOR WOMEN'S POLICY RESEARCH, BLACK GIRLS IN NEW YORK CITY: UNTOLD STRENGTH AND RESILIENCE 43 (2009), available at http://www.iwpr.org/publications/pubs/black-girls-in-new-york-city-untold-strength-and-resilience/at_download/file.

²⁷ *Id.* at 43-44.

²⁸ AM. PSYCHOLOGICAL ASS'N TASK FORCE ON RESILIENCE AND STRENGTH IN BLACK CHILDREN AND ADOLESCENTS, RESILIENCE IN AFRICAN AMERICAN CHILDREN AND ADOLESCENTS: A VISION FOR OPTIMAL DEVELOPMENT 3 (2008).

²⁹ *Id.* at 31 (citing Bernadette Gray-Little & Adam R. Hafdahl, Factors Influencing Racial Comparisons of Self-Esteem: A Quantitative Review, 126 PSYCHOL. BULL. 26 (2000)).

³⁰ *Id.* at 35.

³¹ MELISSA HARRIS-PERRY, SISTER CITIZEN: SHAME STEREOTYPES, AND BLACK WOMEN IN AMERICA 53-97 (2011).

³² See MONIQUE W. MORRIS, AFRICAN AM. POLICY FORUM, RACE, GENDER, AND THE SCHOOL-TO-PRISON PIPELINE: EXPANDING OUR DISCUSSION TO INCLUDE BLACK GIRLS 5 (2012), available at <http://www.otlcampaign.org/sites/default/files/resources/Morris-Race-Gender-and-the-School-to-Prison-Pipeline.pdf>; Jamilia J. Blake, Bettie Ray Butler & Charlotte Danielle Smith, *Challenging Middle Class Notions of Femininity: The Cause for Black Females' Disproportionate Suspension Rates*, in CLOSING THE SCHOOL DISCIPLINE GAP: RESEARCH TO PRACTICE (Daniel Losen ed., forthcoming) (manuscript at 4, on file with authors) (citing Regina Rahimi & Delores D. Liston, *What Does she Expect when She Dresses Like That? Teacher Interpretation of Emerging Adolescent Female Sexuality*, 45 EDUC. STUD. 512 (2009)).

³³ Blake, Butler & Smith, *supra* note 32 (manuscript at 4-5). See also Jamilia J. Blake et al., *Unmasking the Inequitable Discipline Experiences of Urban Black Girls: Implications for Urban Educational Stakeholders*, 43 URB. REV. 90, 92-93 (2011).

³⁴ MORRIS, *supra* note 32, at 5-6.

³⁵ Blake, Butler & Smith, *supra* note 32 (manuscript at 9-10). See also Blake et al., *supra* note, at 93-94.

³⁶ See generally Russell J. Skiba et al., *Office Referrals and Suspension: Disciplinary Intervention in Middle Schools*, 20 EDUC. & TREATMENT OF CHILD. 295 (1997) [hereinafter *Office Referrals*]; Russell J. Skiba et al., *The Color of Discipline*, 34 URB. REV. 317 (2002) [hereinafter *Color of Discipline*]; Blake, Butler & Smith, *supra* note 32.

³⁷ MORRIS, *supra* note 32, at 6.

³⁸ Diane A. M. Archer-Banks & Linda S. Behar-Horenstein, *Ogbu Revisited: Unpacking High-Achieving African American Girls' High School Experiences*, 47 URB. EDUC. 198, 208-09 (2012) (citing Susan Frazier-Kouassi, *Race and Gender at the Crossroads: African American Females in Schools*, 8 PERSP. 151 (2002)).

³⁹ Blake et al., *supra* note 33, at 92 (citing Virginia Costenbader & Samia Markson, *School Suspension: A Study with Secondary School Students*, 36 J. SCH. PSYCHOL. 59 (1998)).

⁴⁰ See generally Robert W. Livingston, Ashleigh Shelby Rosette & Ella F. Washington, *Can an Agentic Black Woman Get Ahead? The Impact of Race and Interpersonal Dominance on Perceptions of Female Leaders*, 23 PSYCHOL. SCI. 354 (2012).

⁴¹ Blake, Butler & Smith, *supra* note 32 (manuscript at 9) (citing JOYCE A. LADNER, *TOMORROW'S TOMORROW: THE BLACK WOMAN* (1972)).

⁴² GIRL SCOUT RESEARCH INST., *THE STATE OF GIRLS: UNFINISHED BUSINESS – GIRLS' LEADERSHIP* 15 (2013), available at https://www.girlscouts.org/research/pdf/sog_ch7_leadership.pdf.

⁴³ *Id.* at 16, 18.

⁴⁴ *Id.* at 19.

⁴⁵ *Id.* at 23.

⁴⁶ *Id.* at 20.

⁴⁷ See *Green v. County Sch. Bd.*, 391 U.S. 430, 436-37 (1968) (directing federal courts to address segregation in the following areas: physical condition of the school plant; school transportation system; student, faculty and staff assignment and extracurricular activities — these became known as the *Green* factors).

⁴⁸ William Julius Wilson, *Being Poor, Black, and American: The Impact of Political, Economic, and Cultural Forces*, 35 AM. EDUCATOR 10, 25 (2011), available at <https://www.aft.org/pdfs/americaneducator/spring2011/Wilson.pdf> (citing SCHOTT FOUND. FOR PUB. EDUC., *LOST OPPORTUNITY: A 50 STATE REPORT ON THE OPPORTUNITY TO LEARN IN AMERICA – NATIONAL SUMMARY REPORT* (2009), available at http://www.otlstatereport.org/50_state_report_national_summary.pdf).

⁴⁹ CHILDREN'S DEF. FUND, *CHILD POVERTY IN AMERICA: 2011* 3 (2012), available at <http://www.childrensdefense.org/child-research-data-publications/data/2011-child-poverty-in-america.pdf>.

⁵⁰ Algernon Austin, Economic Policy Institute, *African Americans are still concentrated in neighborhoods with high poverty and still lack full access to decent housing* (July 22, 2013), <http://www.epi.org/publication/african-americans-concentrated-neighborhoods/>.

⁵¹ See generally GARY ORFIELD ET AL., *THE CIVIL RIGHTS PROJECT/PROYECTO DERECHOS CIVILES, E PLURIBUS... SEPARATION: DEEPENING DOUBLE SEGREGATION FOR MORE STUDENTS* (2012), available at http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students/orfield_epluribus_revised_omplete_2012.pdf. Seventy-four percent of African American students are in schools where the majority of students are not white. Thirty-eight percent of African American students attend “intensely segregated schools” where white students comprise 10 percent or less of the student body. *Id.* at 9. Latinos also disproportionately attend high-minority, racially isolated, and high-poverty schools. *Id.*

⁵² Wilson, *supra* note 48, at 21-22 (noting that “a century ago, when African American children in most northern cities attended school alongside white children, the problems commonly associated with inner-city schools—low achievement and dropping out—were not nearly as pervasive as they are today”).

⁵³ Charles T. Clotfelter, Helen F. Ladd & Jacob Vigdor, *Who Teaches Whom? Race and the Distribution of Novice Teachers*, 24 ECON. EDUC. REV. 377, 378 (2004).

⁵⁴ See generally LAWRENCE J. SCHWEINHART ET AL., *THE HIGH/SCOPE PERRY PRESCHOOL STUDY THROUGH AGE 40: SUMMARY, CONCLUSIONS, AND FREQUENTLY ASKED QUESTIONS* (2005), available at http://www.highscope.org/file/Research/PerryProject/specialsummary_rev2011_02_2.pdf; Frances A. Campbell et al., *Adult Outcomes as a Function of an Early Childhood Educational Program: An Abecedarian Project Follow-Up*, 48 DEVELOPMENTAL PSYCHOL. 1033 (2012); Arthur J. Reynolds et al., *Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Center Program: Executive Summary* (2001), <http://www.waisman.wisc.edu/cls/cbaexecsum4.html>; ELLEN FREDE ET AL., *NAT'L INST. FOR EARLY EDUC. RESEARCH, THE APPLES BLOSSOM: ABBOTT PRESCHOOL PROGRAM LONGITUDINAL EFFECTS STUDY (APPLES) PRELIMINARY RESULTS THROUGH 2ND GRADE – INTERIM REPORT* (2009), available at http://nieer.org/pdf/apples_second_grade_results.pdf.

⁵⁵ SCHWEINHART ET AL., *supra* note 54, at 2; NAT'L WOMEN'S LAW CTR., *HIGH-QUALITY PREKINDERGARTEN IS A WISE INVESTMENT 1-2* (2013), available at <http://www.nwlc.org/sites/default/files/pdfs/prekfactsheet.pdf>.

⁵⁶ NAT'L WOMEN'S LAW CTR., *supra* note 55, at 1.

⁵⁷ See EARLY CHILDHOOD LEARNING & KNOWLEDGE CTR., U.S. DEP'T OF HEALTH AND HUMAN SERVICES, *HEAD START PROGRAM FACTS: FISCAL YEAR 2013* 6, available at <https://eclkc.ohs.acf.hhs.gov/hslc/data/factsheets/docs/hs-program-factsheet-2013.pdf>; U.S. Department of Health and Human Services, Office of the Administration for Children & Families, Office of Child Care, *FY2012 Preliminary Data Table 11 – Average Monthly Percentages of Children by Racial Group*, <http://www.acf.hhs.gov/programs/occ/resource/fy-2012-ccdf-data-tables-preliminary-table-11>; U.S. Census Bureau, Current Population Survey (CPS), 2014 Annual Social and Economic (ASEC) Supplement, 2012 Poverty Table of Contents, POV34. *Single Year of Age-Poverty Status*, http://www.census.gov/hhes/www/cpstables/032014/pov/pov34_100.htm [hereinafter CPS POV34].

⁵⁸ National Women's Law Center, *Gaps in Support for Early Care and Education*, http://www.nwlc.org/sites/default/files/pdfs/gaps_in_support_for_early_care_and_education_april_2014.pdf.

⁵⁹ *Id.* See also OFFICE OF THE ASSISTANT SEC'Y FOR PLANNING AND EVALUATION, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, ESTIMATES OF CHILD CARE ELIGIBILITY AND RECEIPT FOR FISCAL YEAR 2009 (2012), available at <http://aspe.hhs.gov/hsp/12/childcareeligibility/ib.pdf>.

⁶⁰ KAREN SCHULMAN & HELEN BLANK, NAT'L WOMEN'S LAW CTR., PIVOT POINT: STATE CHILD CARE ASSISTANCE POLICIES 2013 8 (2013), available at http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_2013statechildcareassistancereport.pdf.

⁶¹ Data on Head Start enrollment in Fiscal Year 2012 from ADMIN. FOR CHILDREN AND FAMILIES, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, JUSTIFICATION OF ESTIMATES FOR APPROPRIATIONS COMMITTEES: FISCAL YEAR 2014 102, available at https://www.acf.hhs.gov/sites/default/files/olab/sec2d_cfsp_2014cj.pdf, and data on the number of three- and four-year-old children in poverty from CPS POV34, *supra* note 57. Figures are National Women's Law Center calculations.

⁶² U.S. Census Bureau, *Who's Minding the Kids? Child Care Arrangements: 2011 - Detailed Tables, Table 6. Average Weekly Child Care Expenditures of Families with Employed Mothers that Make Payments, by Age Groups and Selected Characteristics: Spring 2011*, <http://www.census.gov/hhes/childcare/data/sipp/2011/tables.html>. Statistics are for families with African American or white, non-Hispanic mothers who are employed and who have children under age 15.

⁶³ CHILD CARE AWARE OF AMERICA, PARENTS AND THE HIGH COST OF CHILD CARE: 2013 REPORT 14 (2013) available at <http://usa.childcareaware.org/sites/default/files/Cost%20of%20Care%202013%20110613.pdf>

⁶⁴ SARA BERNSTEIN ET AL., MATHEMATIC POLICY RESEARCH, KINDERGARTENERS' SKILLS AT SCHOOL ENTRY: AN ANALYSIS OF THE ECLS-K 3 (2014), available at http://www.mathematica-mpr.com/~media/publications/pdfs/earlychildhood/kindergarten_skills_school_entry.pdf.

⁶⁵ Generally ORFIELD *supra* note 51. See also CLOTFELTER, LADD & VIGDOR *supra* note 53, at 378.

⁶⁶ CIVIL RIGHTS DATA COLLECTION, U.S. DEPT. OF EDUC. OFFICE FOR CIVIL RIGHTS, ISSUE BRIEF No. 3, DATA SNAPSHOT: COLLEGE AND CAREER READINESS 1,8 (2014), available at <http://ocrdata.ed.gov/Downloads/CRDC-College-and-Career-Readiness-Snapshot.pdf> (hereinafter COLLEGE AND CAREER READINESS).

⁶⁷ CIVIL RIGHTS DATA COLLECTION, U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, ISSUE BRIEF No. 4, DATA SNAPSHOT: TEACHER EQUITY 1, 5 (2014), available at <http://ocrdata.ed.gov/Downloads/CRDC-Teacher-Equity-Snapshot.pdf>.

⁶⁸ National Science Foundation, National Center for Science and Engineering Statistics, Science and Engineering Indicators 2012, Appendix Table 1-25. *Perceptions of working conditions of public middle and high school*

mathematics and science teachers, by minority enrollment and school poverty levels: Academic years 2003-04 and 2007-08, <http://www.nsf.gov/statistics/seind12/append/c1/at01-25.pdf> [hereinafter Appendix Table 1-25].

⁶⁹ Center for Public Education, *Teacher Quality and Student Achievement: Q&A*, <http://www.centerforpubliceducation.org/Main-Menu/Staffingstudents/Teacher-quality-and-student-achievement-At-a-glance/Teacher-quality-and-student-achievement-QA.html>.

⁷⁰ 103 F. Supp. 337 (E.D. Va. 1952).

⁷¹ Barbara Johns is the niece of renowned Civil Rights leader, Vernon Johns, who was Dr. King's predecessor as pastor of the Dexter Avenue Baptist Church in Montgomery, Alabama. Although he was not directly involved, he is believed to have given advice to his niece in her protest efforts. See JILL OGLINE TITUS, *BROWN'S BATTLEGROUND: STUDENTS, SEGREGATIONISTS, & THE STRUGGLE FOR JUSTICE IN PRINCE EDWARD COUNTY, VIRGINIA* 5 (2011).

⁷² See generally KANEFIELD, *supra* note 8.

⁷³ "A quarter of high schools with the highest percentage of black and Latino students do not offer Algebra II; a third of these schools do not offer chemistry." *supra* note 66 at COLLEGE AND CAREER READINESS 1 (2014), available at <http://ocrdata.ed.gov/Downloads/CRDC-College-and-Career-Readiness-Snapshot.pdf> [hereinafter COLLEGE AND CAREER READINESS]. In addition, for Advanced Placement courses, "[b]lack and Latino students make up 37% of students in high schools, 27% of students enrolled in at least one Advanced Placement (AP) course, and 18% of students receiving a qualifying score of 3 or above on an AP exam" which is the score needed to earn college credit. *Id.*; *The College Board, About AP Scores*, <https://ap.score.collegeboard.org/scores/about-ap-scores>.

⁷⁴ Brea Perry et al., *Blinded to Science: Gender Differences in the Effects of Race, Ethnicity, and Socioeconomic Status on Academic and Science Attitudes Among Sixth Graders*, 24 GENDER & EDUC. 1, 4, 10 (2012); Rose M. Pringle et al., *Factors Influencing Elementary Teachers' Positioning of African American Girls as Science and Mathematics Learners*, 112 SCH. SCI. & MATHEMATICS 217, 221 (2012).

⁷⁵ COLLEGE AND CAREER READINESS, *supra* note 66, at 1.

⁷⁶ *Id.* at 7.

⁷⁷ *Id.* at 1.

⁷⁸ *Id.*

⁷⁹ *Id.* at 8.

⁸⁰ *Id.*

⁸¹ Clotfelter, Ladd & Vigdor, *supra* note 53, at 378.

⁸² National Science Foundation, National Center for Science and Engineering Statistics, Science and Engineering Indicators 2012, Appendix Table 1-18. *Years of teaching experience of public middle and high school mathematics and science teachers, by minority enrollment and school poverty level: Academic years 2003-04 and 2007-08*, <http://www.nsf.gov/statistics/seind12/append/c1/at01-18.pdf>. “High-minority schools” are defined here as those with minority enrollments greater than 45 percent of the student population, and “low-minority schools” are those with 0-5 percent minority enrollment.

⁸³ National Science Foundation, National Center for Science and Engineering Statistics, Science and Engineering Indicators 2012, Appendix Table 1-11. *Highest degree attainment of public middle and high school mathematics and science teachers, by minority enrollment and school poverty level: Academic years 2003-04 and 2007-08*, <http://www.nsf.gov/statistics/seind12/append/c1/at01-11.pdf>. “High-poverty schools” are defined here as those in which more than 50 percent of students were eligible for free or reduced-price lunch and “low-poverty schools” are those in which 0-10 percent of students were eligible.

