

4-2024

Taking Our Position: Repairing The Breach In The Pipeline To The Legal Profession By Transforming The Impact Of Bias Against Black Girls In Student Discipline

Hon. Tiffany W. Brewer
Howard University School of Law

Follow this and additional works at: <https://repository.belmont.edu/lawreview>



Part of the [Education Law Commons](#), and the [Legal Writing and Research Commons](#)

Recommended Citation

Brewer, Hon. Tiffany W. (2024) "Taking Our Position: Repairing The Breach In The Pipeline To The Legal Profession By Transforming The Impact Of Bias Against Black Girls In Student Discipline," *Belmont Law Review*: Vol. 11: Iss. 2, Article 4.

Available at: <https://repository.belmont.edu/lawreview/vol11/iss2/4>

This Article is brought to you for free and open access by the College of Law at Belmont Digital Repository. It has been accepted for inclusion in Belmont Law Review by an authorized editor of Belmont Digital Repository. For more information, please contact repository@belmont.edu.

TAKING OUR POSITION: REPAIRING THE BREACH IN THE PIPELINE TO THE LEGAL PROFESSION BY TRANSFORMING THE IMPACT OF BIAS AGAINST BLACK GIRLS IN STUDENT DISCIPLINE

TIFFANY WILLIAMS BREWER*

This Article implores the legal profession to intervene in promoting accountability in remediating implicit bias and discrimination in school discipline decisions disproportionately impacting Black girls' educational outcomes, given their significant impact in disrupting the pipeline to the legal profession. The lack of accountability for disparate school discipline policies has resulted in little progress in decreasing the school-to-prison pipeline for Black girls. As a result, failures to eradicate implicit bias and discrimination in educational systems threaten the pipeline of future Black women law students, lawyers, and judges. This Article contends that if the bias in current school discipline policies toward Black girls is left unabated, inevitably society will be deprived of their gifts, clients will be deprived of their expertise and perspectives, law school communities will be deprived of their thought leadership, and Black girls themselves will be deprived of fulfilling their passion and purpose in life. In Part I, this Article examines the legal profession's diversity problem,

* Hon. Tiffany Williams Brewer is an Assistant Professor of Law at Howard University School of Law and Chair of the New Jersey State Commission of Investigation. She is a former New Jersey Administrative Law Judge and served in numerous executive leadership roles in the public service. She teaches courses in Evidence, Professional Responsibility, Legislation and Regulation, and Black Women and the Law. She is also the Founder of the Esther Project and the Esther Institute for the Advancement of Women and Girls. Special acknowledgement to Howard Law research assistants, Migueyli Duran and Haskel Black, without whom this article would not be possible, as well as to the sisters in the Lutie Lytle Workshop who offered valuable feedback, and to Dr. Kathryn E. Wiley, Assistant Professor of Educational Leadership and Policy Studies at Howard University, who offered insightful expertise and guidance. Thank you to my loving husband, Dr. Eric Brewer, for supporting and encouraging me in the writing process.

particularly the legal profession's struggle to retain and advance Black women attorneys within the profession. Part II explains the legal profession's initiatives to develop the pipeline to the legal profession for Black girls. Whereas Part III describes the disruption to the Pipeline due to bias, the "adultification" of Black girls, and the failure to see Black girls as worthy of protection from disproportionate discipline measures. In turn, this leads to a diminished prospects of a pipeline of future Black women law students, lawyers, and judges. The Article concludes in Parts IV & V with proposed recommendations on the role of the legal profession, educational systems, and public policy makers in reversing these trends, and it calls for fostering accountability in uprooting bias in school discipline on the primary and secondary school level, to equip girls for success rather than stifling their potential at the first sign of a potential disciplinary issue.

INTRODUCTION	308
I. THE LEGAL PROFESSION'S DIVERSITY PROBLEM	309
A. The Legal Profession's Struggle to Address Bias Against Black Women Lawyers	313
II. THE LEGAL PROFESSION'S PIPELINE INITIATIVES: DEVELOPING THE PIPELINE TO THE LEGAL PROFESSION FOR BLACK GIRLS	315
III. THE LEGAL PROFESSION'S PIPELINE PROBLEM: BIAS IN SCHOOL DISCIPLINE HAS BROKEN THE PIPELINE TO THE LEGAL PROFESSION FOR BLACK GIRLS.....	317
A. The Racially Disparate Treatment of Black Girls in School Discipline Decisions	317
1. <i>Disparate Suspension and Expulsions</i>	318
2. <i>Disparate Referral to Law Enforcement and Use of Physical Force</i>	319
3. <i>Disparate Discipline Based on Regulation of Black Girls' Hair</i>	320
B. The Role of Bias and Discrimination in Disparate Discipline Against Black Girls.....	322
C. Implications of Bias and Discrimination for Black Girls	324
1. <i>Bias in Discipline Threatens Black Girls' Educational Outcomes</i>	324
2. <i>Bias in Discipline Threatens Black Girls' Freedom, Future Autonomy, and Safety</i>	324
3. <i>Bias in Discipline Threatens Black Girls' Future Career Trajectory as Lawyers</i>	326
IV. THE INEXTRICABLE LINK BETWEEN BLACK GIRLS' DISCIPLINE DISPARITIES AND THE FUTURE OF THE LEGAL PROFESSION	326

A.	Fostering Accountability & Transparency in School Discipline Decisions	327
B.	Removing Bias from School Disciplinary Decisions	328
C.	Counteracting Adultification in Schools.....	330
D.	Affirming Black Girls in Their Potential for Positive Educational Outcomes	330
E.	Utilizing Alternative Restorative Justice Court Interventions	332
V.	I DREAM A WORLD: IMAGINING THE POSSIBILITIES OF THE PROLIFERATION OF BLACK WOMEN IN THE PROFESSION	332

INTRODUCTION

The recent appointment and confirmation of Justice Ketanji Brown Jackson, the first Black woman to serve as an Associate Justice on the Supreme Court of the United States, was a paramount event in the history of the legal profession.¹ After 235 years of the Court's existence and 115 justices later, Justice Jackson represented the sixth woman and the first Black woman to be among its ranks. The legal profession has struggled with diversifying its numbers, with some of the most significant struggles surrounding the advancement of Black women attorneys.² In response, the legal profession turned to the importance of developing the pipeline to the legal profession, including investing in the successful educational outcomes of girls of color at the primary and secondary level and in higher education.³ However, contemporary trends reveal that the pipeline to the legal profession is fraught with breaks and tears that impede the transition of Black girls from school to the profession, due to the lack of institutional accountability for bias and discrimination in student discipline decisions.⁴ Without intervention, the selection of a future Justice Ketanji Brown Jackson may be stalled, and the legal profession, clients, and society will fail to capture the brilliant contributions of Black girls as future Black women attorneys and judges.

This Article implores the legal profession, given its potential to significantly disrupt the pipeline to the legal profession, to intervene in promoting accountability in remediating implicit bias and discrimination in school discipline decisions that disproportionately hinder Black girls' educational outcomes. The lack of accountability for disparate school

1. Melissa Murray, *Review: Mothers in Law*, 121 MICH. L. REV. 909, 909 (2023).

2. Kelsey Butler, *Jackson's Path to Court Topples 233-Year Barrier for Black Women* (2), BLOOMBERG L. (Mar. 18, 2022, 10:12 AM), <https://news.bloomberglaw.com/us-law-week/jacksons-path-to-court-topples-223-year-barrier-for-black-women> [https://perma.cc/64DL-Y4V7].

3. Sybil Dunlop & Jenny Gassman-Pines, *Why the Legal Profession is the Nation's Least Diverse (And How to Fix It)*, 47 MITCHELL HAMLINE L. REV. 129, 134 (2021).

4. Butler, *supra* note 2.

discipline policies has resulted in little progress in decreasing the school-to-prison pipeline for Black girls. As a result, failures to eradicate implicit bias and discrimination in educational systems threaten the pipeline of future Black women law students, lawyers, and judges. This Article argues that if the bias in current school discipline policies toward Black girls is left unabated, then inevitably, society will be deprived of their gifts, clients will be deprived of their expertise and perspective, and law school communities will be deprived of their contributions and thought leadership. Most critically, Black girls themselves will be deprived of fulfilling their passions and purposes in life.

In Part I, this Article examines the legal profession's diversity problem, particularly its struggle to retain and advance Black women attorneys within the profession. Part II explains the legal profession's initiatives to develop the pipeline to the legal profession for Black girls. Whereas Part III describes the disruption to the Pipeline due to bias, the "adulthoodification" of Black girls, and the failure to see Black girls as worthy of protection from disproportionate discipline measures. In turn, this leads to a diminished prospects of a pipeline of future Black women law students, lawyers, and judges. This Article concludes in Parts IV and V by proposing recommendations for the legal profession, educational systems, and public policy makers in reversing these trends and fostering accountability in uprooting bias in school discipline on the primary and secondary school level to equip girls for success rather than stifling their potential at the first sign of a possible disciplinary issue.

