

**#BLACKGIRLMAGIC: DUE PROCESS AND THE DISAPPEARANCE
OF BLACK GIRLS IN PUBLIC EDUCATION**

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INTRODUCTION

#BlackGirlMagic is a term used to illustrate the universal awesomeness of black women. It's about celebrating anything black culture deems particularly dope, inspiring, or mind-blowing about black girls.¹ Despite the celebration of black girl magic, in the past decade, African American girls have had the fastest growing suspension rate of all students², while simultaneously being underrepresented in the special education student population.³ This has resulted in extended suspensions and expulsions for subjective behaviors⁴ and denied access to adequate education through special education services.⁵ African American girls are overrepresented in disciplinary procedures in America's public school systems yet underrepresented in research on race and gender disparity in public education.⁶ Nationally, African American girls experience discipline rates six times higher than White girls; they experience suspension rates higher than 67 percent of all boys as well.⁷ In contrast, African American boys are overrepresented in special education programs.⁸ The disparity is influencing the disappearance of African American girls in public education.

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¹ Julee Wilson, *The Meaning of #BlackGirlMagic, and How You Can Get Some of It*, Huff Post (Jan. 14, 2016), https://www.huffpost.com/entry/what-is-black-girl-magic-video_n_5694dad4e4b086bc1cd517f4.

² Kimberle' Williams Crenshaw et al., *Black Girls Matter: Pushed Out, Overpoliced and Underprotected*, Center for Intersectionality and Social Policy Studies, (2015), available at https://www.atlanticphilanthropies.org/wp-content/uploads/2015/09/BlackGirlsMatter_Report.pdf.

³ Paul L. Morgan et al., *Minorities Are Disproportionately Underrepresented in Special Education: Longitudinal Evidence Across Five Disability Conditions*, 44(5) Educational Researcher 278, 282 (2015).

⁴ Kimberle' Williams Crenshaw et al., *Black Girls Matter: Pushed Out, Overpoliced and Underprotected* 7 (2015).

⁵ Smith, Pamela J., *Looking Beyond Traditional Educational Paradigms: When Old Victims Become New Victimizers*, 23 Hamline L. Rev. 101 (1999).

⁶ *Id.*

⁷ *Id.*

⁸ U.S. Dep't of Educ. Off. For Civil Rights, 2013-2014 Civil Rights Data Collection: A First Look 3 (2016).

African American girls have represented everything encompassed in #BlackGirlMagic. They have endured an education system that has proven to disadvantage them. They are confronted by both a woman question and a race problem, and is yet, an unacknowledged factor in both.⁹ They have been ostracized from special education but embraced into the school to prison pipeline. Despite those odds, many African American girls have successfully graduated high school and at higher rates than African American boys.¹⁰ In one study, researchers posed the question, in a world of normalized exclusion, how and where, then do black girls situate themselves as Americans and as global citizens?¹¹ African American girls are forced to illustrate the awesomeness of black women. They deserve to be celebrated and viewed as particularly dope and inspiring. Magic is the power of apparently influencing the course of events by using mysterious or supernatural forces.¹² African American girls are magic. They have influenced the course of events for their lives in what appears to be a mysterious way.

Schools are one of the largest influences of the life trajectory for African American girls.¹³ Part I of this essay will provide background information on the laws that govern special education. It will also take a look into the #BlackGirlMagic movement and its significance in society. Part II of this essay will review the impact of discipline and special education on African American girls' right of due process. Part III of this essay will analyze the underrepresentation of African American girls in special education programs compared to the overrepresentation of African American boys. Part IV of this essay will discuss the growing suspension rates

⁹ Gerda Lerner, *Black Women in White America: A Documentary History* 574 (1972).

¹⁰ *Public High School Graduation Rates*, National Center for Education Statistics (May 2019), https://nces.ed.gov/programs/coe/indicator_coi.asp (see Figure 2).

¹¹ Monique W. Morris, *Pushout: The Criminilization of Black Girls in Schools* 26 (2016).