⁸⁴ Clotfelter, Ladd & Vigdor, *supra* note 53, at 378.

⁸⁵ Appendix Table 1-25, *supra* note 68. “High-poverty schools” are defined here as those in which more than 50 percent of students were eligible for free or reduced-price lunch and “low-poverty schools” are those in which 0-10 percent of students were eligible. “High-minority schools” are defined here as those with minority enrollments greater than 45 percent of the student population, and “low-minority schools” are those with 0-5 percent minority enrollment. “Necessary materials” include textbooks, supplies, and copy machines. See U.S. DEP’T OF EDUC., NAT’L CTR. FOR EDUC. STATISTICS, TEACHER QUESTIONNAIRE: SCHOOL AND STAFFING SURVEY – 2007-08 SCHOOL YEAR 33, available at <http://nces.ed.gov/surveys/sass/pdf/0708/sass4a.pdf>. Figures are National Women’s Law Center calculations.

⁸⁶ Pringle et al., *supra* note 74, at 221.

⁸⁷ KRISTA D. MATTERN, EMILY J. SHAW & MAUREEN EWING, THE COLLEGE BOARD, RESEARCH REPORT No. 2011-6, ADVANCED PLACEMENT EXAM PARTICIPATION: IS AP EXAM PARTICIPATION AND PERFORMANCE RELATED TO CHOICE OF COLLEGE MAJOR? 12 (2011), available at <https://research.collegeboard.org/sites/default/files/publications/2012/7/researchreport-2011-6-ap-participation-performance-major-choice.pdf>. See also Adam V. Maltese & Robert H. Tai, *Pipeline Persistence: Examining the Association of Educational Experiences With Earned Degrees in STEM Among U.S. Students*, 95 SCI. EDUC. 877, 881 (2011), available at [http://www.socialimpactexchange.org/sites/www.socialimpactexchange.org/files/A+B-Tai__Maltese-Pipeline\(2011\).pdf](http://www.socialimpactexchange.org/sites/www.socialimpactexchange.org/files/A+B-Tai__Maltese-Pipeline(2011).pdf).

⁸⁸ Keith Cowing, *Homer Hickam Supports High School Student Whose Science Project Got Her Expelled and Arrested*, SPACE REF, May 13, 2013, <http://spaceref.com/nasa-hack-space/homer-hickam-supports-high-school-student-whose-science-project-got-her-expelled-and-arrested.html>.

⁸⁹ Rebecca Klein, Kiera Wilmot, *Teen Arrested in Botched Science Experiment, Haunted By Felony Record*, HUFFINGTON POST, May 30, 2014, http://www.huffingtonpost.com/2014/05/30/kiera-wilmot-college_n_5420612.html.

⁹⁰ Leslie Postal, *Kiera Wilmot Will Not Be Expelled From School, Attorney Says*, ORLANDO SENTINEL, May 29, 2013, available at http://articles.orlandosentinel.com/2013-05-29/news/os-kiera-wilmot-not-expelled-20130529_1_alternative-school-leah-lauderdale-school-police-officer.

⁹¹ Danica Lawrence, *Teen Arrested for Explosive Science Project Graduates*, USA TODAY, June 4, 2014, <http://www.usatoday.com/story/news/nation/2014/06/04/florida-student-arrested-science-experiment-blast/9947139>.

⁹² *Id.*

⁹³ Klein, *supra* note 89.

⁹⁴ Kirsten West Savali, *Victory: Kiera Wilmot Will Not Be Prosecuted for Exploring Science Experience!*, NEWS ONE, May 15, 2013, <http://newsone.com/2454320/kiera-wilmot-florida-science-experiment-3/>.

⁹⁵ Daniel Clark, *Cleared of Charges of Setting Off a School Exploding, Florida Honor Student Heads to Space Camp*, ABC NEWS, May 22, 2013, <http://abcnews.go.com/US/cleared-charges-honor-student-space-camp/story?id=19236561>.

⁹⁶ Cowing, *supra* note 88.

⁹⁷ *Id.*

⁹⁸ NAT’L WOMEN’S LAW CTR., THE NEXT GENERATION OF TITLE IX: ATHLETICS 3 (2012), available at http://www.nwlc.org/sites/default/files/pdfs/nwlcathletics_titleixfactsheet.pdf.

⁹⁹ *Id.* (citing Robert Kaestner & Xin Xu, *Title IX, Girls’ Sports Participation, and Adult Female Physical Activity and Weight*, 34 EVALUATION REV. 52 (2010)). Girls who had opportunities to play sports because of Title IX had a seven percent lower risk of obesity 20 to 25 years later when they were in their late 30s and early 40s. One study notes that while a seven percent decline in obesity is modest, “no other public health program can claim similar success.” *Id.*

¹⁰⁰ ELLEN J. STAUROWSKY ET AL., WOMEN’S SPORTS FOUND., HER LIFE DEPENDS ON IT II: SPORT, PHYSICAL ACTIVITY, AND THE HEALTH AND WELL-BEING OF AMERICAN GIRLS AND WOMEN 44-46 (2009), available at http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/~/_media/PDFs/WSF%20Research%20Reports/Her_Life_II_Full.ashx.

¹⁰¹ *Id.* at 40-43. See also NAT’L WOMEN’S LAW CTR, *supra* note 98, at 3 (citing Don Sabo et al., *High School Athletic Participation And Adolescent Suicide: A Nationwide Study*, 40 INT. REV. FOR SOC. SPORT 5 (2004), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563797/pdf/nihms50086.pdf>;

George Nicoloff & Thomas L. Schwenk, *Using Exercise to Ward Off Depression*, 23 *PHYSICIAN & SPORTSMEDICINE* 44 (1995); Randy M. Page & Larry A. Tucker, *Psychosocial Discomfort and Exercise Frequency: An Epidemiological Study of Adolescents*, 29 *ADOLESCENCE* 183 (1994).

¹⁰² See STAUROWSKY ET AL., *supra* note 100, at 36-39; DON SABO ET AL., *WOMEN'S SPORTS FOUND., SPORT AND TEEN PREGNANCY* 7 (1998), available at http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/~media/PDFs/WSF%20Research%20Reports/Teen_Pregnancy.ashx.

¹⁰³ NAT'L WOMEN'S LAW CTR., *supra* note 98, at 3 (citing *National Collegiate Athletic Association, Graduation Success Rate Report, 1999-2002 Cohorts: Overall Division I* (2009), http://web1.ncaa.org/app_data/nH8egsrAggr2009/1_0.pdf; NAT'L FED'N OF STATE HIGH SCH. ASSOCIATIONS, *THE CASE FOR HIGH SCHOOL ACTIVITIES* 7 (2008); Press Release, Univ. of Cent. Fla., *UCF Study Looks at Diversity in Campus Leadership, Graduation Rates for Women's 2004 Sweet 16 College Teams* (March 25, 2004), available at http://www.tidesport.org/Grad%20Rates/2004_Campus_Leadership_Study_for_Women%27s%20BB.pdf).

¹⁰⁴ See generally Sandra L. Hanson & Rebecca S. Krauss, *Women, Sports, Science: Do Female Athletes Have an Advantage?* 71 *SOC. EDUC.* 93 (1998).

¹⁰⁵ DON SABO, *WOMEN'S SPORTS FOUND., MINORITIES IN SPORTS: THE EFFECT OF VARSITY SPORTS PARTICIPATION ON THE SOCIAL, EDUCATIONAL, AND CAREER MOBILITY OF MINORITY STUDENTS* 4 (1989), available at <http://files.eric.ed.gov/fulltext/ED312356.pdf>.

¹⁰⁶ NCAA Research, *Trends in Graduation-Success Rates and Federal Graduation Rates at NCAA Division I Institutions* 20 (Oct. 2013), http://www.ncaa.org/sites/default/files/GSR%2Band%2BFed%2BTrends%2B2013_Final.pdf. Figure compares graduation rates of NCAA Division I athletes and students overall. Figures are National Women's Law Center calculations.

¹⁰⁷ NAT'L WOMEN'S LAW CTR., *supra* note 98, at 3.

¹⁰⁸ *Id.*

¹⁰⁹ 20 U.S.C. §§ 1681-1688.

¹¹⁰ DON SABO & PHIL VELIZ, *WOMEN'S SPORTS FOUND., GO OUT AND PLAY: YOUTH SPORTS IN AMERICA* 5, 15-16 (2008), available at <http://www.womenssportsfoundation.org/en/home/research/articles-and-reports/mental-and-physical-health/go-out-and-play>.

¹¹¹ TERRIS ROSS ET AL., NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEPT. OF EDUC., *HIGHER EDUCATION: GAPS IN ACCESS AND PERSISTENCE STUDY* 81 tbl.16-2 (2012), available at <http://nces.ed.gov/pubs2012/2012046.pdf>.

¹¹² See Tracy K. Richmond et al., *Can School Income and Racial/Ethnic Composition Explain the Racial/Ethnic Disparity in Adolescent Physical Activity Participation?*, 117 *PEDIATRICS* 2158, 2163-2165 (2006). Study participants were asked about participation in a variety of physical activities: "[t]he first

of the 3 physical activity questions referred to riding a bike, roller-skating, or roller-blading; the second asked about participation in active sports such as soccer, baseball, or basketball; and the third asked about engaging in active exercises such as walking, running, dancing, or jumping rope." *Id.* at 2160.

¹¹³ *Id.* at 2163.

¹¹⁴ *Id.* at 2164.

¹¹⁵ Mira Grieser et al., *Black, Hispanic, and White Girls' Perceptions of Environmental and Social Support and Enjoyment of Physical Activity*, 78 *J. SCH. HEALTH* 314, 318 (2008).

¹¹⁶ WILSON SPORTING GOODS CO. & WOMEN'S SPORTS FOUND., *THE WILSON REPORT: MOMS, DADS, DAUGHTERS AND SPORTS* 27 (1988), available at <https://www.womenssportsfoundation.org/en/home/research/articles-and-reports/mental-and-physical-health/moms-dads-daughters-and-sports>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 30.

¹²⁰ SABO AND VELEZ, *supra* note 110, at 133.

¹²¹ High School Data Transparency Act of 2013, H.R. 455, S. 217, 113th Cong. (2013). See also National Coalition for Women & Girls in Education, *The High School Data Transparency Bills of 2013*, http://www.nwlc.org/sites/default/files/pdfs/2013_1_31_hs_transparency_bills_mythsfacts.pdf. Recently the U.S. Department of Education's Office for Civil Rights resolved five complaints filed by the National Women's Law Center, finding district-wide underrepresentation of girls in sports in Arizona, North Carolina, Ohio, Texas, and California. National Women's Law Center, *OCR Resolves Five NWLC Title IX Complaints and Finds District-Wide Underrepresentation of Girls in Sports*, <http://www.nwlc.org/success/ocr-resolves-five-nwlc-title-ix-complaints-and-finds-district-wide-underrepresentation-girls>.

¹²² BETH M. MILLER, NELLIE MAY FOUND. *CRITICAL HOURS: AFTERSCHOOL PROGRAMS AND EDUCATIONAL SUCCESS* 30-31 (2003), available at <http://www.nmefoundation.org/getmedia/08b6e87b-69ff-4865-b44e-ad42f2596381/Critical-Hours?ext=.pdf>.

¹²³ *Id.* at 80.

¹²⁴ MARGO GARDNER ET AL., CAMPAIGN FOR EDUC. EQUITY, *EQUITY MATTERS: RESEARCH REVIEW No.4, CAN AFTER-SCHOOL PROGRAMS HELP LEVEL THE ACADEMIC PLAYING FIELD FOR DISADVANTAGED YOUTH?* 14 (2009), available at http://www.equitycampaign.org/i/a/document/11242_after-school_report_10-7-09_web.pdf.

¹²⁵ LISA DODSON & RANDY ALBELDA, CTR. FOR SOC. POLICY, UNIV. OF MASS. BOSTON, HOW YOUTH ARE PUT AT RISK BY PARENTS' LOW-WAGE JOBS 13 (2012), available at http://cdn.umb.edu/images/centers_institutes/center_social_policy/Youth_at_RiskParents_Low_Wage_Jobs_Fall_121.pdf.

¹²⁶ MILLER, *supra* note 122, at 80.

¹²⁷ DODSON & ALBELDA, *supra* note 125, at 14.

¹²⁸ MILLER, *supra* note 122, at 80.

¹²⁹ American Community Survey (ACS) 2012 using Steven Ruggles et. al. Integrated Public Use Microdata Series: Version 5.0 [Machine-readable database] (Minneapolis: University of Minnesota, 2010). Data refers to the number of hours per week that the respondent usually worked in the prior year, if the person worked during the previous year. National Women's Law Center calculations.

¹³⁰ ROSS ET AL., *supra* note 111, at 81 tbl.16-2. Figures are National Women's Law Center calculations.

¹³¹ ROSS ET AL., *supra* note 111, at 81 tbl.16-2.

¹³² Lloyd D. Johnston et al., *Monitoring the Future: A Continuing Study of American Youth (12th-Grade Survey)*, 2012 ICPSR34861-v2 Form 6 (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2014), <http://doi.org/10.3886/ICPSR34861.v2>. Figures are National Women's Law Center calculations.

¹³³ ROBERT GRIMM JR, KIMBERLY SPRING & NATHAN DIETZ, CORP. FOR NAT'L & CMTY. SERV., THE HEALTH BENEFITS OF VOLUNTEERING: A REVIEW OF RECENT RESEARCH 3-4 (2007), available at http://www.nationalservice.gov/sites/default/files/documents/07_0506_hbr.pdf.

¹³⁴ CHRISTOPHER SPERA ET AL., CORP. FOR NAT'L & CMTY. SERV., VOLUNTEERING AS A PATHWAY TO EMPLOYMENT: DOES VOLUNTEERING INCREASE ODDS OF FINDING A JOB FOR THE OUT OF WORK? 1 (2013), available at http://www.nationalservice.gov/sites/default/files/upload/employment_research_report.pdf.

¹³⁵ Archer-Banks & Behar-Horenstein, *supra* note 38, at 208.

¹³⁶ CHILDREN'S DEF. FUND, CHILDREN OUT OF SCHOOL IN AMERICA 5-6, 117-47 (1974), available at http://diglib.lib.utk.edu/cdf/data/0116_000050_000207/0116_000050_000207.pdf.

¹³⁷ "Zero tolerance" refers to a discipline policy under which a single infraction can result in suspension or expulsion or other severe sanctions, without any intermediate disciplinary options.

¹³⁸ CHRISTOPHER BOCCANFUSO & MEGAN KUHFIELD, CHILD TRENDS, RESEARCH-TO-RESULTS BRIEF No. 2011-09, MULTIPLE RESPONSES, PROMISING RESULTS: EVIDENCE-BASED, NONPUNITIVE ALTERNATIVES TO ZERO TOLERANCE 1 (2011), available at http://www.childtrends.org/wp-content/uploads/2011/03/Child_Trends-2011_03_01_RB_AltToZeroTolerance.pdf.

¹³⁹ CATHERINE KIM, DANIEL LOSEN & DAMON HEWITT, THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 113 (2010) (noting that "[a]nother factor exacerbating the increased criminalization of school misconduct involves the deployment of full-time police officers to patrol K-12 school hallways").

¹⁴⁰ Blake et al., *supra* note Error! Bookmark not defined., at 92-94.

¹⁴¹ Color of Discipline, *supra* note 36, at 335 (citing ADVANCEMENT PROJECT & THE CIVIL RIGHTS PROJECT AT HARVARD UNIV., OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE (2000)).

¹⁴² See generally RUSSELL J. SKIBA & NATASHA T. WILLIAMS, THE EQUITY PROJECT AT IND. UNIV., SUPPLEMENTARY PAPER No. 1, ARE BLACK KIDS WORSE? MYTHS AND FACTS ABOUT RACIAL DIFFERENCES IN BEHAVIOR: A SUMMARY OF THE LITERATURE (2014), available at http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf.

¹⁴³ Color of Discipline, *supra* note 36, at 333-35.

¹⁴⁴ *Id.* at 332.

¹⁴⁵ DANIEL J. LOSEN & RUSSELL SKIBA, SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS 7 (2010), available at http://www.splcenter.org/sites/default/files/downloads/publication/Suspended_Education.pdf. The report analyzed suspension rates in middle schools in 18 of the largest urban school districts in the United States: Los Angeles, CA; Denver, CO; Hartford, CT; Miami-Dade, FL; Palm Beach, FL; Atlanta, GA; Indianapolis, IN; Des Moines, IA; Springfield, MA; Baltimore, MD; Jackson, MS; Charlotte, NC; Providence, RI; Dallas, TX; Houston, TX; San Antonio, TX; Seattle, WA; and Milwaukee, WI.

¹⁴⁶ CIVIL RIGHTS DATA COLLECTION, U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, ISSUE BRIEF No. 1, DATA SNAPSHOT: SCHOOL DISCIPLINE 3 (2014), available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf> [hereinafter SCHOOL DISCIPLINE]. At 12 percent, the out-of-school suspension rates for African American girls are higher than those for all other groups of girls and all boys except for African American boys (20 percent) and American Indian/Alaska Native boys (13 percent).