I. THE LEGAL PROFESSION'S DIVERSITY PROBLEM

The future viability and legitimacy of the legal profession as an institution depends on the composition of its members. As Nancy Sherer states, "[l]egitimacy is a long-term, deep-seated support for an institution . . . rather than short-term snapshots of an institution's popularity."⁵ As a self-governed profession, lawyers set their own requirements for admission, discipline, and modes of conduct within the justice system.⁶ As officers of the court, legal experts, and guardians of justice, lawyers reflect the values of the profession.⁷ Given lawyers' roles in the judicial system, the legitimacy of the legal profession impacts the legitimacy of the judicial system, which in turn implicates confidence in the rule of law.⁸ Moreover, the values of the legal profession impact the values of the justice system,

5. Nancy Scherer, *Diversifying the Federal Bench: Is Universal Legitimacy for the U.S. Justice System Possible?*, 105 NW. U. L. REV. 587, 625 (2011).

6. Fred C. Zacharias, *The Myth of Self-Regulation*, 93 MINN. L. REV. 1147, 1147–49 (2009).

7. See Dunlop & Gassman-Pines, *supra* note 3, at 134.

8. Sherrilyn A. Ifill, *Judicial Diversity*, 13 GREEN BAG 2D 45, 48–49 (2009); see also Dunlop & Gassman-Pines, *supra* note 3, at 134.

since lawyers play such an instrumental role as advocates in crafting legal arguments that define what constitutes a just result. The diversity of the membership of the legal profession inspires confidence in the judicial system.⁹ Therefore, who becomes a lawyer matters.

Presently, the legal profession is one of the least racially diverse professions in the United States.¹⁰ The profession also struggles to maintain racially diverse members of the profession at a rate that reflects their presence in American society.¹¹ The overwhelming majority of U.S. lawyers are white, with lawyers of color constituting 19% of the profession.¹² Black lawyers are the most underrepresented racial group within the legal profession, constituting 4.5% of the lawyers in the U.S.¹³ Despite investment in efforts to increase diversity, law firm diversity has not fared well, and law firms remain the least diverse practice setting.¹⁴ Only 27.6% of law firm associates are lawyers of color and merely 10.75% of law firm partners are lawyers of color.¹⁵ Black lawyers only represent 4.48% of associates at law firms, which decreased in the past decade from 4.66%.¹⁶ The profession is also majority male, despite women outpacing men in their presence in law school.¹⁷ Women currently comprise 38% of lawyers in the profession.¹⁸ Considering the impact of the intersection of race and gender, Black women's presence in the profession has lingered at an all-time low in the profession and at law firms.¹⁹ While 22% of equity

9. Dunlop & Gassman-Pines, *supra* note 3, at 134.

10. Deborah L. Rhode, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That.*, WASH. POST (May 27, 2015, 8:25 AM), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/> [https://perma.cc/Y7SW-LXHK]; see also Dunlop & Gassman-Pines, *supra* note 3, at 130.

11. *Lawyers by Race and Ethnicity*, ABA PROFILE OF THE LEGAL PRO., <https://www.abalegalprofile.com/demographics.php#anchor4> [https://perma.cc/4DAE-2E32] (data showing that just 19% of all lawyers in 2022 were lawyers of color).

12. *Id.*; Tiffany Williams Brewer, *The Sword and the Scale: Model Rule 8.4(g) As A Tool of Racial Justice in the Legal Profession*, DICK. L. REV. (forthcoming 2024).

13. Brewer, *supra* note 12.

14. Rhode, *supra* note 10; Dunlop & Gassman-Pines, *supra* note 3; see also Joe Patrice, *Paul Weiss Press Release Captures Everything Broken About Biglaw In One Image*, ABOVE THE L. (Dec. 11, 2018, 12:16 PM), <https://abovethelaw.com/2018/12/paul-weiss-press-release-captures-everything-broken-about-biglaw-in-one-image/> [https://perma.cc/53DP-EEFP].

15. *Diversity in U.S. Law Firms*, ABA PROFILE OF THE LEGAL PRO. 2022, <https://www.abalegalprofile.com/demographics.php#anchor4> [https://perma.cc/4DAE-2E32].

16. See Dunlop & Gassman-Pines, *supra* note 3, at 131.

17. *Lawyers by Gender*, ABA PROFILE OF THE LEGAL PRO. 2022, <https://www.abalegalprofile.com/demographics.php#anchor4> [https://perma.cc/4DAE-2E32].

18. *Id.*

19. KRISTLA STUDAVENT RAMSEY ET AL., THE STATE OF BLACK WOMEN IN THE LAW: 2023 DEIB ASSESSMENT REPORT 10, 15 (2023), https://nationalbarinstitute.org/wp-content/uploads/digital_NBA_WLD_Report_Final_digital.pdf [https://perma.cc/3AGG-NKFN].

partners at law firms are women, less than 1% of law firm partners are Black women.²⁰

For decades, the prevailing statistical trends have demonstrated a stagnation in the number of diverse lawyers entering, advancing, or remaining in the profession.²¹ A significant documented factor in the lack of retention and advancement of lawyers of color is the impact of bias and discrimination.²² Explicit racism, stereotyping, failure to individuate between lawyers of color and confusing them for one another, using racial insults in the presence of lawyers of color,²³ microaggressions, race-based staffing decisions, harsher scrutiny for the writing²⁴ and work product²⁵ of lawyers of color, and complicit silence by bystander lawyers²⁶ all contribute to the negative experiences of attorneys of color in the legal profession. Lawyers of color report a “subtle yet pervasive tendency by almost exclusively white partners to favor those who looked similar to themselves.”²⁷

Diversity and cultural competence are values that a contemporary legal profession cannot ignore given the projected increase in diversity in the U.S. population. By the year 2045, the estimated population will be

20. AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PRO. 2022 (2022), <https://www.abalegalprofile.com/women.php> [<https://perma.cc/A2LK-AVZ5>]; see also Ramsey et al., *supra* note 19, at 10.

21. AM. BAR ASS'N, PROFILE OF THE LEGAL PRO. 2023 (2023), <https://www.americanbar.org/content/dam/aba/administrative/news/2023/potlp-2023.pdf> [<https://perma.cc/B382-LWNU>].

22. See Dunlop & Gassman-Pines, *supra* note 3, at 132.

23. *Id.* at 157 (“A Black associate recalls that a client used the ‘n-word’ in front of her. The Senior White partner did not say anything, leaving the young Black associate to tell the client, ‘You can’t say that!’”).

24. For example, law firm partners were given a memo by an associate named Thomas Meyer. Half of the partners were told Meyer was Black and half were told that he was white. The white Thomas Meyer received ratings of 4.1 out of 5, while the Black Thomas Meyer received ratings of 3.2 out of 5. The white Thomas Meyer received encouraging comments such as “good analytical skills” and “has potential,” while the Black Thomas Meyer received criticism and insults including “needs lots of work” and “can’t believe he went to NYU.” See Arin N. Reeves, *Yellow Paper Series: Written in Black and White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills*, NEXTIONS (2014), <https://www.ncada.org/resources/CLE/WW17/Materials/Wegner%20-%20Wilson--Confirmation%20Bias%20in%20Writing.pdf> [<https://perma.cc/RLP6-9CAC>]; see also Dunlop & Gassman-Pines, *supra* note 3, at 149–50.

25. Dunlop & Gassman-Pines, *supra* note 3, at 155 (“One Black associate said, ‘I’ve almost felt like I have to work harder to show appreciation’ and ‘I’ve felt like I have to do amazing.’”).

26. For example, a Black woman attorney described the silence of white attorneys in the courtroom after observing and agreeing that she received harsh and disparate treatment by a judge in court for making objections. *Id.* at 157. The attorney also stated she was the only woman and person of color present in the courtroom. *Id.*

27. *Id.* at 144 (quoting Luis J. Diaz & Patrick C. Dunican Jr., *Ending the Revolving Door Syndrome in Law*, 41 SETON HALL L. REV. 947, 977 (2011)).

majority-minority.²⁸ The legal profession will be forced to serve diverse clients with an awareness of how their cultural and societal norms impact their legal dilemmas. Lawyers will also need to understand the impact of past and current discrimination on clients they serve to effectively meet their needs. The profession cannot afford to remain a place where diverse attorneys fail to take up space. To the contrary, space should be made, and the table set for diverse lawyers to take their place, as their perspectives and skillsets are needed now more than ever.

The challenge for the legal profession's future is twofold. First, the legal profession has a present challenge in recruiting and retaining lawyers of color—particularly Black women lawyers, who remain most vulnerable to extinction in the legal profession. Second, the pipeline to the legal profession, upon which it relies to fill its membership, is broken given the current state of Black girls' educational experiences with unjust disciplinary policies that disrupt their educational outcomes and divert them out of the pipeline. The legal profession can no longer afford to ignore the injustices facing Black girls in school because these outcomes deprive the profession of future Black women law students, lawyers, and judges. This Article seeks to connect these challenges to a call to action to the legal profession to examine the inequities facing Black girls and invest in advocacy efforts to foster policies furthering educational reform and accountability in student discipline outcomes for Black girls.

Lawyers are reminded of the ideals set forth in the American Bar Association ("ABA") Model Rules of Professional Conduct's Preamble: that they have "a special responsibility for the quality of justice."²⁹ Moreover, lawyers are implored to recognize that:

as a public citizen, a lawyer should seek improvement of the law . . . cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law . . . [and] further the public's understanding of and confidence in the rule of law and the justice system[,] because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.³⁰

Accordingly, lawyers must reform disparities in the educational system that present barriers for the advancement of Black girls. If not us, then who?

28. William H. Frey, *The US Will Become 'Minority White' in 2045, Census Projects: Youthful Minorities Are the Engine of Future Growth*, BROOKINGS (Sept. 10, 2018), <https://www.brookings.edu/articles/the-us-will-become-minority-white-in-2045-census-projects/> [https://perma.cc/2YTP-P4Y8].

29. MODEL RULES OF PRO. CONDUCT Preamble (AM. BAR ASS'N 2023).

30. *Id.*

A. The Legal Profession's Struggle to Address Bias Against Black Women Lawyers

*"There are also women I have never met but who are recorded in the pages of history and whose lives and struggles inspire me and thousands of other working women to keep putting one foot in front of another every day."*³¹

Justice Ketanji Brown Jackson

Black women are among the most vulnerable populations in the legal profession given their existence at the intersection of the vulnerabilities of race and gender.³² Often data about the profession is not disaggregated to give a clear snapshot of the experiences of Black women within the legal profession. For example, the annual demographic data compiled by the American Bar Association fails to delineate data relevant to women of color's presence in the profession.³³ While gender and race are often separately evaluated, the impact of the intersectionality of Black women's existence is rarely evaluated and aired. In fact, statistics and studies that capture the experiences of women and Black lawyers separately already disavow the fundamental frustration of the invisibility of Black women lawyers who cannot separate their gendered experiences from their racialized experiences.³⁴ As a result, the trends and experiences of Black women in the profession go unnoticed, and disparities fester. This Article also seeks to shed light on the parallels between the unique experiences of Black women in the legal profession and the unique experiences of Black girls in their educational environments and promote reform in both spheres.

Recently, The State of Black Women in the Law: Diversity, Equity, Inclusion, and Belonging (DEIB) Assessment Report highlighted the experiences of Black women in the profession.³⁵ One of the lead authors, Dean Alfreda Robinson³⁶ stated:

31. Press Release, Nat. Ass'n of Social Workers, NASW Congratulates Judge Ketanji Brown Jackson on Supreme Court Appointment (Apr. 17, 2022) (attributing the quote to Justice Ketanji Brown Jackson).

32. Carla D. Pratt, *Sisters in Law: Black Women Lawyers' Struggle for Advancement*, 2012 MICH. ST. L. REV. 1777, 1779 (2012).

33. See *Lawyers by Race and Ethnicity*, *supra* note 11; see also *Lawyers by Gender*, *supra* note 17.

34. See *Lawyers by Race and Ethnicity*, *supra* note 11; see also *Lawyers by Gender*, *supra* note 17.

35. RAMSEY ET AL., *supra* note 19.

36. Alfreda Robinson served as the 77th Chair of the National Bar Association and is presently Associate Dean of Trial Advocacy at The George Washington University School of Law in Washington, D.C. *Id.* at 4.

There is a need to measure progress by the meaningful inclusion of Black women lawyers at leadership ranks in every part of the legal profession. Notwithstanding decades of well-intentioned declarations, Mansfield Rules certifications, lofty goals, commitments, studies, conferences, lawsuits, and excuses, there is [an] inexcusable single-digit representation of Black women lawyers at the highest leadership ranks in law firms, corporations, government agencies, nonprofit organizations, and law schools and universities. Black women have extraordinary qualifications and immeasurable corporate value, despite confronting a unique set of challenges. Increasing Black women lawyers in leadership is manifestly required and will dramatically and significantly produce greater: 1) equitable compensation, recognition, business development, and promotion; 2) participation in the development of visionary organizational policy and strategic planning; 3) identification of invisible discriminatory practices—including macro- and micro-aggressions; and 4) critical outcome determinative sponsorship—not just mentorship—of recent Black women lawyers and law students.³⁷

The study found that 36% of Black women respondents personally experienced discrimination or bias at their workplace, while 41% reported having personally witnessed discrimination or bias at their workplace.³⁸ The study also confirmed the dismay and fatigue of continually educating others in the workplace and the elusive hope of white allyship plaguing Black women's experiences in the profession.³⁹ Forty-seven percent of the participants felt the burden of having to educate people on diversity, equity, and inclusion solely because they are Black, and 29% of respondents reported that white allyship at their organization felt performative.⁴⁰ Additionally, the study confirmed the vulnerable dynamic that many Black women in the profession face—a lack of accountability in legal environments for acts of bias and discrimination.⁴¹

Advancement for Black women in the federal courts has been more promising, with Black women being appointed to federal judgeships at a record rate under the Biden administration—now accounting for about 4%

37. *Id.* at 9.

38. *Id.* at 13.

39. *Id.* at 13, 19.

40. *Id.*

41. *Id.* at 19.

of our nation's Article III judges.⁴² In law firms, the gradual gains made decade after decade at both the partner and associate levels are sluggish and reflective of the vulnerability of being a Black woman in the legal profession.⁴³ In 2021, 2.32% of law firm partners were Black, but less than 1% were Black women. Similarly, on the associate level, only 3% of all associates were Black women.⁴⁴

The sluggish growth in equal representation of Black women suggests that challenges persist in their ongoing presence within the profession.⁴⁵ In addition to disrupting and fostering accountability for bias and discrimination, the legal profession should also invest in ensuring that the inequities created by bias and discrimination are not impacting the future pipeline for Black women lawyers. Presently, an examination of the state of Black girls' educational outcomes when impacted by racially and gendered disparate discipline policies demonstrates that Black girls are not populating the pipeline to the legal profession.⁴⁶ The profession is faced with the duality of curing the evils of bias and discrimination that affect Black women in the profession and mitigating the bias and discrimination in educational discipline policies that threaten the pipeline of future Black women lawyers and judges.⁴⁷

II. THE LEGAL PROFESSION'S PIPELINE INITIATIVES: DEVELOPING THE PIPELINE TO THE LEGAL PROFESSION FOR BLACK GIRLS

In examining strategies to increase diversity in the profession, legal employers began to coalesce around the notion that increasing the number of diverse candidates in law school would solve their diversity recruiting crisis.⁴⁸ Accordingly, the legal profession decided to invest in the pipeline to the legal profession and legal diversity programs, resulting in the proliferation of new initiatives.⁴⁹ The ABA recognized a need to "increase

42. *New Report on Profession Focuses on Judicial Demographics*, AM. BAR ASS'N (Aug. 8, 2022), <https://www.americanbar.org/news/abanews/aba-news-archives/2022/08/new-report-on-profession/> [<https://perma.cc/PGW2-BP89>] (finding that as of 2022, 4% of federal judges were Black women.). *See generally* AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PRO. 2023 (2023), <https://www.americanbar.org/content/dam/aba/administrative/news/2023/potlp-2023.pdf> [<https://perma.cc/B382-LWNU>].

43. *See* NAT'L ASS'N FOR L. PLACEMENT, REPORT ON DIVERSITY IN U.S. LAW FIRMS 1, 14–18 (2023), https://www.alanet.org/docs/default-source/diversity/2022nalpreportondiversity_final.pdf?sfvrsn=1da01ab_1 [<https://perma.cc/A599-9U9V>].

44. *Id.* at 19–20.

45. *See* Dunlop & Gassman-Pines, *supra* note 3, at 140.

46. KIMBERLE W. CRENSHAW ET AL., BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED, AND UNDERPROTECTED 1, 5 (2015), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=4236&context=faculty_scholarship [<https://perma.cc/3MRB-V9PD>].

47. *See id.*; *see also* Dunlop & Gassman-Pines, *supra* note 3, at 140.

48. *See* Dunlop & Gassman-Pines, *supra* note 3, at 131.