¹⁴⁷ *Id.* at 4.

¹⁴⁸ *Id.* at 14-15.

¹⁴⁹ See generally Blake, Butler & Smith, *supra* note 32.

¹⁵⁰ *Id.* (manuscript at 6-7 & tbl.2). “Disobedience and disruptive behavior” is defined as “an unwillingness to submit to authority, refusal to respond to a reasonable request, or any act that substantially disrupts the orderly learning environment (i.e. dress code violations, inappropriate language, cursing, in appropriate gestures).” *Id.* (manuscript at 7).

¹⁵¹ U.S. Department of Education, Civil Rights Data Collection, 2009-10 National and State Estimations, National total, <http://ocrdata.ed.gov/downloads/projections/2009-10/2009-10-Estimations-Nation.xls> [hereinafter CRDC 2009-10]. Discipline data are for students without disabilities. National Women’s Law Center calculations.

¹⁵² LIZ WATSON & PETER EDELMAN, GEORGETOWN CTR. ON POVERTY, INEQUALITY, AND PUB. POLICY, IMPROVING THE JUVENILE JUSTICE SYSTEM FOR GIRLS: LESSONS FROM THE STATES 1 (2012), available at http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/upload/JDS_V1R4_Web_Singles.pdf (citing AM. BAR ASS’N & NAT’L BAR ASS’N, JUSTICE BY GENDER: THE LACK OF APPROPRIATE PREVENTION, DIVERSION AND TREATMENT ALTERNATIVES FOR GIRLS IN THE JUSTICE SYSTEM 1 (2001), available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_justicebygenderweb.authcheckdam.pdf).

¹⁵³ M. Sickmund, A. Sladky, & W. Kang, Easy Access to Juvenile Court Statistics: 1985-2011 (2014), <http://www.ojjdp.gov/ojstatbb/ezajcs/>. A delinquent act is defined as “[a]n act committed by a juvenile for which an adult could be prosecuted in a criminal court, but when committed by a juvenile is within the jurisdiction of the juvenile court. Delinquent acts include crimes against persons, crimes against property, drug offenses, and crimes against public order, as defined under Referral offense, when such acts are committed by juveniles.” Office of Juvenile Justice and Delinquency Prevention, Easy Access to Juvenile Court Statistics: 1985-2011, Glossary, http://www.ojjdp.gov/ojstatbb/ezajcs/asp/glossary.asp#delinquent_act. National Women’s Law Center calculations.

¹⁵⁴ ERIC S. HALL & ZORKA KARANXHA, SCHOOL TODAY, JAIL TOMORROW: THE IMPACT OF ZERO TOLERANCE ON THE OVER-REPRESENTATION OF MINORITY YOUTH IN THE JUVENILE SYSTEM (2012), available at http://www.loyola.edu/~media/department/powerplay/documents/past/vol4number1/ppj_vol_04_no_01_hall_karanxha.ashx.

¹⁵⁵ WATSON & EDELMAN, *supra* note 152, at 1.

¹⁵⁶ Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502, 1528 (2012) (citing Alecia Humphrey, *The Criminalization of Survival Attempts: Locking up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN’S L.J. 165, 172 (2004)).

¹⁵⁷ Blake, Butler & Smith, *supra* note 32 (manuscript at 4) (citing Regina Rahimi & Delores D. Liston, *What Does she Expect when She Dresses Like That? Teacher Interpretation of Emerging Adolescent Female Sexuality*, 45 EDUC. STUD. 512 (2009)).

¹⁵⁸ Morris, *supra* note 32, at 5.

¹⁵⁹ Nanda, *supra* note 156, at 1530-31.

¹⁶⁰ *Id.* at 1507.

¹⁶¹ Morris, *supra* note 32, at 9.

¹⁶² Watson & Edelman, *supra* note 152, at 2-3.

¹⁶³ Kim Taylor-Thompson, *Girl Talk – Examining Racial and Gender Lines in Juvenile Justice*, 6 NEV. L.J. 1137, 1139 (2006), available at <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1396&context=nlj> (citing Am. Bar Ass’n & Nat’l Bar Ass’n, *Justice by Gender: The Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System*, 9 WM. & MARY J. WOMEN & L. 73, 79 (2002)).

¹⁶⁴ Title IV prohibits discrimination based on race, color, or national origin in public schools. It also prohibits discrimination on the basis of sex and religion.

¹⁶⁵ Title VI prohibits discrimination on the basis of race, color, or national origin to those entities that receive Federal Financial assistance.

¹⁶⁶ See Joint Dear Colleague Letter from U.S. Department of Justice and U.S. Department of Education on the Nondiscriminatory Administration of School Discipline (Jan. 8, 2014), available at <http://www.justice.gov/crt/about/edu/documents/dcl.pdf>.

¹⁶⁷ Rebecca Klein, *Tiana Parker, 7, Switches Schools After Being Forbidden From Wearing Dreads*, HUFFINGTON POST, Sept. 5, 2013, http://www.huffingtonpost.com/2013/09/05/tiana-parker-dreads_n_3873868.html; Fran Jeffries, *Report: African-American Girl Won’t be Expelled Over Her Natural Hair Style*, ATLANTA J. CONST., Nov. 26, 2013, <http://www.ajc.com/news/news/report-african-american-girl-faces-expulsion-over/nb5M7>.

¹⁶⁸ Erica DeRamus, *Chose Suspension Over Paddling For Too-Revealing Prom Dress*, HUFFINGTON POST, June 2, 2010 pm, http://www.huffingtonpost.com/2010/04/02/erica-deramus-chose-suspe_n_523083.html.

¹⁶⁹ Civil Rights Data Collection, Discipline and Disability (2009+) for Oxford High School, Oxford, AL using U.S. Department of Education, Civil Rights Data Collection, Detailed Data Tables, <http://ocrdata.ed.gov/flex/Reports.aspx?type=school>. Figures are National Women’s Law Center calculations.

¹⁷⁰ Sonja C. Tonnesen, Commentary, *“Hit It and Quit It”: Responses to Black Girls’ Victimization in School*, 28 BERKELEY J. GENDER L. & JUST. 1, 10 (2013), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1312&context=bglj>.

¹⁷¹ David Schwartz & Andrea Hopmeyer Gorman, *Community Violence Exposure and Children’s Academic Functioning*, 95 J. EDUCATIONAL PSYCHOL. 163, 170 (2003).

¹⁷² *Id.* at 171.

¹⁷³ Biological research has shown that trauma can affect the hippocampus, the area of the brain that controls the ability to learn and to store both long- and short-term memory. See Stephanie Covington, *A Trauma-Informed Approach to Girls: What it is and Why it's Needed*, Keynote Address at Trauma-Informed Policy and Practice for Disconnected Girls (Nov. 15, 2013). See also Office of Juvenile Justice and Delinquency Prevention, National Training and Technical Assistance Center, *A Trauma Informed Effective Reinforcement System for Girls* (Aug. 2013), <https://www.nttac.org/index.cfm?event=trainingCenter.traininginfo&eventID=190&from=training&dtab=1>.

¹⁷⁴ ROSS ET AL., *supra* note 111, at 64 tbl.12-1.

¹⁷⁵ DANIELLE L. MCGUIRE, *AT THE DARK END OF THE STREET: BLACK WOMEN, RAPE, AND RESISTANCE—A NEW HISTORY OF THE CIVIL RIGHTS MOVEMENT FROM ROSA PARKS TO THE RISE OF BLACK POWER* 30-31 (2010).

¹⁷⁶ See generally *id.*

¹⁷⁷ *Id.* at 6-8, 13-26.

¹⁷⁸ DANICE K. EATON ET AL., CENTERS FOR DISEASE CONTROL AND PREVENTION, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, *SURVEILLANCE SUMMARIES VOL. 61 No. 4, YOUTH RISK BEHAVIOR SURVEILLANCE—UNITED STATES, 2011 66* (2012), available at <http://www.cdc.gov/mmwr/pdf/ss/ss6104.pdf>.

¹⁷⁹ U.S. Department of Health and Human Services, Office of Refugee Resettlement, *Fact Sheet: Human Trafficking* (Aug. 2, 2012), <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-human-trafficking>.

¹⁸⁰ WILLIAM ADAMS, COLLEEN OWENS & KEVONNE SMALL, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *EFFECTS OF FEDERAL LEGISLATION ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN* 1, 3 (2010), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/228631.pdf>.

¹⁸¹ U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 13* (2006), available at <http://www.state.gov/documents/organization/66086.pdf>.

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¹⁸³ DUREN BANKS & TRACEY KYCKELHAHN, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008-2010* (2011), available at <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>. See also PARSONS, *supra* note 182. These are just confirmed victims whose gender was known; sex trafficking is a crime that is severely underreported and it is extremely difficult to confirm the number of victims.

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¹⁸⁷ Lynsey Clark, *Oakland Schools Teach Trafficking Prevention in Schools*, CHRON. FOR SOC. CHANGE, Aug. 26, 2013, <https://chronicleofsocialchange.org/news/oakland-schools-teach-trafficking-prevention-in-schools/3818>.

¹⁸⁸ Tucker, *supra* note 185.

¹⁸⁹ Clark, *supra* note 187.

¹⁹⁰ Ryan Dunn, *Protecting Children from Trafficking*, CONNECTION NEWSPAPERS, May 21, 2014, <http://www.connectionnewspapers.com/news/2014/may/21/protecting-children-trafficking/>.

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¹⁹² *Id.*

¹⁹³ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *National Survey on Drug Use and Health, 2012, ICPSR34933-v1* (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2013), <http://doi.org/10.3886/ICPSR34933.v1>; SCYATTA A. WALLACE & RIKI WILCHINS, TRUE CHILD & HEINZ ENDOWMENTS, *GENDER NORMS: A KEY TO IMPROVING HEALTH & WELLNESS AMONG BLACK WOMEN & GIRLS* 4 (2013), available at <http://www.truechild.org/Images/Interior/findtools/heinz%20report.pdf> (citing Ellen F. Harrington, Janis H. Crowther & Jillian C. Shipherd, *Trauma, Binge Eating, and the "Strong Black Woman"*, 78 J. CONSULTING & CLINICAL PSYCHOL. 469 (2010)). See also HARRIS-PERRY, *supra* note 31, at 184-91. National Women's Law Center calculations.

¹⁹⁴ WALLACE & WILCHINS, *supra* note 193, at 13.

¹⁹⁵ Tonnesen, *supra* note 170, at 20.

¹⁹⁶ See generally Francine T. Sherman, *Reframing the Response: Girls in the Juvenile Justice System and Domestic Violence*, JUV. & FAM. JUST. TODAY 16, 17-20 (2009); Francine T. Sherman, *Justice for Girls: Are We Making Progress?* CRIM. JUST., Summer 2013, at 9, available at <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1507&context=lsfp>.

¹⁹⁷ CATHERINE HILL & HOLLY KEARL, AM. ASS'N OF UNIV. WOMEN, *CROSSING THE LINE: SEXUAL HARASSMENT AT SCHOOL* 11 (Nov. 2011), available at <http://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf>.

¹⁹⁸ *Id.* at 25.

¹⁹⁹ AM. ASS'N OF UNIV. WOMEN EDUC. FOUND., *HOSTILE HALLWAYS: BULLYING, TEASING, AND SEXUAL HARASSMENT IN SCHOOL 24-25* (2001), available at <http://www.aauw.org/files/2013/02/hostile-hallways-bullying-teasing-and-sexual-harassment-in-school.pdf>.

²⁰⁰ Tonnesen, *supra* note 170, at 5 (citing JODY MILLER, *GETTING PLAYED: AFRICAN AMERICAN GIRLS, URBAN INEQUALITY, AND GENDERED VIOLENCE* (2008)).

²⁰² Tonnesen, *supra* note 170, at 10.

²⁰³ JOSEPH G. KOSCIW ET AL., *GAY, LESBIAN & STRAIGHT EDUC. NETWORK, THE 2011 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS 87* (2012), available at <http://glsen.org/sites/default/files/2011%20National%20School%20Climate%20Survey%20Full%20Report.pdf>.

²⁰⁴ *Id.* at 86.

²⁰⁵ 20 U.S.C. §§ 1681-1688. See also OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., *REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS OR THIRD PARTIES* (2001), available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>; Dear Colleague Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, U.S. Dep't of Educ. (Apr. 4, 2011), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

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²⁰⁷ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

²⁰⁸ Verna Williams, now a Professor at the University of Cincinnati College of Law, worked at the National Women's Law Center from 1993-2001. She served as Vice President and Director of Educational Opportunities, where she focused on issues of gender equity in education.

²⁰⁹ Press Release, U.S. Dep't of Educ., *U.S. Department of Education Reaches Agreement with West Contra Costa Unified School District in California to Address & Prevent Sexual Assault, Harassment of Students* (Nov. 6, 2013), available at <https://www.ed.gov/news/press-releases/us-department-education-reaches-agreement-west-contra-costa-unified-school-distr>; Letter from Arthur Zeidman, Director, U.S. Dep't of Educ. Office for Civil Rights San Francisco, to Bruce Harter, Superintendent, West Contra Costa Unified Sch. Dist. (Nov. 6, 2013), available at <http://www2.ed.gov/documents/press-releases/west-contra-costa-california-letter.doc>.

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²¹¹ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., *QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE* (2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

²¹² MARIA GUERRA, *CTR. FOR AM. PROGRESS, FACT SHEET: THE STATE OF AFRICAN AMERICAN WOMEN IN THE UNITED STATES* (2013), available at <http://cdn.americanprogress.org/wp-content/uploads/2013/11/SOW-factsheet-AA.pdf>.

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²¹⁴ *Id.*

²¹⁵ *Id.* at 1, 3-5, 17.

²¹⁶ 34 C.F.R. § 106.40(b)(5).

²¹⁷ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., *SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972* (2013), available at <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>. See also Dear Colleague Letter from Seth Galanter, Acting Assistant Sec'y for Civil Rights, U.S. Dep't of Educ. (June 25, 2013), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf>.

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²²³ See NAT'L WOMEN'S LAW CTR., *supra* note 213, at 11-19.

²²⁴ PERPER, PETERSON & MANLOVE, *supra* note 220, at 3.

²²⁵ Alyssa Newcomb, *Woman Denied Sole Valedictorian Status Because of Race, Lawsuit Says*, ABC NEWS, July 26, 2011, <http://abcnews.go.com/US/student-sues-school-barred-sole-valedictorian/story?id=14164431>. National Women's Law Center calculations.

²²⁶ Editorial Projects in Education, Education Counts database using Editorial Projects in Education, Research Center, Custom Table Builder, <http://www.edcounts.org/createtable/step1.php>. Graduation rates are reported by Editorial Projects in Education under the Cumulative Promotion Index. National Women's Law Center calculations.

²²⁷ *Id.* 2010 graduation rates by race and gender are: female African American students (66 percent); female white students (82 percent); female Hispanic students (71 percent); female Asian students (83 percent); and female American Indian students (51 percent).

²²⁸ *Id.* 2010 graduation rates are reported by Editorial Projects in Education under the Cumulative Promotion Index. The District of Columbia, Connecticut, Hawaii, Idaho, Iowa, Maine, Montana, Vermont, and Wyoming were excluded due to insufficient data.

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²³⁰ *Id.*

²³¹ National Center for Education Statistics, National Assessment of Educational Progress (NAEP), NAEP Overview, <http://nces.ed.gov/nationsreportcard/about/>.

²³² National Assessment of Educational Progress (NAEP), 2013 Reading and Mathematics Assessments [hereinafter 2013 NAEP Assessments] using U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, NAEP Data Explorer, <http://nces.ed.gov/nationsreportcard/naepdata/>. African American girls had slightly larger or equivalent shares of student scoring below Basic when compared to American Indian/Alaska native female students. Figures are National Women's Law Center calculations.

²³³ *Id.*

²³⁴ ROSS ET AL., *supra* note 111, at 98 tbl.19-1. The NAEP science assessment for 12th-graders was last administered in 2009.

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²³⁶ National Assessment of Educational Progress (NAEP), 2009 High School Transcript Study using U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, NAEP Data Explorer, <http://nces.ed.gov/nationsreportcard/hstsdta/>. National Women's Law Center calculations.

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²⁴⁰ CRDC 2009-10, *supra* note 151. Data disaggregated by gender are not yet available from the most recent 2011-12 Civil Rights Data Collection. National Women's Law Center calculations.

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²⁴² The College Board, About AP Scores, <https://apscore.collegeboard.org/scores/about-ap-scores>.

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²⁴⁴ The College Board, *supra* note 243. National Women's Law Center calculations. Figures are National Women's Law Center calculations.

²⁴⁵ *Id.*

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²⁴⁸ COLLEGE BOARD, TOTAL GROUP PROFILE REPORT: 2013 COLLEGE-BOUND SENIORS 3 tbl.10 (2013), available at <http://media.collegeboard.com/digitalServices/pdf/research/2013/TotalGroup-2013.pdf>.

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²⁵⁰ *Id.*

²⁵¹ *Id.* In 2012, the ACT college readiness benchmark for science was 24 out of 36 points and for math was 22 out of 36 points. GRADUATING CLASS 2012 NATIONAL, *supra* note 249, at 19, 21.