49. *Id.*

diversity in the educational pipeline to the profession,” and created the Council for Diversity in the Educational Pipeline.⁵⁰ As a result, the Law School Admission Council created the Pipeline Diversity Directory, now known as the National Pipeline Diversity Initiatives Directory, which compiles existing legal pipeline programs.⁵¹ A vast number of diversity pipeline programs exist to give diverse students access to the profession at every phase in their educational journey toward licensure.⁵² Some programs provide an early pipeline to K-12 students with legal aspirations, while others focus on high school, college, and law students.⁵³

One model of pipeline program has been created by nonprofit organizations, typically founded or led by lawyers, and aims to expose middle school, high school, and college students to the legal profession. For example, Legal Outreach in New York City provides a summer law institute for students just completing eighth grade.⁵⁴ Legal Outreach uses the institute as a prerequisite to high school college-bound programming and boasts 100% high school graduation rates among its participants, amidst a national average of 81% for Black students, with a 98% college matriculation rate and a 95% college graduation rate for its participants.⁵⁵ The governing board and advisory board of Legal Outreach boasts forty-two lawyers, ranging from law firm partners to corporate general counsel, with its Executive Director a lawyer as well.⁵⁶ Similarly, a New Jersey-based legal pipeline program, the New Jersey Law and Education Empowerment Program (“NJ LEEP”), based on Legal Outreach’s model, hosts a summer law institute for rising ninth graders in Newark, New

50. *National Pipeline Programs Directory*, AM. BAR ASS’N, [https://www.americanbar.org/groups/diversity/diversity_pipeline/projects_initiatives/pipeline_diversity_directory/\[https://perma.cc/H5QG-JTAT\]](https://www.americanbar.org/groups/diversity/diversity_pipeline/projects_initiatives/pipeline_diversity_directory/[https://perma.cc/H5QG-JTAT]).

51. *See id.* Former ABA President Paulette Brown, the ABA’s first Black woman President, relaunched the Pipeline Diversity Directory through the launching of the Diversity 360 Commission under her leadership.

52. *See id.*

53. *Id.*

54. *Summer Law Institute*, LEGAL OUTREACH, [https://legaloutreach.org/?page_id=155\[https://perma.cc/UN8W-A7D6\]](https://legaloutreach.org/?page_id=155[https://perma.cc/UN8W-A7D6]). Legal Outreach was founded by Harvard Law School graduate, James B. O’Neal, Esq. and is presently led by Executive Director Tamika Edwards, Esq. *History*, LEGAL OUTREACH, [https://legaloutreach.org/?page_id=83\[https://perma.cc/58CX-U4AA\]](https://legaloutreach.org/?page_id=83[https://perma.cc/58CX-U4AA]). The U.S. Census Bureau reports that 23.4% and 28.9% of New Yorkers are Black and Hispanic, respectively. *Quick Facts, New York City, New York*, U.S. CENSUS BUREAU, [https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST045222\[https://perma.cc/E9GE-WFXV\]](https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST045222[https://perma.cc/E9GE-WFXV]).

55. *Raising the Bar of Student Achievement*, LEGAL OUTREACH (2019), [https://legaloutreach.org/wp-content/uploads/2020/10/2019-Impact-Report.pdf\[https://perma.cc/7S8K-RG5G\]](https://legaloutreach.org/wp-content/uploads/2020/10/2019-Impact-Report.pdf[https://perma.cc/7S8K-RG5G]); *see also Public High School Graduation Rates*, NAT’L CTR. FOR EDUC. STAS. (2023), [https://nces.ed.gov/programs/coe/pdf/2023/coi_508.pdf\[https://perma.cc/8N8K-5KSP\]](https://nces.ed.gov/programs/coe/pdf/2023/coi_508.pdf[https://perma.cc/8N8K-5KSP]).

56. *Board of Directors*, LEGAL OUTREACH, [https://legaloutreach.org/?page_id=85\[https://perma.cc/2V2U-GRW8\]](https://legaloutreach.org/?page_id=85[https://perma.cc/2V2U-GRW8]).

Jersey, where the population is 48.2% Black and 38.6% Latinx.⁵⁷ NJ LEEP produces 100% high school graduation rates among its participants, and 85% of its participants matriculate to college.⁵⁸

Law schools have also participated in establishing legal pipeline programs. Georgetown University Law Center (“GULC”) has an early outreach initiative where the law school reaches out to high school students in underserved communities.⁵⁹ GULC recognizes that for many legal professionals, the aspiration to go to law school first cultivates in high school, suggesting that “going to law school requires early, pre-college exposure to the idea of law school.”⁶⁰ However, “systemic inequality means that people of color, first-generation college students, and socio-economically disadvantaged people are less likely to have such exposure.”⁶¹ Through this initiative, GULC gives diverse high school students exposure to the legal profession and connections with legal professionals who can support them in their journeys toward becoming lawyers.⁶²

III. THE LEGAL PROFESSION’S PIPELINE PROBLEM: BIAS IN SCHOOL DISCIPLINE HAS BROKEN THE PIPELINE TO THE LEGAL PROFESSION FOR BLACK GIRLS

A. The Racially Disparate Treatment of Black Girls in School Discipline Decisions

The disparate treatment of Black girls in school discipline decisions is well documented in literature, with data demonstrating the stark crisis in the disruption of Black girls’ positive educational outcomes and life trajectories.⁶³ The disparities are most pervasive in the uses of exclusionary

57. See NJ LEEP, <http://njleep.org/> [<https://perma.cc/JG85-T8Q6>]; see also *Quick Facts, Newark City, New Jersey*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/newarkcitynewjersey,US/PST045222> [<https://perma.cc/ZF36-2DMF>]. NJ LEEP was founded by Craig Livermore, Esq. and is presently led by Executive Director Matthew Feinstein, Esq. *NJ Law and Education Empowerment Project*, SETON HALL L., <https://law.shu.edu/About/diversity/njleep.html> [<https://perma.cc/DTD2-DSVT>]. The author is familiar with NJ LEEP being modeled after Legal Outreach based on having served on the Board of Directors of Legal Outreach with the Founder and Executive Director.

58. *Our Results*, NJ LEEP, <https://njleep.org/our-results> [<https://perma.cc/R992-96HW>].

59. See *Early Outreach Initiative*, GEO. L., <https://www.law.georgetown.edu/admissions-aid/early-outreach-initiative/> [<https://perma.cc/MEX2-YJCM>].

60. *Id.*

61. *Id.*

62. *Id.*

63. See generally Pushout: The Criminalization of Black Girls in Schools (Women in the Room Productions 2018); Crenshaw et. al., *supra* note 46; Leticia Smith-Evans et al., Nat’l Women’s L. Ctr. & NAACP Legal Def. & Educ. Fund, *Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity* 15 (2014), <https://www.naacpldf.org/wp-content/uploads/Unlocking-Opportunity-for-African->

discipline, such as suspension (in-school and out-of-school) and expulsion, when Black girls are the target of the discipline decision.⁶⁴ Nationwide, Black girls are suspended six times more often than white girls,⁶⁵ with only 2% of white female students subjected to exclusionary suspension compared to 12% of Black girls.⁶⁶

1. *Disparate Suspension and Expulsions*

In major cities throughout the United States, studies confirm the stark disparities facing Black girls in school discipline, including examining suspension and expulsion rates.⁶⁷ In Boston, Black girls were eleven times more likely to be subjected to discipline than their white counterparts, even though schools enrolled about three times as many as white female students.⁶⁸ Overall, Black girls comprised 61% of all girls disciplined, compared to 5% of their white counterparts.⁶⁹ Expulsion rates of Black girls were the most alarming with 63% of all girls expelled being Black girls and none being white girls.⁷⁰ Assuming hypothetically that one white female student had been expelled, the expulsion rate for Black girls would have been 10:1.⁷¹ Suspension rates for Black girls demonstrated that they were twelve times more likely to be suspended than their white counterparts.⁷²

Similarly, in New York City, Black girls were enrolled at twice the rate of white female students but were disciplined at ten times the rate of their counterparts.⁷³ Like Boston, in New York City, Black girls represented 56% of all girls disciplined compared to only 5% of their white counterparts.⁷⁴ Expulsion rates in New York City were even more alarming

American_Girls_0_Education.pdf [https://perma.cc/3FFA-BW7N]; Leah A. Hill, *Disturbing Disparities: Black Girls and the School-to-Prison-Pipeline*, 87 Fordham L. Rev. 58 (2018).

64. Subini Ancy Annamma et al., *Black Girls and School Discipline: The Complexities of Being Overrepresented and Understudied*, 54 URB. EDUC. 211, 232 (2016) (“[T]he quantitative analysis shows that even when Black girls are referred to the office for the same behaviors as others [sic] girls, holding for other identity markers, Black girls are punished more harshly.”).

65. Crenshaw et al., *supra* note 46, at 16.

66. *Id.*

67. While this Article focuses primarily on data from public schools, studies show that disparities in discipline rates in K-8 charter schools are even higher than non-charter schools. See Daniel J. Losen, et al., *Charter Schools, Civil Rights and School Discipline: A Comprehensive Review*, CTR. FOR C.R. REMEDIES, 1, 8 (2016), <https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/charter-schools-civil-rights-and-school-discipline-a-comprehensive-review/losen-et-al-charter-school-discipline-summary-2016.pdf> [https://perma.cc/S5AY-P28L].

68. Crenshaw et al., *supra* note 46, at 19.

69. *Id.*

70. *Id.* at 21.

71. *Id.*

72. *Id.* at 22.

73. *Id.* at 19.

74. *Id.*

than in Boston, with 90% of all girls expelled being Black, and no white female students expelled.⁷⁵ Assuming for illustrative purposes that even one white female student had been expelled, the expulsion rate for Black girls would have been 53:1.⁷⁶ Black girls were ten times more likely to be suspended than their white counterparts.⁷⁷

In Baltimore, where the school district is 81% Black, Black girls comprised 80.6% of all girls enrolled, but represented 95% of suspensions and 92% of expulsions, making them four times more likely to get suspended and twice as likely as their white counterparts to get expelled.⁷⁸

2. *Disparate Referral to Law Enforcement and Use of Physical Force*

The disparate treatment of Black girls is also reflected in the disparate involvement of law enforcement and the use of physical force against Black girls by teachers, school resource officers,⁷⁹ and local law enforcement.⁸⁰ This is evident in the city of Baltimore, whose public school system is the only school district in Maryland to create its own police force—the Baltimore School Police Force.⁸¹ The racial disparity in law enforcement involvement in school discipline remained poignant in Baltimore. The only students who were arrested in school were Black, with 20% constituting Black girls.⁸² School referrals to law enforcement were equally disparate, with 76 of 156 referrals constituting Black girls, and all referrals consisting of Black students.⁸³ Black girls represent 31% of girls referred to law enforcement nationally and 43% of those arrested on school grounds, even though they only constitute 17% of the overall student

75. *Id.* at 21.

76. *Id.*

77. *Id.* at 22.

78. CARA MCCLELLAN, T. MARSHALL INST., *OUR GIRLS, OUR FUTURE: INVESTING IN OPPORTUNITY & REDUCING RELIANCE ON THE CRIMINAL JUSTICE SYSTEM IN BALTIMORE* 1, 2 (2018), https://tminstituteldf.org/wp-content/uploads/2019/04/Baltimore_Girls_Report_FINAL_6_26_18.pdf [<https://perma.cc/VL68-AJAS>].

79. School resource officers are sworn law enforcement officers that work part-time or full-time in a school and typically have additional training to deal with youth. See Stephen Sawchuk, *School Resource Officers (SROs), Explained*, EDUC. WK. (Nov. 16, 2021), <https://www.edweek.org/leadership/school-resource-officer-sro-duties-effectiveness> [perma.cc/NVN5-XC3T].

80. See Abbie Vansickle & Weihua Li, *Police Hurt Thousands of Teens Every Year. A Striking Number are Black Girls*, THE MARSHALL PROJECT (Nov. 2, 2021, 5:00 AM), <https://www.themarshallproject.org/2021/11/02/police-hurt-thousands-of-teens-every-year-a-striking-number-are-black-girls> [<https://perma.cc/Q3TS-LBFP>]; Richard Fausset & Ashley Southall, *Video Shows Officer Flipping Student in South Carolina*, N.Y. TIMES (Oct. 26, 2015), <https://www.nytimes.com/2015/10/27/us/officers-classroom-fight-with-student-is-caught-on-video.html> [<https://perma.cc/MAX2-NEWD>].

81. MCCLELLAN, *supra* note 78, at 2.

82. *Id.*

83. *Id.*

population.⁸⁴ The use of zero-tolerance policies by schools contributes to the law enforcement referrals of Black girls and increases their presence in the juvenile justice system, where they then become at risk of finding themselves among the fastest growing prison population.⁸⁵

Black girls are also subjected to the disproportionate use of harsh physical force and assault by law enforcement compared to their peers. In 2015, the nation observed the video footage of a sixteen-year-old Black girl at Spring Valley High School in Columbia, South Carolina, who was assaulted by a police officer in her classroom.⁸⁶ The officer placed her in a headlock, flipped her over her desk, and proceeded to drag and throw her across the classroom.⁸⁷ While her classmate video recorded the incident, the classmate was also threatened with arrest by the officer—a threat which he later effectuated by arresting her and sending her to juvenile detention for “disturbing a school function.”⁸⁸ In Wake County, North Carolina, video footage showed an officer body-slam a Black girl and drag her limp body out of view.⁸⁹ Also in North Carolina, a fourteen-year-old Black girl received a hall pass because she was not feeling well and was prevented by a school resource officer from calling her mother.⁹⁰ The officer followed her outside, shoved her to the ground, held her face to the hot pavement, handcuffed her, and arrested her.⁹¹ These incidents were more than an anomaly. Black girls represent one-third of all police assaults.⁹²

3. *Disparate Discipline Based on Regulation of Black Girls’ Hair*

Disparate discipline decisions are also emanating from discretionary decisions about the acceptability of Black girls’ hairstyles

84. LETICIA SMITH-EVANS ET AL., *supra* note 63, at 19; Annamma et al., *supra* note 64, at 214.

85. Hill, *supra* note 63, at 60.

86. #AssaultAtSpringValley: *An Analysis of Police Violation Against Black and Latine Students in Public Schools*, ADVANCEMENT PROJECT & ALL. FOR EDUC. JUST., 1, 3 (2022), <https://policefreeschools.org/wp-content/uploads/2022/12/AP-AssaultAt-Report-V4-120922.pdf> [<https://perma.cc/99PT-2TAL>] [hereinafter #AssaultAtSpringValley]; see also Verna L. Williams, *Making Gender Visible: Title IX and Discriminatory School Discipline*, 6 TENN. J. RACE, GENDER & SOC. JUST. 67, 67–68 (2017).

87. #AssaultAtSpringValley, *supra* note 86.

88. *Id.*

89. *Id.*

90. Monique W. Morris, *Countering the Adultification of Black Girls*, ASSOC. FOR SUPERVISION & CURRICULUM DEV. (Apr. 1, 2019), <https://www.ascd.org/el/articles/countering-the-adultification-of-black-girls> [<https://perma.cc/24ZG-WRMD>].

91. *Id.*

92. #AssaultAtSpringValley, *supra* note 86, at 9 (Black students represent 84% of all police assaults. In nearly 60% of those police assaults, there were no reported consequences to the officer, although two cases resulted in civil lawsuits.).

manifested in hair codes.⁹³ For example, at Mystic Valley Public Charter School in Massachusetts, Black girls were subjected to disciplinary infractions for wearing “distracting” braided hair extensions, including being barred from the prom and extracurricular activities and threatened with suspension if their hair was not “fixed.”⁹⁴ After parents pointed to white students who had hair extensions with hair color, Mystic Valley school officials doubled down on the disparity, characterizing the white girls’ hair extensions as not as obvious.⁹⁵ Similar accounts emerge of Black girls being removed from class, reprimanded, and threatened with detention for having hair extensions and/or natural hairstyles untreated with chemical straightening processes.⁹⁶ Hair discrimination research studies reveal that racial discrimination based on hairstyles can start as early as five years old and last a lifetime, creating negative effects on Black girls.⁹⁷ Legislative efforts to combat hair discrimination, like the CROWN Act, emphasize the importance of dignity connected to Black girls’ hair in schools.⁹⁸ The CROWN Act represents a meaningful step forward in protecting Black girls from hair discrimination in schools, guarding against overreaching hair and dress codes.⁹⁹

93. Kayla Lattimore, *When Black Hair Violates the Dress Code*, NPR (July 17, 2017, 5:45 AM), <https://www.npr.org/sections/ed/2017/07/17/534448313/when-black-hair-violates-the-dress-code> [https://perma.cc/6SER-XWRA].

94. *Id.*

95. *Id.*

96. *Id.*; Letter from Alexander J. Dan, Interim Sch. Dir. to Parents & Guardians of Mystic Valley Reg’l Charter Sch. (May 12, 2017), (available at https://www.mvrcs.com/ourpages/auto/2017/5/12/51363318/05_12_17%20Notice%20to%20Parents.pdf?aria=true [https://perma.cc/SE8P-9PCH]). Mystic Valley issued a statement defending its hair code in a letter to parents dated May 12, 2017, as follows: “The specific prohibition on hair extensions, which are expensive and could serve as a differentiating factor between students from dissimilar socioeconomic backgrounds, is consistent with our desire to create such an educational environment, one that celebrates all that our students have in common and minimizes material differences and distractions.” *Id.*

97. *The CROWN Act Research Studies*, THE CROWN ACT, <https://www.thecrownact.com/research-studies> [https://perma.cc/79WF-F97J].

98. *About the Crown Act*, THE CROWN ACT, <https://www.thecrownact.com/about> [https://perma.cc/7Y77-CZB8]. The House of Representatives passed the CROWN (“Creating a Respectful and Open World for Natural Hair”) Act in both the 116th and 117th Congresses, but in both instances, the legislation failed to overcome a filibuster by Senate Republicans. Press Release, Rep. Bonnie Watson Coleman, House of Representatives, Statement on Senate Republicans Blockage of CROWN Act (Dec. 14, 2022), <https://watsoncoleman.house.gov/newsroom/press-releases/senate-republicans-block-passage-of-crown-act> [https://perma.cc/3658-BB3B]. The Act would prohibit race-based hair discrimination in employment, housing, public accommodations, and federally assisted programs. Jonathan Franklin, *A Black Texas student sues after he was suspended over his hairstyle*, NPR (Sept. 23, 2023, 2:42 PM), <https://www.npr.org/2023/09/22/1200374764/crown-act-texas-hairstyles-law-nationwide> [https://perma.cc/7M7E-KZUP]. Even so, as of October 2023, the Act has been introduced in twenty states and has already become law in twenty-four states and the U.S. Virgin Islands. *Id.*

99. *About the Crown Act*, *supra* note 98; *A Black Texas student sues after he was suspended over his hairstyle*, *supra* note 98.