²⁵² COLLEGE BOARD, *supra* note 248, at 3.

²⁵³ Mark Hugo-Lopez & Ana Gonzalez-Barrera, Women's college enrollment gains leave men behind, FACT TANK, March 6, 2014, <http://www.pewresearch.org/fact-tank/2014/03/06/womens-college-enrollment-gains-leave-men-behind/>. Some attribute this to lowered labor market barriers that make a college education more beneficial for women. *Id.*

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May 2013 National Occupational Employment and Wage Estimates United States, http://www.bls.gov/oes/current/oes_nat.htm. Figures are National Women's Law Center calculations.

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No. 16-273

IN THE
Supreme Court of the United States

GLOUCESTER COUNTY SCHOOL BOARD,
Petitioner,

v.

G.G., BY HIS NEXT FRIEND AND MOTHER,
DEIRDRE GRIMM,
Respondent.

**On Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit**

**BRIEF OF NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC. AND THE
ASIAN AMERICAN LEGAL DEFENSE AND
EDUCATION FUND AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENT**

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INTEREST OF *AMICI CURIAE*¹

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is a non-profit civil rights legal organization that, for over 75 years, has fought to enforce the guarantee of equal protection and due process in the United States Constitution on behalf of victims of discrimination. See, e.g., *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637 (1950); *Sweatt v. Painter*, 339 U.S. 629 (1950); *Sipuel v. Bd. of Regents of Univ. of Okla.*, 332 U.S. 631 (1948); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

Having advocated for integration throughout the country and in numerous aspects of public life—including access to public restrooms—LDF now writes to highlight the ways in which history is at risk of repeating itself. Although focused primarily on vindicating the constitutional rights of victims of racial discrimination, LDF has also successfully fought against discrimination on the basis of sex, see, e.g., *Phillips v. Martin Marietta*, 400 U.S. 542 (1972), and in places of public accommodation, see, e.g., *Newman v. Piggie Park Enters., Inc.*, 256 F. Supp. 941 (D.S.C. 1966), *aff'd in relevant part and rev'd in part on other grounds*, 377 F.2d 433 (4th Cir. 1967), *aff'd and modified on other grounds*, 390 U.S. 400 (1968).

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and that no person other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3(a), counsel for *amici curiae* has obtained the consent of the parties to file this brief. Petitioner has given blanket consent in a letter filed with the Court, and Respondent has consented in an email addressed directly to counsel for *amici curiae*.

LDF has also participated as *amicus curiae* in cases across the nation about the rights of lesbian, gay, bisexual, transgender and queer (LGBTQ) individuals. See, e.g., *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *United States v. Windsor*, 133 S. Ct. 2675 (2013); *Romer v. Evans*, 517 U.S. 620 (1996); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); *Jackson v. Abercrombie*, 585 F. App'x 413 (9th Cir. 2014); *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014); *Perry v. 2 Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010); *Ingersoll v. Arlene's Flowers*, No. 91615-2 (Wash. Feb. 16, 2017); *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009); *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008); *Conaway v. Deane*, 932 A.2d 571 (Md. 2007); *Hernandez v. Robles*, 855 N.E.2d 1 (N.Y. 2006); *Masterpiece Cakeshop, Inc. v. Colorado Civil Rights Comm'n*, No. 15SC738, 2016 WL 1645027 (Colo. App. Apr. 25, 2016); *Gifford v. McCarthy*, 137 A.D.3d 30 (N.Y. App. Div. 2016).

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. Asian Americans have been subject to overt discrimination and segregation by governmental agencies, often justified by racially-biased beliefs. The resolution of issues of discrimination against transgender students presented in this case will affect Asian Americans and all minority groups.

Amici have a strong and enduring interest in advancing integration and ensuring that the protections of anti-discrimination laws apply with equal measure to every individual, and submit that their experience and knowledge will assist the Court in its resolution of the questions presented.

INTRODUCTION AND SUMMARY OF ARGUMENT

While this case involves complex issues of agency deference and the proper interpretation of Title IX of the Education Amendments of 1972, one fundamental question lies at its core: can state actors physically separate and restrict individuals in public places solely because they are perceived to be different based on unfounded fears and prejudices?

Time and time again, this Court has rightly said that the principle of equality under the law dictates that the answer to this question is no. Accordingly, this Court has made clear that it is unconstitutional for a state to physically separate people into different schools or bathrooms by their race, regardless of the quality of the respective facilities; to separate and prohibit people from enjoying the benefits of marital union because of race or sex; to separate and restrict people from neighborhoods based on race or disability; and/or to separate and exclude people from the workplace based on race or sex. The broad application of this principle is central to the enduring strength of liberty and equal protection.

Given the vital importance of equal access to public accommodations and *amici*'s long experience challenging discrimination against disfavored groups—including discrimination justified by claims of “states’ rights”—*amici* register three core points in this brief:

First, there is a lengthy and troubling history of state actors using public restrooms and similar shared spaces to sow division and instill subordination. Not so long ago, bathrooms nationwide were designated “Colored Only” and “Whites Only.” A key lesson of that painful and ignoble era is that while private-space barriers like racially segregated bathrooms may have seemed to some like

minor inconveniences or insignificant sources of embarrassment, they were in fact a source of profound indignity that inflicted deep and indelible harms on individuals of both races, and society at large. This disreputable tradition of state and local governments enshrining fear or hostility toward a disfavored group of people into laws requiring their physical separation from others should encourage this Court to view with skepticism the rationales proffered by local officials here.

Second, state officials often justified physical separation in restroom facilities, swimming pools, and marriage by invoking unfounded fears about sexual contact and exploitation. As demonstrated below, the purported concerns about sexual predation currently used as a basis for excluding transgender students from school bathrooms uncomfortably echo those used to justify the separate bathrooms for racial minorities.

Third, certain physical-separation rules that were applied to African Americans were also justified as protectionist—*e.g.*, for the good of the African-American community and/or to protect African-Americans from harm that could arise from others' feelings of discomfort. Eventually, these kinds of rules were rejected by both the courts and society at large because they conflict with the foundational constitutional principle that government shall not distinguish between people based on sex, race, or other arbitrary, perceived differences.

The arguments offered to defend the discriminatory singling out of G.G. are painfully similar to those that this Court long ago deemed to be insufficient to justify discrimination based on race. The proposition that G.G. should go back to using the “separate restroom,” Pet. App. 88a, parrots the functionalist logic that this Court discarded along with “separate but equal.”

The Trump Administration’s recent withdrawal of the guidance on transgender students and its description of bathroom access as a “states’ rights issue”² only amplifies the disconcerting historical echoes in this case. State and local officials often invoked “states’ rights” as a basis for opposing this Court’s decisions and insulating prohibited discrimination from statutory and constitutional review. Indeed “states’ rights” was the frequent refrain of officials who fought against racial integration, including in bathrooms. Ultimately, however, the claim of “states’ rights” has no relevance to this Court’s interpretation of a federal statute—in this case Title IX—as states are bound by this Court’s interpretation of federal law.

We must not repeat the mistakes of the past. These all-too-familiar arguments—about sexual contact, predation, danger, and discomfort—remain both factually baseless and legally immaterial. Instead, the weight of precedent and the guarantee of equal protection inexorably support this Court in recognizing G.G.’s simple and inherent dignity by letting him use the boys’ bathroom with his peers.

In “striving to achieve our ‘historic commitment to creating an integrated society,’” *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2525 (2015) (citation omitted), our nation has demonstrated a consistent capacity to move forward. *Brown v. Board*, *Loving v. Virginia*, and *Obergefell v. Hodges* powerfully demonstrate that forms of equality that were once inconceivable can, and do, become

² See Press Briefing by Press Secretary Sean Spicer, Feb. 23, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15/> (“[I]f a state wants to pass a law or rule [about transgender bathrooms] * * * that’s their right. But it shouldn’t be the federal government getting in the way of this.”).

indisputable. We are confident that the same will ultimately prove true for transgender students. The Court should affirm the decision below.

ARGUMENT

The Gloucester County School Board (“School Board”) has adopted a policy of singling out and physically separating certain students it perceives to be different based on an essential characteristic of their person. Specifically, nearly all students can use the bathroom that is consistent with their identity as male or female. However, G.G. and other transgender students³ are not permitted to use the bathroom that aligns with their gender identity. Instead, they are relegated to separate, individual bathrooms away from other students.

To justify such blatant and unabashed discrimination and differentiation among students of the same gender, the School Board and its supporters contend that allowing transgender students to use a bathroom consistent with their gender identity would endanger or violate the privacy of other students. But the claim of danger is demonstrably false, and the Board’s own actions undermine its purported concern for the privacy needs of non-transgender students vis-à-vis their transgender peers. At the same time that it excluded transgender students from the regular student bathrooms, the Board instituted changes *within* those bathrooms “to improve general privacy for *all* students, including adding or expanding partitions between urinals in male restrooms, adding privacy strips to the doors of stalls in all restrooms,

³ The School Board labels these students as having “gender identity issues.”

and constructing single-stall unisex restrooms available to all students.” Pet. App. 11a (emphasis added).⁴

In short, like other physical-separation rules in this tradition, the patina of legitimacy the School Board sought here by invocations of safety and privacy concerns disappears upon close examination and reveals instead discomfort, fear, and hostility toward transgender students because of their gender identity. Indeed, the decision below plainly described what prompted the rule: “Many of the speakers displayed hostility to G.G., including by referring pointedly to him as a ‘young lady.’” Pet. App. 10a. “One speaker called G.G. a ‘freak’ and compared him to a person who thinks he is a ‘dog’ and wants to urinate on fire hydrants.” Pet. App. 11a. Neither discomfort nor hostility can justify disparate treatment by the state.

The remainder of this brief shows the connections between this policy and others that, in the name of safety, order, and/or privacy, sought impermissibly to rely on fear, discomfort, and hostility to impose physical separations between one group of people and another. When assessing the School Board’s claims here, therefore, it is especially important to consider the troubling history of physical-separation rules involving bathrooms, *infra* § I, how unfounded fears of sexual predation have often been used to justify discrimination, *infra* § II, and how this Court and lower courts have struck down physical-separation rules in these and various other contexts, recognizing the discomfort and unsupported fears behind them, *infra* § III.

⁴ See also Speaker Tim Moore (@NCHouseSpeaker), Twitter (Feb. 23, 2016 9:39 AM), <https://twitter.com/NCHouseSpeaker/status/702140832867074052/> (statement by North Carolina Speaker of the House that transgender bathroom access posed “major public safety issue.”).

I. THE PHYSICAL SEPARATION OF BATHROOMS BY RACE WAS CONTROVERSIAL AND HARMFUL.

The School Board asserts that this case is novel because it involves transgender students in restrooms.⁵ But history reveals that the exclusion of transgender students from bathrooms relies on a time-tested tactic of seizing upon sensitivities regarding bathrooms to sow division and discord.

The archetypal example is the physical separation of bathrooms by race, a defining feature of the Jim Crow era. “Public washrooms and water fountains were rigidly demarcated to prevent contaminating contact with the same people who cooked the white South’s meals, cleaned its houses, and tended its children.” Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America’s Struggle for Equality* 86 (1975). Because the courts and the country now see that type of separation of bathrooms as invidious and unconstitutional, it is worth examining the history and harms involved.

Before the Civil Rights Act of 1964, laws requiring the racial segregation of bathrooms were widespread. Typifying these rules was a Florida Board of Health provision stating that “where colored persons are employed or accommodated’ separate toilet and lavatory rooms must be provided.” *Robinson v. State of Fla.*, 378

⁵ In actuality, protections for transgender persons are not new, as federal law prohibits discrimination on the basis of sex, including on the basis of gender stereotypes. See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989); *Glenn v. Brumby*, 663 F.3d 1312, 1316-19 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 573-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000).

U.S. 153, 156 (1964) (footnote omitted). An Alabama ordinance likewise specified that in workplaces, public accommodations, and in certain “multiple dwellings,” “separate water closets or privy seats within completely separate enclosures shall be provided for each race * * * .” *King v. City of Montgomery*, 168 So. 2d 30, 31 (Ala. Ct. App. 1964).

Among other settings, some courthouses physically separated bathroom users based on race. In *Dawley v. City of Norfolk*, 260 F.2d 647 (4th Cir. 1958), *cert. denied*, 359 U.S. 935 (1959), for example, a Black lawyer sought to enjoin a Virginia city “from maintaining certain signs in the State courthouse * * * indicating the segregation of the races in the public restrooms maintained in the building for men and women.” At the time, the federal courts declined to intervene, observing simply that “[t]he matter was one which affected the internal operations of the court of the State.” *Ibid.* Similar segregation occurred in other parts of government, as well. “Under President [Woodrow] Wilson, the Federal Government began to require segregation in Government buildings; desks of Negro employees were curtained off [and] separate bathrooms * * * were provided * * * .” *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 394 (1978).

In the 1950s, still more of these laws governing bathrooms were enacted or reinforced in response to this Court’s rulings in *Brown* and *Brown II*, as state officials tried to galvanize resistance to integration. “By 1956, Senator [Harry] Byrd [of Virginia] had created a coalition of nearly 100 Southern politicians to sign on to his ‘Southern Manifesto,’ an agreement to resist the implementation of *Brown*.” LDF, *Brown at 60: The Southern Manifesto and “Massive Resistance” to Brown*, <http://www.naacpldf.org/brown-at-60-southern-manifesto>

-and-massive-resistance-brown/. That same year, legislators in Louisiana passed a series of bills intended to flout federal integration mandates, including by requiring segregation in bathrooms. Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana, 1915-1972*, 205 (2008). See also Katie Riley, 'Little Rock Nine' Student: Transgender Bathroom Debate Is Part of Civil Rights Fight, *Time*, May 13, 2016, <http://time.com/4329931/transgender-bathroom-obama-law-debate-civil-rights/> (comparing personal experience of integrating school post-*Brown* in 1957 with that of transgender students today).

Through the 1960s, physical-separation rules about bathrooms persisted, were often enforced by violence and sparked intense political conflict. For example, in 1961, a group of Freedom Riders embarked on a bus trip to commemorate the *Brown* decision and faced beatings when they attempted to use whites-only restrooms and other segregated facilities in South Carolina. Birmingham's Commissioner of Public Safety, "Bull" Connor, stated that "if the Negroes attempt to use the restroom in the [bus] depot, Klansmen are to beat them in the rest room and 'make them look like a bulldog got a hold of them'; then remove the clothing of the victim and carry the clothing away. If the nude individual attempts to leave the restroom, he will be immediately arrested and it will be seen that this person is sent to the penitentiary." Raymond Arsenault, *Freedom Riders: 1961 and the Struggle for Racial Justice* 92 (2011). When the Freedom Riders reached Alabama, a mob attacked them so brutally that it resulted in hospitalizations and the journey had to be cut short. In 1966, in Tuskegee, Alabama, "a white gas station attendant shot and killed, Sammy Younge, Jr., a black Navy veteran and member of [the Student Nonviolent Coordinating Committee], as he attempted to use a 'white' toilet." Nat'l Park Serv., U.S. Dep't of the

Interior, *Civil Rights in America: Desegregation of Public Accommodations* 1, 79-80 (2004, rev. 2009).

These state laws requiring separate facilities visited an immeasurable indignity on African Americans. To avoid it, many Black parents instructed their children to use the facilities at home and avoid using segregated public facilities. See, e.g., Vernon E. Jordan Jr., *Movies That Unite Us*, N.Y. Times, Feb. 19, 2017, at SR3. Often the use of segregated bathrooms involved walking long distances, in front of others, which further underscored the separateness and shame involved. See Margot Lee Shetterly, *Hidden Figures: The American Dream and the Untold Story of the Black Women Mathematicians Who Helped Win the Space Race* 108 (2016) (“It was the proximity to professional equality that gave the slight [of having no “Colored” restrooms in the building] such a surprising and enduring sting. * * * It was difficult enough to rise above the silent reminders of Colored signs on the bathroom doors and cafeteria tables. But to be confronted with the prejudice so blatantly, there in the temple to intellectual excellence and rational thought, by something as mundane, so ridiculous, so universal as having to go to the bathroom [was especially hurtful] * * * .”).

Dr. Martin Luther King, Jr. eloquently recounted his experience with segregated bathrooms:

I looked over and saw another sign which said “Men.” “Colored Men” and “Men.” So I thought I was a man [and I used the “Men’s” room]. * * * But as soon as I walked up, there was a colored man in there; he was working in there [as an attendant]. * * * [H]e looked over at me and said: “The, the, the colored room is over there.” I didn’t say anything; I just stood there. But he came up and touched me, and said: ‘You belong over there; that’s where the colored room is.’ I said: “Are you speaking to me?” ‘Yes, sir, yes, sir. You see,

the colored room is over there.” I said: “Well, I’m going to stay here, right here.”