B. The Role of Bias and Discrimination in Disparate Discipline Against Black Girls

*“What we believe about young people matters—it informs how we treat them and what they come to believe about themselves.”*¹⁰⁰

Monique Morris

Black girls are more likely to experience exclusionary discipline outcomes for subjective reasons, such as disobedience, disruptive behavior, and defiance and may be punished more harshly than their peers for the same violation.¹⁰¹ School discipline codes can give school officials great deference and leeway in deciding which behaviors rise to the level of a disciplinary infraction.¹⁰² It is in the exercise of this discretion that evidence of attitudes steeped in bias, notions of white superiority, and adherence to stereotypes of Black women show up in disparate discipline decisions about Black girls' behavior.¹⁰³ Teacher referral bias is associated with disparate student discipline sanctions and referrals, as opposed to the students' behavior.¹⁰⁴ Black girls are less likely to be referred for discipline for objective offenses, like drug or alcohol possession, but more likely to be referred for subjective reasons.¹⁰⁵ In justifying their enforcement authority to target discrimination in school discipline, the U.S. Department of Education and the U.S. Department of Justice cited research expressing concern with the increased suspension rates that did not appear to emanate from “greater misbehavior by Black children.”¹⁰⁶

100. Morris, *supra* note 90, at 44–45.

101. REBECCA EPSTEIN ET AL., GEO. L. CTR. ON POVERTY & INEQ., GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS' CHILDHOOD 1, 4, 9 (2017) <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf> [<https://perma.cc/7KKR-WE2R>].

102. Hill, *supra* note 63, at 61.

103. Dorinda J. Carter Andrews et al., *The Impossibility of Being “Perfect and White”*: Black Girls' Racialized and Gendered Schooling Experiences, 56 AM. EDUC. RSCH. J. 2531, 2533 (2019) (discussing that “femininity is anchored by White supremacist ideologies” and to the extent that Black girlhood/womanhood depart from these constructions of femininity, Black women and girls “are not afforded the care and consideration given to White women and girls”).

104. Jamilia J. Blake et al., *Unmasking the Inequitable Discipline Experiences of Urban Black Girls: Implications for Urban Educational Stakeholders*, 43 URB. REV. 90, 92 (2011); Annamma et al., *supra* note 64, at 230 (“Our findings indicate that Black girls are being punished largely for perceptions of threat, non-compliance, and harm. These patterns are alarming as these are the referral categories that can be most affected by racial bias, unconscious or not, for they involve students breaching implicit norms among school staff.”).

105. Blake et al., *supra* note 104; Annamma et al., *supra* note 64, at 230.

106. Williams, *supra* note 86, at 68; *see also* C.R. Div., U.S. Dep't of Just. & Office for C.R., U.S. Dep't of Educ., Dear Colleague Letter: Nondiscriminatory Administration of

Discipline codes can also reveal bias by using racially stereotypical words such as irate, insubordinate, disrespectful, uncooperative, and uncontrollable.¹⁰⁷ Black girls are often disciplined for different infractions than their Latinx or white counterparts and most frequently cited for defiance, inappropriate dress, profane language, and physical aggression.¹⁰⁸

A leading contributing factor in the racialized misperception of Black girls that impacts discipline decisions is the view that Black girls are less innocent and more adult than their white peers, referred to as “adultification.”¹⁰⁹ Examples of attitudes and perceptions that constitute adultification include perceptions that Black girls need less nurturing and protection, need to be supported and comforted less, are more independent, and know more about sex and adult topics.¹¹⁰ Monique Morris points out that “Black girls are likened more to adults than to children and are treated as if they are willfully engaged in behaviors typically expected of Black women . . . render[ing] Black girlhood interchangeable with Black womanhood.”¹¹¹ Adultification dehumanizes Black girls and makes them more culpable for their actions and subject to harsher punishment despite their status as children.¹¹²

In the school discipline context, disparate discipline decisions reveal bias against Black girls rooted in stereotypes against Black women—such as the hypersexualized “Jezebel” or the angry, loud, and aggressive “Sapphire.”¹¹³ The consequences of these stereotypes for Black girls in school are that they underlie implicit and explicit bias in the perception of Black girls’ conduct that needs to be regulated.¹¹⁴ These perceptions can

School Discipline (Jan. 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> [<https://perma.cc/WK5U-TFEZ>].

107. Janel A. George, *Stereotype and School Pushout: Race, Gender, and Discipline Disparities*, 68 ARK. L. REV. 101, 112 (2015); see also Andrews et al., *supra* note 103, at 2545–46.

108. Blake et al., *supra* note 104, at 100 (noting that many behaviors for which Black girls were cited paralleled behaviors of stereotypical images of Black women as hypersexualized, angry, and hostile).

109. See EPSTEIN ET AL., *supra* note 101, at 2; see also Tiffany Williams Brewer, *No Girl Left Behind: Girls Courts as a Restorative Justice Approach to Healing*, 52 SETON HALL L. REV. 685, 696–97 (2022). See generally Morris, *supra* note 90 (enumerating several negative outcomes of adultification).

110. EPSTEIN ET AL., *supra* note 101, at 2.

111. Morris, *supra* note 90, at 32.

112. EPSTEIN ET AL., *supra* note 101, at 1.

113. Annamma et al., *supra* note 49, at 217; see also Morris, *supra* note 51, at 34 (highlighting stereotypes described by Pauli Murray as “female dominance on the one hand and loose morals on the other hand, both growing out of roles forced upon them during the slavery experience and its aftermath. As such in the public’s collective consciousness, latent ideas about Black females as hypersexual, conniving, loud, and sassy predominate. However, age compression renders Black girls just as vulnerable to these aspersive representations”). See generally EPSTEIN ET AL., *supra* note 101, at 5.

114. EPSTEIN ET AL., *supra* note 101, at 6 (“These images and historical stereotypes of Black women have real-life consequences for Black girls today . . . For example, teachers may subconsciously use stereotypical images of Black females to interpret Black girls’

contribute to harsher punishments by educators and school resource officers as their biases frequently show up in discretionary decisions where there is wide latitude to make a subjective decision about a disciplinary referral.¹¹⁵

C. Implications of Bias and Discrimination for Black Girls

A primary concern for the impact of bias and discrimination for Black girls rests in the diminishing effect on their educational outcomes. Absence from school and referrals to law enforcement authorities can serve as disruptive forces in the trajectory of a Black girl's career. Moreover, the negative stigmas surrounding biased discipline can threaten the autonomy, freedom, and safety of Black girls, causing them not to be believed when they are in danger. All of these factors weigh against Black girls' ability to achieve the rigorous educational background required to be afforded opportunities for law school.

1. *Bias in Discipline Threatens Black Girls' Educational Outcomes*

Black girls face threats to their educational trajectory, with the high school dropout rate for Black girls at 7% as compared to 3.8% for white girls.¹¹⁶ Once expelled, 48% of Black girls do not have access to education.¹¹⁷ When asked about her discipline experiences in school, one Black girl described, "I got expelled, and there's only one high school in [the city]. . . . I was out of school for two years."¹¹⁸ Exclusionary discipline policies can disrupt Black girls' education because they increase the risk of teen pregnancy and juvenile delinquency, which can have a significant impact on whether girls finish school.¹¹⁹

2. *Bias in Discipline Threatens Black Girls' Freedom, Future Autonomy, and Safety*

The literature is well documented that exclusionary discipline policies increase the likelihood of juvenile delinquency and incarceration, a

behaviors and respond more harshly to Black girls who display behaviors that do not align with traditional standards of femininity.") (internal quotations omitted).

115. CRENSHAW ET AL., *supra* note 46, at 24 (discussing how implicit bias informs disciplinary choices for Black girls); *see also* Williams, *supra* note 86, at 75–78 (discussing how Black girls are perceived to deviate from gender norms and common perceptions of femininity).

116. Morris, *supra* note 90, at 21.

117. M. Alex Evans, *Carceral School: Black Geographies of Confinement, Surveillance, and Policing* 22 (2023) (unpublished article) (on file with author).

118. CRENSHAW ET AL., *supra* note 46, at 34.

119. Blake et al., *supra* note 104, at 101.

dynamic often referred to as the “school-to-prison pipeline.”¹²⁰ The correlation is so strong that one researcher described suspension, expulsion, or being held back in middle school as “the single largest predictor” of later arrest among adolescent females.¹²¹ School-to-prison pipeline data also demonstrates the psychological effects of law enforcement interaction on youth.¹²² Biased school environments lead to psychologically unsafe learning environments.¹²³

These factors are exacerbated when Black girls are also the victims of bullying and sexual harassment because they often left to defend themselves, subsequently receiving punishment for their aggression.¹²⁴ Additionally, Black girls’ safety remains under threat, with homicide serving as the second leading cause of death for Black women and girls aged fifteen to twenty-four.¹²⁵ Intimate partner and domestic violence rates are highest among Black women and girls aged twelve and older, at 7.8% as compared to 6.2% for white women and girls.¹²⁶

Societal structural risks also add to the stress that Black girls encounter. Black girls face unabated economic instability and insecurity in their developmental years, with 35% of Black girls living below the poverty line, compared with 23% of children nationally.¹²⁷ They are more likely to endure more adverse childhood experiences that can lead to trauma, witness a high incidence of violence, experience sexual harassment and sexual assault, and are less likely to be believed when reporting it.¹²⁸ The stress that Black girls’ daily existence brings undoubtedly has an impact on their behavior and ability to learn.¹²⁹

120. Hill, *supra* note 63, at 59 (providing a survey of the problem of Black girls’ overrepresentation in the school-to-prison pipeline); Morris, *supra* note 90; *see also* CRENSHAW ET AL., *supra* note 46, at 5.

121. Annamma et al., *supra* note 64, at 214.

122. Dorothy Hines-Datiri & Dorinda J. Carter Andrews, *The Effects of Zero Tolerance Policies on Black Girls: Using Critical Race Feminism and Figured Worlds to Examine School Discipline*, 55 URB. EDUC. 1419, 1420 (2020) (providing a review of the effects of zero-tolerance policies on Black girls’ identity and educational experiences); *see* Evans, *supra* note 117 (The “school-to-prison pipeline” mimics the historically state-sanctioned social practice of constructing Black spaces as spaces of carceral control.” Disciplinary measures rob Black girls of opportunities to engage in society, much like the carceral system locks individuals out of society); *see also* Bettina L. Love, *Anti-Black Violence, Classroom Edition: The Spirit Murdering of Black Children*, 13 J. CURRICULUM & PEDAGOGY 22, 22 (2016) (discussing the concept of “spirit murdering” in the context of schools). The concept of “spirit murdering” speaks powerfully to the effects of overly punitive disciplinary policies on Black girls’ psyche.

123. Kamontá Heidelberg, et al., *Reconceptualizing School Safety for Black Students*, 46 SCH. PSYCH. INT’L 591, 598 (2022) (“Racial microaggressions can be harmful because they convey to Black students that schools are not safe or welcoming.”).

124. Hill, *supra* note 48, at 61.

125. Morris, *supra* note 90, at 21.

126. *Id.*

127. *Id.*

128. Hill, *supra* note 63, at 62.

129. *Id.*

3. *Bias in Discipline Threatens Black Girls' Future Career Trajectory as Lawyers*

Black girls who have encountered law enforcement, been subjected to physical force at the hands of law enforcement, subjected to harsher discipline than their white peers, and who have been redirected to the school-to-prison or sex-abuse-to-prison pipelines are unlikely to pursue a career in the legal profession. Their contact with law enforcement or the carceral system may disqualify them from the character and fitness requirements of bar admission in most states. Most pointedly, their negative experiences with bias, disparate discipline, and law enforcement may erode their faith and trust in the legitimacy of the justice system and rule of law. The disruption to their education and the diminution of their positive educational outcomes can redirect them to a trajectory that is not compatible with the ever-increasingly competitive requirements for law school admission.

IV. THE INEXTRICABLE LINK BETWEEN BLACK GIRLS' DISCIPLINE DISPARITIES AND THE FUTURE OF THE LEGAL PROFESSION

*"In a real sense all life is inter-related. All men are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. I can never be what I ought to be until you are what you ought to be, and you can never be what you ought to be until I am what I ought to be...This is the inter-related structure of reality."*¹³⁰

Dr. Martin Luther King, Jr.

The risk factors represent breaks in the pipeline to the legal profession. Black girls are falling out of the pipeline to the legal profession due to the impact of bias and discrimination in disciplinary decisions—many of which are subjective discretionary decisions rooted in bias and negative stereotyping.¹³¹ The legal profession's ability to create pathways in the profession for future Black women attorneys, legal academics, and judges requires intervention in the crisis facing Black girls in the pipeline. Presently, 9,079 out of a total of 116,724 students at ABA accredited law schools are Black, representing the most significant disparity between the

130. Martin Luther King, Jr., *Remaining Awake Through a Great Revolution*, Address at Oberlin College's 132nd Commencement (June 1965).

131. Laura Bagby, *Why Women of Color Are Walking Away from Law*, 2CIVILITY (July 9, 2020), <https://www.2civility.org/why-women-of-color-are-walking-away-from-law/​> [https://perma.cc/JR76-YBA6].

general population and law students (13.3% compared to 8.3%).¹³² Unless the legal profession takes an active role in protecting its pipeline and shoring up the cracks, the profession will not achieve diversity, equity, inclusivity, and belonging.

A. Fostering Accountability & Transparency in School Discipline Decisions

Reform begins with demanding standards for accountability and transparency in school discipline decisions. Access to data regarding disciplinary decisions is the first step in accountability. When disciplinary decisions are hidden or obfuscated by school officials, opportunities to discover and rectify bias are severely impeded. School administrators should be held accountable for maintaining accurate and contemporaneous records of discipline, which should be reviewed and maintained by school superintendents, boards of education, and state education departments, as well as made available to parents, education advocates, and the public at large. State education departments should also be encouraged to aggregate this data to create and publish a state-wide registry of disciplinary decisions per school district. Additionally, state education departments should consider mandating equity audits to gain an understanding of how discipline decisions are impacting students of color.¹³³

School administrators should monitor and disclose the identities of teachers who most frequently are the sources of discipline referrals and the identities of school resource officers who are most frequently involved in arrests or the use of physical force against students. While training is a vital prerequisite, accountability in teacher and officer discipline for inappropriate application of discipline or excessive force should be mandated as a condition of employment. State education departments should also consider maintaining a registry of teachers and resource officers who have received discipline for inappropriate student discipline.

132. *Law School Enrollment Race & Ethnicity*, ENJURIS (2022), <https://www.enjuris.com/students/law-school-race-2022/> [https://perma.cc/9Y47-QHNJ].

133. Blake et al., *supra* note 104, at 103.

B. Removing Bias from School Disciplinary Decisions¹³⁴

Additionally, states should consider implementing a Model Code on Education and Dignity, advocated for nationally by education coalitions.¹³⁵ The Model Code seeks to provide a comprehensive set of school policies and practices for states, school districts, and individual schools.¹³⁶ Some of the most effective recommended model language includes:

- language to mitigate the negative impacts of exclusionary discipline;
- recognition of disproportionate disciplinary decisions; and
- eradication of racialized disciplinary practices and how to reverse those realities.¹³⁷

Education advocates are lobbying for legislative reform in school discipline policies. Advocates in Minnesota were successful in implementing the following legislative changes recently, which serve as a model for state legislators throughout the nation.¹³⁸ First, pupils enrolled in kindergarten through third grade were added to the pupils for whom disciplinary dismissals are prohibited and for whom non-exclusionary discipline resources must be exhausted.¹³⁹ Additionally, an “ongoing serious safety threat to the child or others” must be present before expulsions and exclusions may be used.¹⁴⁰ The legislature also defined “non-exclusionary disciplinary policies and practices,” and amended the statute requiring the provision of alternative programs before dismissal to

134. Dorinda J. Carter Andrews & Melissa Gutwein, *Middle School Students' Experiences with Inequitable Discipline Practices in School: The Elusive Quest for Cultural Responsiveness*, 51 MIDDLE SCH. J. 29, 37 (2020) (suggesting ways educators can deconstruct ideas related to discipline, culture, identity, power, and privilege in favor of more equitable and restorative disciplinary practices); see also *Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity*, *supra* note 63, at 40–45 (providing recommendations for addressing the issue of overcriminalization of Black girls in schools and the community overall).

135. See generally *A Model Code on Education and Dignity: Presenting a Human Rights Framework for Schools*, DIGNITY IN SCH. (revised 2019), https://dignityinschools.org/toolkit_resources/full-version-of-model-code-on-education-and-dignity/?toolkits=model-code [<https://perma.cc/VAX3-KLXR>].

136. *Id.* at 2.

137. *Id.*

138. *Legislative Update on Student Discipline and the Pupil Fair Dismissal Act*, MINN. DEP'T OF EDUC., <https://education.mn.gov/MDE/fam/disc/PROD081658> [<https://perma.cc/2JE9-WE8U>].

139. *Id.* (citing Minn. Stat. § 121A.425 (2023)).