Dr. Martin Luther King Jr., “Some Things We Must Do,” Address Delivered at the Second Annual Institute on Nonviolence and Social Change at Holt Street Baptist Church (Dec. 5, 1957). In the adjoining passage, Dr. King highlighted why this sort of experience was so damaging and painful:

Segregation not only makes for physical inconveniences, but it does something spiritually to an individual. It distorts the personality and injures the soul. Segregation gives the segregator a false sense of superiority, and it gives the segregated a false sense of inferiority. But in the midst of this, we must maintain a sense of dignity and self-respect.

Ibid. Consistent with Dr. King’s observation, *amicus* LDF, in cases as far back as *Brown*, presented evidence demonstrating that segregation—including in restrooms—hurts not just minorities but also majority groups. See R.L. Carter, *The Effect of Segregation and the Consequences of Desegregation: A Social Science Statement*, reprinted in 37 Minn. L. Rev. 427 (1953). See also *Wright v. Rockefeller*, 376 U.S. 52, 69 (1964) (Goldberg, J., dissenting) (“[T]he Court’s decisions since *Brown* * * * hold that harm to the Nation as a whole and to whites and Negroes alike inheres in segregation.”).

Some of the vestiges of segregated bathrooms persist to this day. See, e.g., Barbara Maranzani, *9 Things You May Not Know About the Pentagon*, History.com, Jan. 15, 2013, <http://www.history.com/news/9-things-you-may-not-know-about-the-pentagon/> (Pentagon still has twice as many bathrooms as necessary because it was designed to separate Black and white employees). These “vestiges of discrimination—although clearly not the most pressing

problems facing Black citizens today—are a haunting reminder of an all too recent period of our Nation’s history.” *Rogers v. Lodge*, 458 U.S. 613, 632 n.1 (1982) (Stevens, J., dissenting) (noting, almost two decades after the Civil Rights Act of 1964, that “faded paint over restroom doors [at the Burke County, Georgia courthouse] does not entirely conceal the words ‘colored’ and ‘white’”).

The injuries arising from segregation remain hard to cure. Even today, “powerful racial stereotype[s]—that of black men as ‘violence prone,’” *Buck v. Davis*, No. 15-8049, 2017 WL 685534, at *15 (U.S. Feb. 22, 2017), or that “African-American men want to rape white women,” *Fulmore v. M & M Transp. Servs., Inc.*, No. 1:11-CV-00389, 2014 WL 1691340, at *8 (S.D. Ind. Apr. 29, 2014), have a detrimental effect on the treatment of Black people. See also *Shorter v. Hartford Fin. Servs. Grp., Inc.*, No. 3:03-CV-0149, 2005 WL 3536122, at *4 (D. Conn. Dec. 6, 2005).

II. STATE OFFICIALS HAVE INVOKED FEARS ABOUT SEXUAL CONTACT AND PREDATION BASED ON ODIUS STEREOTYPES TO JUSTIFY RACIAL SEGREGATION AS WELL AS CRIMINALIZATION OF LESBIAN AND GAY INDIVIDUALS.

Misplaced concerns about sexual contact and predation have long been a central dimension of the rationales proffered to justify rules and practices that physically separate people based on class, sex, and race. Today, even in the intimate context of bathing facilities, these rationales and the separations they sought to justify are widely understood to reflect nothing more than discomfort, dislike, and fear, all impermissible bases for government action. In resolving G.G.’s case, this Court should consider how state officials have impermissibly invoked similar anxieties about sexual exploitation in the

context of race-based separation of bathrooms, *infra* § II.A, and swimming pools, *infra* § II.B, interracial marriage, *infra* § III.C, and other laws governing lesbian and gay individuals, *infra* § III.D.

A. Bathrooms

Speculation and stereotypes about sexual contact and disease were used to justify the racial segregation of bathrooms. A 1957 Arkansas newspaper advertisement entitled, “[w]hen you start race-mixing where are you going to stop?” featured the loaded question “[b]ecause of the high venereal disease rate among Negroes * * * [will] white children be forced to use the same rest room and toilet facilities * * * ?” Phoebe Godfrey, *Bayonets, Brainwashing, and Bathrooms: The Discourse of Race, Gender, and Sexuality in the Desegregation of Little Rock’s Central High*, 62 *The Ark. Historical Soc’y* 42, 52 (2003). Public fliers hawked “uncontested medical opinions” that “girls under 14 year of age are highly susceptible to disease if exposed to the germs through seats, towels, books, and gym clothes.” *Id.* at 63-64. When President Franklin Roosevelt eliminated racial segregation in bathrooms, “white female government workers staged a mass protest, fretting that they might catch venereal diseases if forced to share toilets with black women.” Nick Haslam, *How the psychology of public bathrooms explains the ‘bathroom bills’*, *Wash. Post*, May 13, 2016, https://www.washingtonpost.com/posteverything/wp/2016/05/13/how-the-psychology-of-public-bathrooms-explains-the-bathroom-bills/?utm_term=.089d65aa02f6/.

These beliefs, of course, had no basis in reality. For example, in the landmark case of *Turner v. Randolph*, 195 F. Supp. 677 (W.D. Tenn. 1961), Black residents of Tennessee, represented by Thurgood Marshall and others, challenged segregation in public libraries. The City of Memphis responded by voluntarily integrating certain

facilities, but “expressly reserved” the question of “whether [the City] should be required to desegregate restrooms and toilet and lavatory facilities.” *Id.* at 678. “In an apparent effort to support [segregation in bathrooms] as a reasonable and valid exercise of the police power, the [City] introduced proof * * * that the incidence of venereal disease is much higher among Negroes * * * than among members of the white race.” *Id.* at 679-80. But the court flatly rejected that argument and discarded testimony of state public health officials, finding that “no scientific or reliable data have been offered to demonstrate that the joint use of toilet facilities * * * would constitute a serious danger to the public health, safety or welfare.” *Id.* at 680. Moreover, the court reasoned that “in the absence of proof, one would be led to believe that venereal disease would not be expected to occur [differently] to any appreciable extent among” different races. *Ibid.*

Trepidations regarding contact and “contamination” in the small setting of a restroom were also often offered as justifications for segregating these facilities. See, e.g., C.J. Griffin, *Workplace Restroom Policies in Light of New Jersey’s Gender Identity Protection*, 61 Rutgers L. Rev. 409, 423 (2009) (discussing privacy, cleanliness and morality rationales for race-based bathroom rules). As one scholar observed, “[t]he point of maintaining racially segregated bathrooms * * * was to make sure that blacks would not contaminate bathrooms used by whites.” Richard A. Wasserstrom, *Racism and Sexism*, in *Race and Racism* 319 (Bernard P. Boxill ed., 2001). See also Griffin, *supra*, 61 Rutgers L. Rev. at 424 (stating that racially segregated facilities “taught both whites and blacks that certain kinds of contacts were forbidden because whites would be degraded by the contact with the

blacks”).⁶ Such arguments about unduly close contact in bathrooms were plainly pretextual, and vague assertions about discomfort or privacy could hardly justify facially disparate treatment on the basis of sex. See, e.g., *United States v. Virginia*, 518 U.S. 515, 540-46 (1996).

B. Swimming Pools

Similar sexual fears were invoked in the closely related context of swimming pools. Long before racial separation was deemed “natural” in swimming facilities, sex separation was the norm. “During the nineteenth century, swimming divided along social lines, the most conspicuous being gender.” Jeff Wiltse, *Contested Waters: A Social History of Swimming Pools in America* 2 (2007). “Because of [a] combination of factors—bodily exposure, physical contact, and difficulty of surveillance—public officials demanded that males and females swim separately.” *Ibid.* Beginning in the 1920s, public officials began to allow men and women to swim together, *id.* at 89, apparently having decided that the privacy and safety concerns that had supported the previous physical-separation rule were not borne out. Yet municipal officials relied on those same invalidated concerns to enforce separation based on race: “When cities permitted males and females to swim together, white swimmers and public officials suddenly attempted to separate blacks from whites.” *Id.* at 124.

⁶ Concerns about interpersonal discomfort were also sometimes cloaked in terms of commerce. A Maryland movie theater, which held a long-term lease from the local government, argued that its racially segregated seating and bathrooms were “the only policy [the company] could profitably pursue.” *Jones v. Marva Theatres, Inc.*, 180 F. Supp. 49, 50 (D. Md. 1960). See also *Robinson v. State of Fla.*, 378 U.S. 153, 154 (1964) (business arguing that eliminating the separation rule “would be ‘very detrimental to our business’ because of the objections of white customers”).

As the concerns that prompted sex segregation were recast to justify race-based rules, fears about sexual predation came to the fore. “[N]orthern whites in general objected to black men having the opportunity to interact with white women at such intimate and erotic public spaces” and “feared that black men would act upon their supposedly untamed sexual desire for white women by touching them in the water and assaulting them with romantic advances.” Wiltse, *supra*, at 124; see generally William M. Carter, Jr., *The Thirteenth Amendment and Constitutional Change*, 38 N.Y.U. Rev. L. & Soc. Change 583, 588 (2014) (“[S]tereotypes about black cleanliness and black dangerousness—particularly the perceived threat of sexual violence to white women—and the stigma attached to commingling of the races in intimate settings such as swimming pools had produced in whites a deep and visceral aversion to sharing public swimming facilities with blacks.”).

In the mid-1950s, the federal district court that upheld Maryland’s racial separation of bathing facilities echoed these concerns, observing that the “degree of racial feeling or prejudice in this State at this time is probably higher with respect to bathing, swimming and dancing than with any other interpersonal relations except direct sexual relations.” *Lonesome v. Maxwell*, 123 F. Supp. 193, 202 (D. Md. 1954), *rev’d sub nom. Dawson v. Mayor & City Council of Baltimore City*, 220 F.2d 386 (4th Cir. 1955), *aff’d*, 350 U.S. 877 (1955) (citation omitted). By contrast, the court took pains to point out that the state parks agency had declined to segregate other facilities within the park, limiting its physical-separation rules to bath houses and beaches and adding that the state itself had “steadily broadened the permissible and customary fields of interracial activities.” 123 F. Supp. at 202.

Yet according to the court, swimming facilities and bath houses were a step too far because they “are for all ages, and are practically unsupervised, except by young life guards.” *Lonesome*, 123 F. Supp. at 203. The court acknowledged that the separation operated, for the Black plaintiffs, as a barrier to “social integration with white people.” *Id.* at 204. The court added: “The natural thing in Maryland at this time—whether at private or public beaches or pools—is for Negroes to desire and choose to swim with Negroes and whites with whites, and for the proprietors of the facilities—whether public or private—to provide separate bathhouses, beaches and pools for the two races.” *Id.* at 205.

C. Interracial Marriage

The prospect of interracial marriage was long exploited as the ultimate fear in the Jim Crow era and was closely intertwined with the maintenance of segregated schools and the physical-separation rules imposed on otherwise shared spaces. Indeed, “a primary reason for segregated schooling was to foreclose the interracial intimacy that might be sparked in integrated classrooms.” Dorothy E. Roberts, *Loving v. Virginia as a Civil Rights Decision*, 59 N.Y.L. Sch. L. Rev. 175, 176 (2014-2015).

The specter of sexual predation ran throughout the discourse around anti-miscegenation laws. The New York Times described as the “ultimate question” of the *Loving v. Virginia* case: “Would you like to have your daughter marry a Negro?” Roberts, *supra*, at 188. Contemporaneous news coverage confirmed the intense anxiety around cross-racial sexual contact, especially between Black men and white women. *Id.* at 176 n.6 (quoting a 1961 L.A. Times article: “Miscegenation is a deep-rooted fear and unquestionably one of the foremost concerns of the Southern citizen.”).

Loving challenged head-on the deep-rooted stereotypes and fears that underlay this separation and subordination of African Americans in marriage. As the case made its way to this Court, it was clear that the physical division of races was a central legal issue. When Mr. and Ms. Loving were sentenced for violating Virginia's "Racial Integrity Act," the trial judge proclaimed: "Almighty God created the races white, black, yellow, malay and red, and he placed them on *separate* continents * * *. The fact that he *separated* the races shows that he did not intend for the races to mix." *Loving v. Virginia*, 388 U.S. 1, 3 (1967) (emphasis added). Likewise, when the Virginia Supreme Court upheld the state ban, it relied primarily on an earlier decision, *Naim v. Naim*, which involved an Asian-American and white couple and held that states had a right to "preserve * * * racial integrity" and prevent a "mongrel breed of citizens," "the obliteration of racial pride" and the "corruption of blood [that would] weaken or destroy its citizenship." 87 S.E.2d 749, 756 (Va. 1955), *cited in Loving v. Commonwealth*, 147 S.E.2d 78, 80 (Va. 1966). Virginia defended its ban, *inter alia*, on the grounds that "intermarriage constitutes a threat to society," citing purportedly scientific evidence "that the crossing of distinct races is biologically undesirable and should be discouraged." See Br. of Appellee, *Loving*, 388 U.S. 1, 1967 WL 113931, at *44, 48 (Mar. 20, 1967) (Civ. No. 395). Before this Court, LDF pointed out that "laws against interracial marriage are among the last of such racial laws with any sort of claim to viability. [They] are the weakest, not the strongest, of the segregation laws." Br. of the National Association for the Advancement of Colored People as *Amicus Curiae*, *Loving*, 388 U.S. 1, 1967 WL 113930, at *14 (Feb. 28, 1967) (No. 395).

This Court struck down Virginia's law because it was "designed to maintain White Supremacy." *Loving*, 388 U.S. at 11. In so doing, the Court rejected Virginia's post-

hoc and pretextual rationalizations for enshrining separate categories of marriages. *Ibid.* (“There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification.”). *Loving* refused to credit *Naim*’s pseudo-scientific theories about the social and genetic consequences of interracial sexual contact, casting them aside as nothing more than “an endorsement of the doctrine of White Supremacy.” *Id.* at 7.

D. Lesbian and Gay Criminalization and Discrimination

Finally, concerns about sexual contact and predation were also used to justify the criminalization of gay and lesbian individuals and their physical exclusion from certain environments. In *Bowers v. Hardwick*, 478 U.S. 186 (1986), for instance, Georgia argued that homosexuality “is marked by * * * a disproportionate involvement with adolescents and, indeed, a possible relationship to crimes of violence” as well as the “transmission of * * * diseases.” Br. of Pet’r, *Bowers*, 1985 WL 667939 (Dec. 17, 1985) (Civ. No. 85-140). In *Lawrence v. Texas*, oral argument featured discussion of whether “a State could not prefer heterosexuals or homosexuals to teach Kindergarten * * * [because of the justification that children would be harmed because they] might be induced to—to follow the path of homosexuality.” 2003 WL 1702534 at *20 (2003). See also *Lawrence*, 539 U.S. at 602 (Scalia, J., dissenting) (“Many Americans do not want persons who openly engage in homosexual conduct as * * * scoutmasters for their children [or] as teachers in their children’s schools.”). Compare Br. of Pet’r, *Gloucester Cty. School Bd. v. G.G.*, 2017 WL 65477, at *37, 40 (filed Jan. 3, 2017) (arguing that some people may exploit transgender bathroom access for “less worthy

reasons,” which might create a “hostile environment” for sexual assault victims).

Likewise, rationales offered to support excluding openly gay and lesbian individuals from both military and civil service echoed fears of sexual predation. Arguments expressed the concern that “showering bodies would be subjected to unwanted sexual scrutiny.” Tobias Barrington Wolff, *Civil Rights Reform and the Body*, 6 Harv. L. & Pol’y Rev. 201, 227, 228 (2012). Decades earlier, the chair of the Civil Service Commission similarly rejected a request to end a ban on openly gay people from federal civil service jobs, pointing to the “apprehension” other employees would feel about sexual advances and assault and related concerns regarding “on-the-job use of the common toilet, shower and living facilities.” *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 981 (N.D. Cal. 2010), *aff’d*, 671 F.3d 1052 (9th Cir. 2012), *vacated sub nom. Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) (quoting Letter from John W Macy to the Mattachine Society of Washington (Feb. 25, 1966) at 2-4).

As this Court has made clear, dislike of or discomfort around gays and lesbians is not a legitimate justification for discrimination. *Romer v. Evans*, 517 U.S. at 631-32. The Equal Protection Clause prohibits the government from discriminating against one group in order to accommodate the prejudices or discomfort of another. “The Constitution cannot control such [private] prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.” *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984). See also *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 448 (1985).

All told, the articulated rationales offered for physically separating transgender students in this case are comparable in many respects to those that were used to

justify racially segregated bathrooms and swimming pools or the criminalization or exclusion of gays and lesbians. This Court must treat the arguments today with similar skepticism.

III. THIS COURT HAS STRUCK DOWN PHYSICAL-SEPARATION RULES THAT IMPERMISSIBLY SOUGHT TO PROTECT SOME INDIVIDUALS FROM PERCEIVED DANGERS OR DISCOMFORT WITH OTHERS.

Viewed more broadly, the bathroom-exclusion rule here fits within a troubling tradition of local and state governments justifying the physical separation of certain groups from others under the guise of providing protection or avoiding discomfort. By excluding a subset of people from a setting where they would otherwise be present, these rules have discriminated impermissibly and have been repudiated both by courts and society at large. This is true regarding recreational facilities, *infra* § III.A, workplaces, *infra* § III.B, and housing, *infra* § III.C.

A. Public Recreational Facilities

Local and state governments have imposed group-based restrictions on the use of recreational facilities—like public parks, golf courses, and baseball and football fields, among others—on the grounds of avoiding discomfort or protecting the public.

For example, New Orleans urged that the Court’s rationale in *Brown v. Board* should not carry over to its rule excluding Black plaintiffs from the city’s public golf course and park facilities. The city claimed that *Brown* was “based on psychological considerations not here applicable.” *New Orleans City Park Improvement Ass’n v. Detiege*, 252 F.2d 122, 123 (5th Cir. 1958), *aff’d*, 358 U.S. 54 (1958). This Court called the argument “completely untenable.” *Ibid.* Similarly, lower courts rejected a

number of related physical-separation rules in public recreational facilities.⁷

Notably, when the City of Memphis highlighted safety as the reason for delaying the integration of public parks, this Court refused to accept the purported justification at face value. *Watson v. City of Memphis*, 373 U.S. 526, 535-36 (1963) (“It is urged that this proposed segregation will promote the public peace by preventing race conflicts.”); see also *id.* at 535 (describing the City’s contention that “gradual desegregation on a facility-by-facility basis is necessary to prevent interracial disturbances, violence, riots, and community confusion and turmoil”).

Instead, the Court stated that “neither the asserted fears of violence and tumult nor the asserted inability to preserve the peace was demonstrated at trial to be anything more than personal speculations or vague disquietudes of city officials.” *Watson*, 373 U.S. at 536. Indeed, the Court recognized that while the police chief had testified about “general predictions” of threatened violence, he “gave no concrete indication of any inability of authorities to maintain the peace.” *Ibid.* The Court also concluded: “There is no indication that there had been any violence or meaningful disturbances when other

⁷ See *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (rejecting a racial-separation rule on city golf courses); *Ward v. City of Miami*, 151 F. Supp. 593 (S.D. Fla. 1957) (finding city law restricting African Americans’ use of golf courses to one day per week unconstitutional); *Holley v. City of Portsmouth*, 150 F. Supp. 6 (E.D. Va. 1957) (extending a temporary injunction against a city law restricting African Americans’ use of golf courses to one day per week); *Moorhead v. City of Fort Lauderdale*, 152 F. Supp. 131 (S.D. Fla. 1957), *aff’d*, 248 F.2d 544 (5th Cir. 1957) (rejecting Fort Lauderdale’s law that denied access to a public golf course based on race).

recreational facilities had been desegregated. In fact, the only evidence in the record was that such prior transitions had been peaceful.” *Ibid.* (footnote omitted). This is especially important in the context of the instant case, where the School Board identified concerns about safety of students, Pet. App. 10a, 26a, but similarly offered no factual evidence whatsoever to support its position.

In addition, the Court in *Watson* observed, “there was no factual evidence to support the bare testimonial speculations that authorities would be unable to cope successfully with any problems which in fact might arise or to meet the need for additional protection should the occasion demand.” 373 U.S. at 536-37. School officials here, charged already with responsibility for keeping bathrooms safe for their students, have not indicated, other than in a vague, nonfactual manner, that the inclusion of transgender students in the bathrooms that conform to those students’ gender identity will unduly tax their ability to perform this function.

More broadly, arguments about danger to and discomfort of the public were also sometimes offered to justify segregation in public swimming facilities, in addition to the sexualized fears discussed above, *supra* § II.⁸ But however the rationale was couched, courts

⁸ Baltimore and Maryland argued, for example, that “preservation of order within the parks” and the authorities’ responsibility “to avoid any conflict which might arise from racial antipathies” justified their insistence on racial separation for use of these facilities. *Dawson v. Mayor & City Council of Baltimore City*, 220 F.2d 386, 387 (4th Cir. 1955), *aff’d per curiam*, 350 U.S. 877 (1955). They advanced another discomfort-focused objective as well, urging that “the greatest good of the greatest number” of both Black and white citizens, on the view that most individuals, regardless of race, “are more relaxed and feel more at home among members of their own race than in a mixed

around the country rejected such physical-separation rules. See, e.g., *Willie v. Harris Cty.*, 202 F. Supp. 549 (S.D. Tex. 1962) (rejecting racial-separation rule in city parks); *Fayson v. Beard*, 134 F. Supp. 379 (E.D. Tex. 1955) (same); *Tate v. Dep't of Conservation & Dev.*, 133 F. Supp. 53 (E.D. Va. 1955), *aff'd*, 231 F.2d 615, (4th Cir. 1956), *cert. denied*, 352 U.S. 838 (1956) (rejecting denial of access to state parks based on race even when conducted by private actors acting on a lease).

B. Workplaces

In the employment context, states and others have previously sought to rely on protectionist rationales for physically separating or excluding particular groups of people from certain workspaces. These physical-separation rules have similarly come to be understood as fundamentally impermissible.

This Court has previously expressed skepticism toward, and ultimately rejected, for example, a private employer's rule forbidding women of childbearing age from working in certain parts of its factories where men were permitted to work. See *Int'l Union v. Johnson Controls, Inc.*, 490 U.S. 187 (1991). The purported interest—in protecting the health of women and the children they might have—had the patina of legitimacy. But by examining the rule in context, where others who remained in the space would also be vulnerable to potential injury, the Court recognized that the health and safety rationale could not explain the sex-based exclusion. *Id.* at 198 (“Respondent does not seek to protect the unconceived children of all its employees. Despite evidence in the record about the

group.” *Lonesome*, 123 F. Supp. at 202 (D. Md. 1954); see also *ibid.* (expressing concern about “racial feeling” that would result from removing the physical-separation rules).

debilitating effect of lead exposure on the male reproductive system, Johnson Controls is concerned only with the harms that may befall the unborn offspring of its female employees.”). The Court added, “[c]oncern for a woman’s existing or potential offspring historically has been the excuse for denying women equal employment opportunities.” *Id.* at 211.

The Court noted as well that “the absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect.” *Johnson Controls*, 490 U.S. at 199. Instead, “[w]hether an employment practice involves disparate treatment through explicit facial discrimination does not depend on why the employer discriminates but rather on the explicit terms of the discrimination.” *Ibid.*

Additionally, a deeply divided Court grappled with a similar justification in *Goesaert v. Cleary*, 335 U.S. 464 (1948), involving a Michigan law that forbade women, other than wives and daughters of the male bar owner, from working as licensed bartenders. According to the Court, “Michigan evidently believe[d] that the oversight assured through ownership by a barmaid’s husband or father minimizes hazards that may confront a barmaid without such protecting oversight.” *Id.* at 466. In particular, “bartending by women,” the Court wrote, “may, in the allowable legislative judgment, give rise to moral and social problems against which it may devise preventive measures.” *Ibid.*

While a majority at the time accepted that argument, the three dissenters were able to see through the state’s purported interest in protecting women. Because female owners could not work in their own bars even if a man was always present, the “inevitable result of the classification belies the assumption that the statute was motivated by a legislative solicitude for the moral and physical well-being

of women. * * *” *Goesaert*, 335 U.S. at 468 (Rutledge, J., dissenting). Roughly a quarter-century after *Goesaert*, the Seventh Circuit easily invalidated a Milwaukee ordinance that imposed a similar physical-separation rule, prohibiting female employees from sitting at the bar or with male customers at tables. See *White v. Fleming*, 522 F.2d 730 (7th Cir. 1975).

In the instant case, although there is evidence of hostility toward G.G. in the physical-separation rule, even if there were not, the facial exclusion of students from bathrooms based on gender likewise amounts to an explicit and impermissible form of discrimination.

C. Residential Restrictions

While arising in somewhat different factual circumstances, the physical separation of homes and neighborhoods based on discomfort with a particular group of people also involves the same underlying principle and, therefore, presents troubling historical parallels. The state applied physical-separation rules at a broader level: instead of separating persons from a given room or facility, it separated them from an entire neighborhood or environment altogether.

For example, in *City of Cleburne*, Texas refused to authorize a group home for people with intellectual disabilities under its zoning regulations. The city permitted many types of group residences to be developed in the area, including boarding, lodging and fraternity and sorority houses as well as hospitals, sanitariums and nursing homes—but it made a special exception for similar homes for “the insane or feeble-minded or alcoholics or drug addicts.” 473 U.S. at 436 n.3 (emphasis omitted). For these groups, Cleburne required a special use permit, which had to be renewed annually and could only be

obtained with the signatures of nearby property owners and the approval of the local planning commission. *Ibid.*

When the Cleburne Living Center applied for the special use permit, the City Council refused the request. Like here, the City identified safety as a reason for its insistence on separating people with “mental retardation” from the general population. The Council said it “feared that the students [from a nearby school] might harass the occupants of the [] home” and noted concerns about the home’s location on an old flood plain. *City of Cleburne*, 473 U.S. at 449. Moreover, the Council “expressed worry about fire hazards, the serenity of the neighborhood, and the avoidance of danger to other residents.” *Id.* at 450. It offered another neutral-sounding explanation as well—an interest in “avoiding concentration of population and * * * lessening congestion of the streets.”

The Court, however, concluded that the safety concerns did not hold up and that Cleburne was using safety as a legitimate-sounding but unavailing stand-in for “mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding.” *City of Cleburne*, 473 U.S. at 448. See also *id.* at 449 (describing the permit denial as “based on [] vague, undifferentiated fears”). Moreover, the Court examined the Council’s specific justifications, and, under rational basis review, could see that while these “wishes or objections of some fraction of the body politic” might be deeply felt, they did not provide a permissible basis for physical separating those with intellectual disabilities from others. *Id.* at 448.⁹

⁹ Much earlier in the 20th century, the Court considered another neighborhood-separation rule that expressly sought to “prevent conflict” and “to preserve the public peace and promote the general welfare.” *Buchanan v. Warley*, 245 U.S. 60, 70 (1917) (discussing race-

In another prominent housing case involving physical-separation rules, the City of Akron amended its charter to allow private residents to discriminate based on race in home sales notwithstanding the city's fair housing ordinance. *Hunter v. Erickson*, 390 U.S. 385 (1969). Although the discrimination in *Hunter* was private—individual homeowners “had specified they did not wish their houses shown to negroes”—the city acted, through its charter amendment, to protect that race-based barrier. *Id.* at 387. The City then invoked its constituents' discomfort as a rationale for its action, stressing that the amendment should survive challenge because it involved “the delicate area of race relations.” *Id.* at 398. This Court, however, flatly rejected the position that concerns about delicate social relations, however strong they might have been in Ohio in the late 1960s, would be a sufficient reason to permit a rule authorizing physical separation based on race.

Finally, the now widely-discredited decision of *Korematsu v. United States* provides yet another illustration of neutral-sounding rationales offered to justify a physical-separation rule that rested on distrust of a subgroup of Americans. There, as is well known, the “twin dangers of espionage and sabotage” were invoked to

based zoning ordinance). Here, too, the Court recognized the legitimacy of general concerns with safety. *Id.* at 81 (describing the aims of preventing racial conflict and preserving public peace as “desirable” and “important”). However, the Court held that these arguments were insufficient to justify the discriminatory barrier imposed and rejected the government's argument that property values would drop without the ordinance. *Id.* at 82. The Court also observed that the race-based barrier did not provide the protection it purported to offer: “property may be acquired by undesirable white neighbors or put to disagreeable though lawful uses with like results.” *Ibid.*

support a rule requiring Japanese-Americans to be forced out of their residences and into internment camps. 323 U.S. 214, 217 (1944). Because those fears were baseless, Mr. Korematsu's conviction was ultimately vacated, Congress awarded reparations, there was an official apology by the President, and an extraordinary confession of error by the United States. See, e.g., Neal Katyal, *Confession Of Error: The Solicitor General's Mistakes During The Japanese-American Internment Cases*, May 20, 2011, <https://www.justice.gov/opa/blog/confession-error-solicitor-generals-mistakes-during-japanese-american-internment-cases/> (highlighting the government's failure to "exhibit[] complete candor" and "reli[ance] on gross generalizations").

CONCLUSION

This Court's precedents make clear that the government may not physically separate and restrict individuals only because they are perceived to be different. That is particularly true when the underlying justification is built upon concerns about discomfort and fears of sexual predation that have no factual support. As the historical record shows, state officials have used such rationales to sow division and effectuate subordination rather than to provide meaningful protection. Such shaky arguments are bound to fail—as this Court has repeatedly recognized in the contexts of racially segregated bathrooms, the criminalization and exclusion of lesbian and gay individuals, and the varied restrictions on African Americans, Asian Americans, women, people with intellectual disabilities and others in public facilities, workplaces, and residential zoning.

Against the backdrop of these decisions, the separation of bathrooms by race is now rightly seen for what it is: immoral, insidious, and unambiguously impermissible.

Even while striving to overcome the enduring vestiges and latest iterations of prejudice, *Brown*, *Loving*, *Obergefell* and other illustrious precedents reaffirm that our nation has a vast capacity to progress: “[W]hat was once a ‘natural’ and ‘self-evident’ ordering [of constitutional principles of equality] later comes to be seen as an artificial and invidious constraint on human potential and freedom.” *City of Cleburne*, 473 U.S. at 465 (Marshall, J., concurring). Indeed, not one of the crass, stereotypical predictions about the dangers of racially integrating restrooms—or swimming pools or neighborhoods or beyond—have come to fruition.

Likewise here, concerns about dangers to non-transgender students from the presence of transgender students in the bathrooms are belied both by evidence that transgender students, including G.G., have been using bathrooms without harm to others and by the well-documented harms of discrimination and violence against transgender youth. See, e.g., U.S. Dep’t of Health & Human Services, *LGBT Youth: Experiences With Violence*, Nov. 12, 2014, <https://www.cdc.gov/lgbthealth/youth.htm/>.

Neither the transgender context nor the prospect of momentary public apprehension should dissuade this Court from applying its precedents straightforwardly. Indeed, this Court has rejected the notion that rights are rigidly limited by prior contexts and past prejudices, finding that “[i]f rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied * * *.” *Obergefell*, 135 S. Ct. at 2602 (citing *Loving*, 388 U.S. at 12; *Lawrence*, 539 U.S. at 566-67).

To be sure, there was a time when there was widespread opposition to integration and to the Civil Rights Act, which

a third of all Americans opposed as of 1964. Yet by 2014, a full 81% of Americans believed the passage of the Act was good for the country, with whites approving at 83%. See Roper Center for Public Opinion Research, *Public Opinion on Civil Rights: Reflections on the Civil Rights Act of 1964*, <https://ropercenter.cornell.edu/public-opinion-on-civil-rights-reflections-on-the-civil-rights-act-of-1964/>. Similarly, public opinion on interracial marriage has shifted dramatically in favor of greater inclusion, as the nation came to embrace the wisdom of *Loving*: in 1958, only 4% of Americans approved of interracial marriage (and therefore 96% disapproved)—whereas by 2013, 96% of adults age 18-29 approved. See Gallup, *In U.S., 87% Approve of Black-White Marriage, vs. 4% in 1958* (July 25, 2013).

Today, our statutes and citizenry alike have a “continuing role in moving the Nation toward a more integrated society,” *Inclusive Communities Project*, 135 S. Ct. at 2526. G.G.’s simple plea to be treated equally in the eyes of the law is an important step along that path.

For the foregoing reasons, this Court should affirm.

Respectfully submitted,

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LDF Files Amicus Brief in Ninth Circuit Tracing Bigoted Roots of Transgender Military Ban

Today, the NAACP Legal Defense and Educational Fund, Inc. (LDF) filed an [amicus brief](#) urging the Ninth Circuit Court of Appeals to find unconstitutional the U.S. government's ban on transgender Americans serving in the military. The brief explains that the justifications the government is relying on to discriminate against transgender people are almost identical to the explanations used more than a half century ago to discriminate against Black Americans.

"The ban on transgender military service is not just about the right to fight, it's about full equality as guaranteed by the Constitution," said LDF Assistant Counsel [Daniel Harawa](#). "By prohibiting Black people from serving their country, the U.S. Government denied them equal citizenship. The Government now seeks to do the same to transgender people. It was unconscionable and unconstitutional to allow prejudice to drive policy then, and it's no different today."

LDF's brief traces the history of the U.S. military's racially discriminatory policies, as well as the similarly discriminatory policies governing transgender service. In doing so, LDF highlights the prejudicial justifications the military once provided for discriminating against Black soldiers and likens them to the justifications the government is now using to ban transgender soldiers. After valiant service and sustained advocacy by civil rights activists, the U.S. government commissioned studies to understand the ramifications of the military's racial segregation and ban on transgender service, respectively. Even though they took place almost 60 years apart, their findings were remarkably similar: that these bigoted policies were indefensible and had cost lives and money. These studies led President Truman to sign an executive order integrating the military in 1948, and Secretary of Defense Ash Carter to issue a directive ending the prohibition on transgender military service in 2016.