140. *Id.* (quoting Minn. Stat. § 121A.425 (2023)).

state: “No school shall dismiss any pupil without attempting to use non-exclusionary disciplinary policies and practices before dismissal proceedings or pupil withdrawal agreements, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property.”¹⁴¹

Other examples of legislative responses from around the country that provide models of a forward path to eradicating disparate disciplinary outcomes include:¹⁴²

- New Jersey (2020): Establishes the Restorative Justice in Education Pilot Program to implement restorative justice programs in school discipline practices in public schools.¹⁴³
- Utah (2017): Places limitations on when schools and law enforcement can refer minors who have committed Class C misdemeanors, infractions, truancy, or status offenses, with a preference for several types of alternatives.¹⁴⁴
- Hawaii (2020): Adds several discipline measures to the list of performance indicators for which data from the preceding three years must be collected and reported. These include discipline, seclusion, and restraint information disaggregated by race and ethnicity, among other categories.¹⁴⁵
- Illinois (2019): Establishes the Safe Schools and Healthy Learning Environments Grant Program to provide resources to schools to implement

141. *Id.* (quoting Minn. Stat. § 121A.45 subdiv. 1 (2023)).

142. *School Safety–Discipline/Code of Conduct*, EDUC. COMM’N U.S., <https://b5.caspio.com/dp.asp?AppKey=b7f93000695b3d0d5abb4b68bd14&id=a0y700000009y8ZAAQ> [<https://perma.cc/MM59-3G6N>]; see also *Exclusionary School Discipline Trends*, GEO. L. CTR. ON POVERTY & INEQ. (2020), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2021/04/ESD-Legislative-Trends-1.pdf> [<https://perma.cc/6LND-W49Y>] (summarizing which states have engaged in discipline reform up until 2020 and proposing policy changes); DANIEL J. LOSEN & PAUL MARTINEZ, *LOST OPPORTUNITIES: HOW DISPARATE SCHOOL DISCIPLINE CONTINUES TO DRIVE DIFFERENCES IN OPPORTUNITY TO LEARN* 48 (2020), <https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/lost-opportunities-how-disparate-school-discipline-continues-to-drive-differences-in-the-opportunity-to-learn/Lost-Opportunities-REPORT-v17.pdf> [<https://perma.cc/Y9Z6-ZHHQ>] (summarizing numerous federal policy changes that address discipline reform).

143. S.B. 2564, 218th Leg., Reg. Sess. (N.J. 2020).

144. H.B. 239, 62d Leg., Reg. Sess. (Utah 2017).

145. S.B. 2486, 30th Leg., Reg. Sess. (Haw. 2020).

restorative interventions and resolution strategies as alternatives to exclusionary discipline, among other goals.¹⁴⁶

C. Counteracting Adultification in Schools

Addressing adultification requires contemplation of implicit and explicit bias and cultural competence of teachers, school resource officers, and school administrators. It also requires that school officials understand the historical and contemporary context of discrimination and the impact of the experience of slavery and systematic oppression in the United States. In overcoming adultification, school officials are also encouraged to:

- Use age-appropriate language;¹⁴⁷
- Respect different communication styles;¹⁴⁸
- Recognize adultification as a critical element of implicit bias;¹⁴⁹
- Ensure girls have a mentor or counselor to consult in times of crisis;¹⁵⁰
- Meet girls where they are.¹⁵¹

D. Affirming Black Girls in Their Potential for Positive Educational Outcomes

National advocates also recommend initiatives such as implementation of a Black Girl Bill of Rights to outline their inalienable rights and privileges that have been historically overlooked.¹⁵² Black female legislators, like Congresswoman Ayanna Pressley, have proposed national legislation, called the Ending PUSHOUT Act that would:

146. H.B. 2084 101st Leg., Reg. Sess. (Ill. 2020).

147. Morris, *supra* note 90, at 47.

148. *Id.*

149. *Id.* at 48.

150. *Id.*

151. *Id.*

152. *Policy Priorities*, NAT'L AGENDA FOR BLACK GIRLS, <https://natagenda4blackgirls.org/policy-priorities/> [<https://perma.cc/6C57-AP8P>].

- Establish a federal interagency taskforce to end school pushout and examine its disproportionate impact on girls of color;¹⁵³
- Require the U.S. Department of Education to collect civil rights data annually;¹⁵⁴ and
- Establish new federal grants to support states and schools that commit to ban unfair and discriminatory school discipline practices and improve school climates.¹⁵⁵

Additionally, researchers recommend the following interventions to aid school officials to create an equitable learning environment that supports and values Black girls:

- Implementing Positive Behavior Supports in schools combined with cultural competence training;¹⁵⁶
- Raising the level of expectation for Black girls' achievement;¹⁵⁷
- Considering classroom management techniques to ensure that discipline is equitable;¹⁵⁸
- Utilizing culturally relevant pedagogy;¹⁵⁹
- Hosting cultural competence training; and¹⁶⁰
- Strengthening teacher-student relationships to reduce disproportionality by increasing student engagement and belonging.¹⁶¹

153. H.R. 2248, 117th Cong. § 5 (2021).

154. H.R. 2248, 117th Cong. § 3(a) (2021).

155. Press Release, Congresswoman Ayanna Pressley, The Ending Punitive, Unfair, School-Based Harm that is Overt and Unresponsive to Trauma (PUSHOUT) Act (Mar. 26, 2021), <https://pressley.house.gov/wp-content/uploads/2023/04/Ending-PUSHOUT-Act-2023-Summary.pdf> [<https://perma.cc/K8Q6-4G2N>].

156. Blake et al., *supra* note 104, at 102.

157. *Id.*

158. *Id.* at 103.

159. *Id.* at 103–04.

160. *Id.* at 101.

161. *Id.*

E. Utilizing Alternative Restorative Justice Court Interventions

In seeking to reduce Black girls' referral to law enforcement and diversion into the school-to-prison pipeline, school administrators and school districts should consider utilizing alternative restorative justice court interventions to divert girls from the juvenile justice system. One emerging model—Girls Courts—can be a productive and healing alternative for Black girls. “Girls Courts models primarily work within the existing juvenile justice system as a trauma-informed alternative court program that provides treatment and encourages girls to take ownership over their future decisions while taking responsibility for the underlying conduct that initiated the referral to Girls Courts.”¹⁶² Girls Courts models vary throughout the United States but typically involve diversion, judicial intervention post-adjudication, mentoring, court monitoring, acceptance of responsibility by participants, and treatment for underlying trauma.¹⁶³ Participation in alternative courts, like Girls Courts, can serve as restorative sources of healing and reconciliation for Black girls, while also preserving positive future outcomes, and “[c]reating a path to divert girls from juvenile delinquency strengthens the likelihood that girls can lead the passionate and purposeful lives for which they were intended.”¹⁶⁴

V. I DREAM A WORLD: IMAGINING THE POSSIBILITIES OF THE PROLIFERATION OF BLACK WOMEN IN THE PROFESSION

In 1949, the iconic poet, Langston Hughes, penned a poem entitled, “I Dream a World,”¹⁶⁵ where he bespoke the promise of a society where bias and discrimination of the era would not result in a separated world, but instead in a mutuality of sharing. Like the hopeful strains from Hughes' pen, the legal profession must remain hopeful, intentional, and vigilant in reimagining the profession to include the contributions of Black women lawyers, legal academics, and judges. Summoning this reimagining must include addressing the root causes of the underrepresentation of Black women in the profession in the first instance. When the pipeline to the profession gives way and breaks along the journey, the profession has a responsibility to repair the breach. Without rendering aid in repair, the profession will continue to be deprived of the contributions of Black women and the inner Black girls that propelled them to the profession.

162. Brewer, *supra* note 109, at 694.

163. *Id.* at 699.

164. *Id.* at 710.

165. Langston Hughes, *I Dream a World*, reprinted in AMNESTY INT'L, <https://www.amnesty.org.uk/files/2019-01/I%20Dream%20a%20World%20by%20Langston%20Hughes.pdf?VersionId=sAOV6Q4S5sG.P7LeUAniCf9edZj7bzyw> [https://perma.cc/FD Y6-8A9R].

Imagine the legal profession without the presence and contributions of Black women lawyers and judges, such as Constance Baker Motley, Eunice Carter, Pauli Murray, Paulette Brown, Ann Claire Williams, Stacey Abrams, Ketanji Brown Jackson, Charlotte Ray, Jane Bolin, and Barbara Jordan. Now imagine the profession with thousands more brilliant Black women trailblazers following their example, filled with possibility and creativity to solve contemporary global dilemmas. Black girls are the future of the legal profession, and the profession should take action to affirm the essence of their existence and eradicate the negative evils that bias in school discipline decisions cause to root out their gifts to society. Our efforts as a profession can spark a transformative movement to capture the essence of Black girls and subscribe their gifts into the cause of justice. Eradicating current bias in school discipline will affirm that the legal profession embraces Black girls' value, as characterized in an anthem of the civil rights era, as "young, gifted and Black."¹⁶⁶

166. NINA SIMONE, *TO BE YOUNG, GIFTED AND BLACK* (RCA 1969).