Rather than learning from the military's history of discrimination, President Trump resurrected the ban on transgender military service in the summer of 2017. In its brief defending the change, the Administration asserted that transgender troops would harm military readiness, undermine military effectiveness, and be disproportionately costly. LDF's brief shows that these are the same justifications that the previous administration found baseless just two years ago, and they are almost identical to the unconstitutional justifications the government used to discriminate against Black people more than half a century ago. LDF's brief also notes that the Supreme Court has repeatedly found that discriminatory classifications by the federal government violate the Constitution, and that the ban on transgender military service should therefore be struck down.

Read the entire brief [here](#).

###

Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF's Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.

No. 18-5257

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

JANE DOE 2, *et al.*,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP,
in his official capacity as President of the United States, *et al.*,

Defendants-Appellants.

**On Appeal from the United States District Court
for the District of Columbia**

**CORRECTED BRIEF OF AMICUS CURIAE
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amicus Curiae NAACP Legal Defense and Educational Fund, Inc. (LDF) submits the following statement of disclosure: LDF is a nonprofit 501(c)(3) corporation. It is not a publicly held corporation that issues stock, nor does it have any parent companies, subsidiaries or affiliates that have issued shares to the public.

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INTEREST OF AMICUS CURIAE¹

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is a non-profit civil rights legal organization that has fought for over 75 years to enforce the guarantee of equal protection and due process in the United States Constitution on behalf of victims of discrimination.

LDF has participated as amicus curiae in cases across the nation that involve the rights of lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals. *See, e.g., Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *United States v. Windsor*, 133 S. Ct. 2675 (2013); *Romer v. Evans*, 517 U.S. 620 (1996); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); *Jackson v. Abercrombie*, 585 F. App'x 413 (9th Cir. 2014); *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014); *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010); *Ingersoll v. Arlene's Flowers, Inc.*, 389 P.3d 543 (Wash. 2017); *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009); *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008); *Conaway v. Deane*, 932 A.2d 571 (Md.

¹ Amicus Curiae NAACP Legal Defense and Educational Fund, Inc. submits this brief without an accompanying motion for leave to file or leave of court because all parties have consented to its filing. *See* Fed. R. App. P. 29(a)(2). No counsel for a party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution intended to fund the preparation or submission of the brief. No one other than amicus or its counsel has made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

2007); *Hernandez v. Robles*, 855 N.E.2d 1 (N.Y. 2006); *Gifford v. McCarthy*, 137 A.D.3d 30 (N.Y. App. Div. 2016).

Consistent with its opposition to all forms of discrimination, LDF has a strong interest in the federal policy at issue banning transgender individuals from serving in the United States military. LDF respectfully submits this brief to assist the Court in its consideration of the issues raised by the parties.²

² Pursuant to Circuit Rule 29(d), LDF submits this brief separately because it represents a unique historical argument regarding the military's past discrimination against African Americans. The arguments presented in this brief are distinct from the arguments presented in the briefs of other amici.

INTRODUCTION

From our Nation's founding until not too long ago, the United States military openly discriminated against African Americans. Black patriots were forced to serve in segregated units,³ relegated to unskilled support roles,⁴ and at times outright banned from enlisting.⁵ The Government justified its discrimination by claiming that allowing Blacks to serve alongside whites "would produce situations destructive to morale and detrimental to the preparation for national defense."⁶ But a comprehensive study commissioned by President Harry S. Truman proved these claims false,⁷ and after a concerted push from the Black community,⁸ President Truman signed an Order desegregating the military.⁹

³ F. Michael Higginbotham, *Soldiers for Justice: The Role of the Tuskegee Airmen in the Desegregation of the American Armed Forces*, 8 Wm. & Mary Bill Rts. J. 273, 277-78 (2000).

⁴ *Id.* at 278.

⁵ National Archives, *Black Soldiers in the U.S. Military during the Civil War*, <https://www.archives.gov/education/lessons/blacks-civil-war> (last visited Oct. 24, 2018).

⁶ J.S. Leonard, *Digest of War Department Policy Pertaining to Negro Military Personnel*, Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services (Jan. 1, 1944), https://www.trumanlibrary.org/whistlestop/study_collections/desegregation/large/documents/index.php?documentid=12-7&pagenumber=1.

⁷ See Harry S. Truman, Presidential Library & Museum, *Records of the President's Committee on Civil Rights*, <https://www.trumanlibrary.org/htspaper/pccr.htm>.

⁸ See generally, Rawn James, Jr., *The Double V: How Wars, Protest, and Harry Truman Desegregated America's Military* (2013).

⁹ See Exec. Order No. 9981, 3 C.F.R. § 772 (1941-1948) (July 26, 1948), <https://www.trumanlibrary.org/9981.htm>.

Winston Churchill—a storied military strategist—is said to have warned that “those that fail to learn from history are doomed to repeat it.”¹⁰ The Government apparently did not learn from its history of discrimination, so here we are. The Government is using the same rationalizations once weaponized against African Americans seeking to serve their country to justify banning transgender Americans from service.¹¹ The Government is on the wrong side of both history and the Constitution.

ARGUMENT

I. THE COUNTRY’S SHAMEFUL HISTORY OF DISCRIMINATING AGAINST AFRICAN AMERICANS IN THE MILITARY

In the United States, “citizenship and eligibility for military service have gone hand in hand.”¹² Despite African Americans fighting in every war the U.S. has ever fought,¹³ up until the mid-20th Century, the military openly discriminated against

¹⁰ Winston Churchill, <http://www.memorablequotations.com/churchill.htm> (last visited Oct. 24, 2018). Justice Ginsburg, quoting George Santayana, made a similar observation: “[t]hose who cannot remember the past are condemned to repeat it.” *Shelby County v. Holder*, 570 U.S. 529, 576 (2013) (Ginsburg, J., dissenting) (quoting 1 G. Santayana, *The Life of Reason* 284 (1905)).

¹¹ See U.S. Dep’t of Defense, *Report and Recommendations on Military Service by Transgender Persons* (Feb. 22, 2018), <https://media.defense.gov/2018/Mar/23/2001894037/-1/-1/0/military-service-by-transgender-individuals.pdf>.

¹² Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 UCLA L. Rev. 499, 500 (1991).

¹³ See U.S. Army, *African Americans in the U.S. Army*, <https://www.army.mil/africanamericans/timeline.html> (last visited Oct. 25, 2018);

Black people seeking to serve their country. And while this discrimination has taken many forms, it was all part and parcel of the country's sordid history of denying Black Americans equal citizenship.

Before the Civil War, African Americans were not allowed to serve in the military. There was a fear that "military service would allow [Black people] to be seen as men, as citizens."¹⁴ This fear intensified as the Civil War loomed. Almost two years into the war, with no end in sight and the number of white enlistees dwindling, the Union needed soldiers, so Congress passed the Militia Act of July 17, 1862.¹⁵ This Act authorized President Lincoln "to employ as many persons of African descent as he may deem necessary and proper for the suppression of this rebellion in such manner as he may judge best for the public welfare."¹⁶ Hundreds of thousands of Black people served during the Civil War.¹⁷ And while they were at first "used almost entirely in support functions that mainly involved manual labor," by the end of the war, Black soldiers regularly engaged in combat and comprised ten

U.S. Army Center of Military History, *The Army and Diversity*, <https://history.army.mil/html/faq/diversity.html> (last visited Oct. 25, 2018).

¹⁴ Karst, *supra* note 12 at 512. For example, many believed that if Black people "put on the uniform . . . it would be hard to deny them the vote." *Id.*

¹⁵ See 12 Stat. 597 (July 17, 1862).

¹⁶ History.com, *Black Civil War Soldiers*, <https://www.history.com/topics/american-civil-war/black-civil-war-soldiers> (last visited Oct. 24, 2018) (quotation marks and ellipsis omitted).

¹⁷ Karst, *supra* note 12 at 512.

percent of the Union Army.¹⁸ By the end of the Civil War, more than 37,000 Black troops—many of whom started the war as slaves—had sacrificed their lives.¹⁹

After the Civil War, African Americans believed that the “wartime sacrifices of black men vindicated the claims of black people to full citizenship.”²⁰ As W.E.B. DuBois reflected about the war: “Nothing else made Negro citizenship conceivable, but the record of the Negro soldier as a fighter.”²¹ The passage of the Reconstruction Amendments²² and a law giving Black people a limited right to serve in the Army,²³ seemed to cement this truth.²⁴ Yet even with these legal victories, African Americans still had a long way to go before the military would treat them equally.

The military’s discrimination against African Americans persisted during Jim Crow and World Wars I and II. Black people were made to serve in segregated units, shut out from leadership and skilled service roles, and excluded altogether from

¹⁸ *Id.* at 513; Elsie Freeman et al., *The Fight for Equal Rights: A Recruiting Poster for Black Soldiers in the Civil War*, 56 Soc. Educ. 2, 118-120 (Feb. 1992), <https://www.archives.gov/education/lessons/blacks-civil-war>.

¹⁹ Karst, *supra* note 12 at 513.

²⁰ *Id.*

²¹ *Id.* (quoting W.E.B. DuBois, *Black Reconstructionist in America* 104 (1935)).

²² See U.S. Const. amends. XIII, XIV, XV.

²³ See 14 Stat. 332, 39 Cong. Ch. 299 (July 28, 1866). Under this law, Black people still had to serve in segregated battalions. *Id.* Even with this limitation the law faced tremendous opposition. “Senior army officials lobbied against the bill, contending that black men were not intelligent enough to work in artillery units.” James, *supra* note 8 at 15.

²⁴ See *id.*; *The Army and Diversity*, *supra* note 13.

some branches of the military.²⁵ The Government's "military and civilian leaders firmly believed that because black people were inferior to whites, black soldiers and sailors were likewise inferior."²⁶

The Government began to justify its discrimination against Black soldiers by claiming it was beneficial for military operations. As one scholar recounted, as the push for the integration of the military intensified during the 1930s and 40s, Government officials asserted "that if units were integrated, the racial strife generated would not only affect morale but also readiness and efficiency."²⁷ For example, in 1940, Assistant Secretary of War Robert Patterson wrote a memorandum to President Franklin Roosevelt asserting that the country had a "satisfactory" policy "not to intermingle colored and white enlisted personnel" and that to integrate the military "would produce situations destructive to morale and detrimental to the preparation for national defense."²⁸ In 1948, General (soon-to-be President) Dwight D. Eisenhower reported to a Senate committee that segregation

²⁵ Higginbotham, *supra* note 3 at 278.

²⁶ James, *supra* note 8 at 4.

²⁷ John L. Newby, *The Fight for the Right to Fight and the Forgotten Negro Protest Movement: The History of Executive Order 9981 and its Effect Upon Brown v. Board of Education and Beyond*, 10 Tex. J. on C.L. & C.R. 83, 88 (2004).

²⁸ James, *supra* note 8 at 92.

“was necessary to preserve the internal stability of the Army [because] [p]rejudice was a condition of American society.”²⁹

As one Army historian summarized, the military defended its policy of segregation by providing these rationales:

- (1) segregation was necessary for internal stability of the Army;
- (2) segregation was an efficient way to isolate poorly educated and undertrained black soldiers; [and]
- (3) segments of American society opposed integration [and thus] the military should not be too far ahead of the rest of the country in protecting the civil rights of blacks.³⁰

All told, by World War II, despite more than 2.5 million African Americans registering for the draft,³¹ and one million African Americans in active service,³² the Government continued to refuse to allow Black people to serve as equals to their white counterparts.

²⁹ Morris J. MacGregor, Jr., *Integration of the Armed Forces 1940-1945* 227 (1981), https://history.army.mil/html/books/050/50-1-1/cmhPub_50-1-1.pdf (quotation marks omitted).

³⁰ Higginbotham, *supra* note 3 at 278. The military also claimed that segregation had a benevolent purpose—it was “the only way to provide equal treatment an opportunity for black troops.” *Id.* (citing MacGregor, *supra* note 29, at 227-29).

³¹ See National Museum of the Pacific War, *African Americans in WWII*, <http://www.pacificwarmuseum.org/your-visit/african-americans-in-wwii/> (last visited Oct. 24, 2018).

³² Higginbotham, *supra* note 3 at 284.

African Americans had to endure “the hypocrisy” of serving honorably during World War II “only to return to a segregated homeland.”³³ “The lack of equal treatment, and the demeaning personal discrimination that blacks suffered at the hands of whites led many black Americans to view supporters of racial segregation and supporters of Aryan supremacy as one in the same.”³⁴ A well-known illustration of this hypocrisy occurred when Black soldiers in the South “were refused service in a restaurant that willingly served Nazi prisoners of war.”³⁵ And the racial violence that was a hallmark of Jim Crow, including lynching and police brutalization, found its way onto U.S. military bases.³⁶

Sick of this treatment, the African American community mobilized. Perhaps the most prominent figure in the fight for racial equality in the military was A. Phillip Randolph, founder of the Brotherhood of Sleeping Car Porters.³⁷ Randolph formed the Committee Against Jim Crow in Military Service and Training, which placed unceasing pressure on the Government to integrate the military.³⁸ African American newspapers were also critical to the fight for military integration. One of the most

³³ Higginbotham, *supra* note 3 at 285.

³⁴ *Id.* at 289.

³⁵ *Id.* at 290.

³⁶ For example, a Black soldier was lynched at Fort Benning, Georgia, and another was shot to death in Fayetteville, North Carolina, after being brutalized by police. *See* Newby, *supra* note 27 at 94.

³⁷ *See* National Park Service, A. Phillip Randolph, <https://www.nps.gov/people/a-philip-randolph.htm> (last visited Oct. 24, 2018).

³⁸ Newby, *supra* note 27 at 96-97.

popular, the Pittsburgh Courier, started the “Double V” campaign.³⁹ The campaign borrowed from the famous World War II slogan “V for Victory,” and urged Black Americans to “fight for victory simultaneously at home and abroad.”⁴⁰ The campaign came to be supported by “nearly every newspaper and pulpit,” and promoted the message that Black troops “would be less than men if, while . . . giving up [their] property and sacrificing [their] lives, [they] do not agitate, contend, and demand those rights guaranteed to all freemen.”⁴¹ The call was clear: “The first V [is] for victory over our enemies from without, the second V [is] for victory over our enemies from within. For surely those who perpetuate these ugly prejudices here are seeking to destroy our democratic form of Government just as surely as the Axis forces.”⁴²

With groundswell pressure to integrate the military,⁴³ the burgeoning battle for integration led by Thurgood Marshall and the NAACP Legal Defense Fund,⁴⁴ and concern that the United States may go to war with the Soviet Union,⁴⁵ President

³⁹ Higginbotham, *supra* note 3 at 285.

⁴⁰ Neil Wynn, *The Afro-American and the Second World War* 100 (1975).

⁴¹ *Id.*

⁴² James, *supra* note 8 at 142.

⁴³ Cornelius L. Bynum, *How a Stroke of the Pen Changed the Army Forever*, Wash. Post (July 26, 2017), https://www.washingtonpost.com/news/made-by-history/wp/2017/07/26/how-a-stroke-of-the-pen-changed-the-army-forever/?noredirect=on&utm_term=.d77b0b3c9259.

⁴⁴ See James, *supra* note 8 at 214.

⁴⁵ See Patrick Feng, *Executive Order 9981: Integration of the Armed Forces*, National Museum of the United States Army (Jan. 25, 2015),

Truman formed the President's Committee on Civil Rights to study desegregating the military.⁴⁶ After several meetings, multiple hearings, and a thorough examination of the available data, the Committee issued a damning assessment: the military's exclusion of African Americans was "indefensible" and had "cost[] lives and money in the inefficient use of human resources."⁴⁷ The study found that the military had "weaken[ed] our defense" by "preventing entire groups from making their maximum contribution to the national defense."⁴⁸ The Committee's report therefore called for an immediate end to segregation based on "race, color, creed, or national origin, in the organization and activities of all branches of the Armed Services."⁴⁹

Armed with this information, on July 26, 1948, President Truman signed Executive Order 9981.⁵⁰ The Order "hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin."⁵¹ Simultaneously,

<https://armyhistory.org/executive-order-9981-integration-of-the-armed-forces/>; Maria Höhn & Martin Klimke, *The Military at a Crossroads Again*, History News Network (Dec. 16, 2010), <https://historynewsnetwork.org/article/134654>.

⁴⁶ See Harry S. Truman, Presidential Library and Museum, *Records of the President's Committee on Civil Rights*, *supra* note 7.

⁴⁷ President's Comm. on Civil Rights, *To Secure These Rights* (1947), <https://www.trumanlibrary.org/civilrights/srights1.htm>.

⁴⁸ *Id.* at 46-47.

⁴⁹ *Id.* at 163.

⁵⁰ See Exec. Order No. 9981, 3 C.F.R. § 772, *supra* note 9.

⁵¹ *Id.*

President Truman created the Committee on Equality of Treatment and Opportunity in the Armed Forces to assess how best to implement the Order.⁵²

The Committee issued its report two years later.⁵³ And like the previous study, it eviscerated the military's segregationist policies. Although the Government had claimed integration would hurt military readiness, the Committee found the opposite—that the “inequality had contributed to inefficiency.”⁵⁴ After examining “the rules, procedures, and practices of the armed services, both past and present,” the Committee was “convinced that a policy of equality of treatment and opportunity will make for a better Army, Navy, and Air Force.”⁵⁵ The Committee concluded that equal treatment of Black and white servicemembers was “right and just,” and would “strengthen the nation.”⁵⁶ This was “consistent[]” with “[t]he integrity of the individual, his equal worth in the sight of God, his equal protection under law, his equal rights and obligations of citizenship and his equal opportunity to make just and constructive use of his endowment”—“the very foundation of the American system

⁵² *Id.* President Truman charged the Committee with examining the “rules, procedures and practices of the armed services in order to determine in what respect such rules, procedures and practices may be altered or improved with a view to carrying out the policy of this order.” *Id.*

⁵³ Comm. on Equality of Treatment and Opportunity in the Armed Services, *Freedom to Serve* (Mar. 27, 1950), <https://www.trumanlibrary.org/civilrights/freeserv>.

⁵⁴ *Id.* at 67.

⁵⁵ *Id.*

⁵⁶ *Id.*

of values.”⁵⁷

Thus began the Government’s efforts to integrate the military. “The military, with its clear hierarchy and commitment to discipline,”⁵⁸ “made a significant commitment to fixing its race problem.”⁵⁹ It did so by creating “race-conscious structural mechanisms to ensure equality.”⁶⁰ Indeed, in many ways, the military has become the model of successful integration.⁶¹ And looking back 70 years later, it’s clear that the military’s reasons for discriminating against African Americans were wrong. Since its integration, African Americans have successfully served at the military’s highest levels and have received its highest honors.⁶² As President Clinton declared, “The model used by the military, the army in particular . . . that model has been especially successful because it emphasizes education and training, ensuring

⁵⁷ *Id.*

⁵⁸ Bynum, *supra* note 43.

⁵⁹ Mario L. Barnes, “*But Some Of [Them] Are Brave*”: *Identity Performance, the Military, and the Dangers of an Integration Success Story*, 14 *Duke J. Gender L. & Pol’y* 693, 702 (2007).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² For example, in 1975, General Roscoe Robinson, Jr. became the first Black four-star General. In 1977, Clifford Alexander, Jr. became the first Black Secretary of the Army. In 1989, General Colin Powell became the first Black Chairman of the Joint Chiefs of Staff. And last year, Cadet Simone Askew became the first Black woman to receive the highest position in the cadet chain of command. *See U.S. Army, African Americans in the U.S. Army, supra* note 13.

that it has a wide pool of qualified candidates for every level of promotion.”⁶³

President Clinton concluded that “[t]hat approach has given us the most racially diverse and the best qualified military in our history.”⁶⁴

II. THE MILITARY’S BAN AGAINST TRANSGENDER INDIVIDUALS BORROWS FROM THE SAME PLAYBOOK ONCE USED AGAINST AFRICAN AMERICANS.

The military’s history of racial discrimination is important to understanding the ban precluding openly transgender people from service. It is alarming that the Government is recycling from a decades-old playbook that was rooted in racism to justify discriminating against transgender Americans.

For decades, the military banned openly transgender people from service.⁶⁵ Despite this, transgender Americans still honorably served—it is estimated that there are more than 130,000 transgender veterans.⁶⁶ At first, the military justified the ban “based on incorrect and outdated medical rationale[s]”⁶⁷; the purported “concern

⁶³ President William Clinton, *Mend It Don’t End It*, Address at the National Archives on Affirmative Action Programs (July 1995), <http://web.utk.edu/~mfitzge1/docs/374/MDE1995.pdf>).

⁶⁴ *Id.*

⁶⁵ Human Rights Campaign, *Transgender Military Service*, <https://www.hrc.org/resources/transgender-military-service> (last visited Oct. 24, 2018).

⁶⁶ Gary J. Gates & Jody L. Herman, *Transgender Military Service in the United States*, Williams Institute UCLA School of Law (May 2014), <https://williamsinstitute.law.ucla.edu/research/military-related/us-transgender-military-service/>.

⁶⁷ German Lopez, *Trump’s Ban on Transgender Troops, Explained*, Vox (Mar. 24, 2018), <https://www.vox.com/identities/2017/7/26/16034366/trump-transgender->

was that a person’s gender dysphoria” could “interfere with someone’s ability to serve.”⁶⁸ But following the 2011 repeal of the military’s “Don’t Ask, Don’t Tell” policy⁶⁹—which allowed openly lesbian, gay, and bisexual Americans to serve in the military—there was a growing call for the military to rethink its ban on transgender Americans.⁷⁰ This call was heard by President Barack Obama’s Administration. In 2014, then-Secretary of Defense Chuck Hagel expressed his belief that the military should “review its prohibition on transgender people in the armed forces” because “[e]very qualified American who wants to serve our country should have an opportunity if they fit the qualifications and can do it.”⁷¹ In 2015, Secretary Hagel’s successor, Ashton Carter, heeded Hagel’s call and eliminated “the

military-ban; *see also* Jocelyn Elders & Alan Steinman, *Report of the Transgender Military Service Commission* (Mar. 2014), <http://archive.palmcenter.org/files/Transgender%20Military%20Service%20Report.pdf>.

⁶⁸ *Id.*

⁶⁹ *Karnoski v. Trump*, No. C17-1297-MJP, 2018 WL 1784464, at *3 (W.D. Wash. Apr. 13, 2018).

⁷⁰ *See* Sandhya Somashekhar & Craig Whitlock, *Military to Allow Transgender Members to Serve Openly*, *Wash. Post* (July 13, 2015), https://www.washingtonpost.com/politics/pentagon-to-allow-transgender-members-to-serve-openly/2015/07/13/fe9b054a-298d-11e5-a5ea-cf74396e59ec_story.html?utm_term=.878fcecac884.

⁷¹ Jonah Engel Bromwich, *How U.S. Military Policy on Transgender Personnel Changed Under Obama*, *N.Y. Times* (July 26, 2017), <https://www.nytimes.com/2017/07/26/us/politics/trans-military-trump-timeline.html>.

categorical ban on open service by transgender persons.”⁷² Secretary Carter then ordered the Undersecretary of Defense to “chair a working group . . . to formulate policy options for the [Department of Defense] regarding the military service of transgender Service members.”⁷³ The working group “considered a broad range of information provided by senior military personnel, various types of experts, health insurance companies, civilian employers, transgender service members themselves, and representatives from the militaries of other nations.”⁷⁴ The group also commissioned a detailed report.⁷⁵

The conclusions reached by the report were much like those reached by the report assessing the would-be effect of integrating the military. The report “found no evidence that allowing transgender individuals to serve would have any effect on ‘unit cohesion.’”⁷⁶ Moreover, “any related costs or impacts on readiness would be ‘exceedingly small,’ ‘marginal,’ or ‘negligible.’”⁷⁷ The report made clear that, after studying “foreign militaries” that allow openly transgender individuals to serve, there was “no case” in which there was “evidence of an effect on the operational

⁷² *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 178-79 (D.D.C. 2017) (quotation marks omitted).

⁷³ *Id.* at 179.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Doe 1*, 275 F. Supp. 3d at 179 (quotation marks omitted).

⁷⁷ *Id.* (quotation marks omitted).

effectiveness, operational readiness, or cohesion of the force.”⁷⁸ Thus, the working group “unanimously concluded that transgender people should be allowed to serve openly in the military.”⁷⁹ Not only that. It found, like the committee that studied racial integration of the military, “that *prohibiting* transgender people from serving undermines military effectiveness and readiness because it excludes qualified individuals on a basis that has no relevance to one’s fitness to serve.”⁸⁰

After receiving the recommendations from the working group, Secretary Carter issued a directive in June 2016 formally ending the military’s prohibition against transgender servicemembers.⁸¹ It was now the military’s policy that, “consistent with military readiness and with strength through diversity,” “transgender individuals should be allowed to serve.”⁸²

The overwhelming evidence supporting Secretary Carter’s directive has not changed. Yet President Trump summarily reversed course when he announced on Twitter last summer “that the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.”⁸³ President Trump then directed the Department of Defense to implement his “directives that

⁷⁸ *Id.* (quotation marks omitted).

⁷⁹ *Id.*

⁸⁰ *Id.* (emphasis in original).

⁸¹ *Id.* at 180.

⁸² *Id.* (quotation marks omitted).

⁸³ *Doe 2 v. Trump*, 315 F. Supp. 3d 474, 479 (D.D.C. 2018).

transgender service be prohibited.”⁸⁴ Following the President’s directive, Secretary of Defense James Mattis issued interim guidance in September 2017, which banned openly transgender individuals from accession and service.⁸⁵ President Trump then issued a supplemental memorandum in March of this year, which similarly prohibits transgender people from serving “unless they are willing and able to adhere to all standards associated with their biological sex.”⁸⁶

In its brief, the Government provided three reasons why the Administration reinstated the ban against openly transgender people serving in the military. The Government first claims that openly transgender troops would pose “significant risks to military readiness.”⁸⁷ It next asserts that allowing openly transgender individuals to serve “would inevitably undermine . . . good order, discipline, steady leadership, unit cohesion, and ultimately military effectiveness and lethality.”⁸⁸ The Government finally justifies the ban by arguing that the previous policy permitting openly transgender Americans to serve in the military was “proving to be disproportionality costly on a per capita basis.”⁸⁹

⁸⁴ *Id.* at 492.

⁸⁵ *See id.* 493.

⁸⁶ *Karnoski*, 2018 WL 1784464 at *6.

⁸⁷ Appellant’s Br. at 24.

⁸⁸ *Id.* at 30 (quotation marks omitted).

⁸⁹ *Id.* at 35 (quotation marks omitted).

Not only are these the same justifications that the previous administration found baseless just two years ago, they are almost identical to the justifications the military used to discriminate against Black soldiers more than half a century ago. The Government once claimed that allowing Black people to serve equally alongside whites would be “detrimental to the preparation for national defense,”⁹⁰ hurting “military readiness.” The Government also said that integration would hurt “unit cohesion” and would be “destructive to morale.”⁹¹ And the Government once provided a cost-related reason for discriminating against Black servicemembers: it would be too costly to provide “poorly educated” Black troops the training necessary to allow them to serve equally alongside whites.⁹² In short, the Government is recycling the kind of justifications once used to discriminate against African Americans, which were proven false, to justify discriminating against transgender people.

The government stigmatized African Americans when it prohibited them from serving equally, denying them full citizenship. Should this ban go into effect, the same will be true for thousands of transgender Americans currently serving⁹³—like

⁹⁰ See Leonard, *supra* note 6.

⁹¹ See *id.*

⁹² See Higginbotham, *supra* note 3 at 278.

⁹³ It is estimated that over 15,000 transgender individuals are either on active duty or are serving in the Guard or Reserve forces. Gates & Herman, *supra* note 66.

the plaintiffs in this case.⁹⁴ It will be true for transgender Americans who have already sacrificed—like Sergeant Shane Ortega, who served in both Iraq and Afghanistan.⁹⁵ And it will be true for the countless other transgender Americans who seek to serve their country. Like the patriotic African Americans decades before, by banning openly transgender people from serving, the Government is denying patriotic Americans the ability to be fully enfolded into the American citizenry.

For the 100-plus years it was occurring, the courts did little to stop the military from openly discriminating against African Americans.⁹⁶ Only one court of appeals decision from 1944 directly addressed the military’s segregationist practices, *United States ex rel. Lynn v. Downer*.⁹⁷ That case involved a challenge under the Selective Service Act to the Army’s racially segregated quota system for the draft.⁹⁸ The court of appeals affirmed the district court’s decision dismissing the claim, holding that “separate quotas in the requisitions based on relative racial proportions of the men subject to call do not constitute prohibited discrimination.”⁹⁹ In approving the

⁹⁴ See Amend. Compl. at 3-5.

⁹⁵ Sergeant Ortega served “two tours in Iraq and one in Afghanistan. Two as a Marine and one in the Army. Two as a woman and one as a man.” Juliet Eilperin, *Transgender in the Military: A Pentagon in Transition Weighs Its Policy*, Wash. Post (Apr. 9, 2015), https://www.washingtonpost.com/politics/transgender-in-the-military-a-pentagon-in-transition-weighs-its-policy/2015/04/09/ee0ca39e-cf0d-11e4-8c54-ffb5ba6f2f69_story.html?utm_term=.a3a43e7b2ea3.

⁹⁶ See Newby, *supra* note 27 at 94.

⁹⁷ 140 F.2d 397, 400 (2d Cir. 1944).

⁹⁸ *Id.* at 399.

⁹⁹ *Id.* (quotation marks omitted).

racially segregated quota system, the court relied on one of the most condemned Supreme Court decisions of all time: *Plessy v. Ferguson*.^{100, 101} Given that the Supreme Court subsequently repudiated *Plessy*,¹⁰² the case would almost certainly come out differently if decided today.

Because the courts did not intervene, it took the Executive Branch correcting its own practices to end the military's discrimination against Black people. Here, while the Executive once corrected its history of discriminating against transgender Americans, it has now doubled-back. This Court should step in. There is little doubt that if any of the military policies that once discriminated against African Americans were to come before a court today, they would be found unconstitutional. As Judge Norris of the Ninth Circuit opined: "Today, it is unthinkable that the judiciary would defer to the Army's prior 'professional' judgment that black and white soldiers had to be segregated to avoid interracial tensions."¹⁰³ "Indeed," Judge Norris continued, "the Supreme Court has decisively rejected the notion that private prejudice against

¹⁰⁰ See *id.* (citing *Plessy v. Ferguson*, 163 U.S. 537 (1896)).

¹⁰¹ See Corinna B. Lain, *Three Supreme Court "Failures" and a Story of Supreme Court Success*, 69 Vand. L. Rev. 1019, 1020 (2016) (identifying *Plessy v. Ferguson*, *Buck v. Bell*, and *Korematsu v. United States* as three "particularly strong examples of the Supreme Court's failure to protect"); accord Erwin Chemerinsky, *The Case Against the Supreme Court* 37 (2014) ("*Plessy v. Ferguson* is remembered together with *Dred Scott* as being among the most tragically misguided Supreme Court decisions in American history.>").

¹⁰² See *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483, 495 (1954).

¹⁰³ *Watkins v. U. S. Army*, 875 F.2d 699, 729 (9th Cir. 1989) (en banc) (Norris, J., concurring).

minorities can ever justify official discrimination, even when those private prejudices create real life and legitimate problems.”¹⁰⁴

The Supreme Court has repeatedly found that discriminatory classifications by the federal Government violate the Constitution.¹⁰⁵ And the Court has consistently held that governmental actions based on unsupported and prejudiced rationales offend the Constitution.¹⁰⁶ Distilled to its essence, that’s what we have here—a policy not founded in fact but based in unconstitutional bigotry.

* * *

In 2008, Secretary of Defense Robert Gates gave an address commemorating the anniversary of President Truman’s signing the Executive Order that integrated the military. In his remarks, Secretary Gates proclaimed that “[n]o aspect of black

¹⁰⁴ *Id.*

¹⁰⁵ *See, e.g., Frontiero v. Richardson*, 411 U.S. 677 (1973) (federal law allowing only male servicemembers the automatic dependency allowance violates due process); *Bolling v. Sharpe*, 347 U.S. 497 (1954) (racial segregation in District of Columbia public schools violates due process).

¹⁰⁶ *See, e.g., Grutter v. Bollinger*, 539 U.S. 306, 333 (2003) (for a “classification” to be “legitimate” it cannot be based on “prejudice or stereotype”); *United States v. Virginia*, 518 U.S. 515, 533 (1996) (a justification for a classification must be “genuine, not hypothesized or invented post hoc in response to litigation”); *Palmore v. Sidoti*, 458 U.S. 429, 433 (1984) (finding unconstitutional a court order granting a father custody after the mother remarried a Black man because the ruling was based on “racial and ethnic” prejudices).

Americans' quest for justice and equality under the law has been nobler than what has been called, 'the fight for the right to fight.'"¹⁰⁷

Secretary Gates' remarks apply with equal force here. Transgender Americans are fighting "for the right to fight." This Court should grant them the justice and equality they deserve, guaranteed to them by the Constitution.

¹⁰⁷ Gerry J. Gilmore, *Truman's Military Desegregation Order Reflects American Values, Gates Says*, American Forces Press Service (July 23, 2008), <http://archive.defense.gov/news/NewsArticle.aspx?ID=50583>.

CONCLUSION

For these reasons, Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. respectfully asks this Court to affirm the district court's decision preliminarily enjoining the ban against openly transgender people serving in the armed forces.

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Respectfully submitted,

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This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it uses a proportionally spaced typeface, Times New Roman, in 14-point font. It was prepared using Microsoft Word. It complies with the type-volume limits of D.C. Circuit Rules 29(a)(5) and 32(a)(7)(B)(i) because it contains 5,113 words, with exclusions made pursuant to D.C. Circuit Rule 32(f) and Fed R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, I electronically filed the foregoing BRIEF OF AMICUS CURIAE NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. IN SUPPORT OF APPELLEES AND AFFIRMANCE with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, which will send electronic notification to all Counsel of Record.

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