¹² "magic." Merriam-Webster Online Dictionary. 2019. <http://www.merriam-webster.com> (2 Jan. 2019).

¹³ Patricia Hill-Collins, *Black Sexual Politics: African Americans, Gender, and the New Racism* 193 (2004).

of African American girls in zero-tolerance public schools and its influx into the school to prison pipeline. It will first look into the stereotype of the “ghetto” black girl. This article will look into the ways that white feminist standards have been used to criminalize African American girls and help lead to their disappearance in America’s classrooms. Finally, this section will look into the long-term effects of school discipline and the criminalization of African American girls. Part V will discuss the long-term effects of the current public education system on black women. Lastly, Part VI suggests various ways in which America can begin to provide quality education for African American girls and contribute to the #BlackGirlMagic Movement.

II. BACKGROUND

A. #BlackGirlMagic

Black Girl Magic is a phrase coined by CaShawn Thompson in 2013.¹⁴ Black Girl Magic does not have one single working definition. Instead, it encompasses a common belief: black girls should be celebrated for their beauty, power, and resilience.¹⁵ According to one source, “the hashtag enables us to give thanks to the women that mainstream history seems to have forgotten, acknowledge those who are paving the way for future generations, share our own personal victories, and reshape the image of Black girls and women.”¹⁶ Disney Channel star, Skai Jackson, defined black girl magic as “just being empowering, being confident, and loving yourself.”¹⁷ It is evident black girl magic is what a black woman makes it. The term “magic” is used as a way to express

¹⁴ Julee Wilson, *The Meaning of #BlackGirlMagic, and How You Can Get Some of It*, Huff Post (Jan. 14, 2016), https://www.huffpost.com/entry/what-is-black-girl-magic-video_n_5694dad4e4b086bc1cd517f4.

¹⁵ *Id.*

¹⁶ Sasha Smith, *The Meaning of #BlackGirlMagic and why it’s so important Right now*, YMCA Child Care (Jul. 2, 2019), <https://blog.ymcagta.org/blog/2018/02/20/the-meaning-of-blackgirlmagic-and-why-its-so-important-right-now/>.

¹⁷ Rasha Ali, *What is Black Girl Magic? A Short Explainer*, The Wrap (Jun. 30, 2016), <https://www.thewrap.com/what-is-black-girl-magic/>.

black female strength, success, and beauty.¹⁸ Thompson stated, “sometimes our accomplishments might seem to come out of thin air, because a lot of times, the only people supporting us our other Black women.”¹⁹ It then makes sense why the resilience of a black girl can be perceived as magical. #BlackGirlMagic today is more than a hashtag.²⁰ It has become a movement that is making the world a much more inclusive place for this marginalized community.²¹ In a world where social media and media television are becoming increasingly influential in the lives of youth, positive movements such as #BlackGirlMagic have the potential to impact not only the black community but how the black community is viewed in America.²² When discussing the way African American girls must overcome their exclusion from special education programs and overrepresentation in school discipline, it is necessary to recognize the magic in their resilience

B. Individuals with Disabilities Act

Special education is governed primarily by what is today known as the Individuals with Disabilities Act (“IDEA”).²³ The IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 6.5 million eligible infants, toddlers, children and youth with disabilities.²⁴ The IDEA began as the Education for All Handicapped Children Act. President Gerald Ford signed the act

¹⁸ Sasha Smith, *The Meaning of #BlackGirlMagic and why it's so important Right now*, YMCA Child Care (Jul. 2, 2019), <https://blog.ymcagta.org/blog/2018/02/20/the-meaning-of-blackgirlmagic-and-why-its-so-important-right-now/>.

¹⁹ Sesali Bowen, *The Real Beauty of #BlackGirlMagic*, Refinery29 (Apr. 13, 2017), <https://www.refinery29.com/en-us/2017/04/149970/black-girl-magic-meaning>.

²⁰ *Id.*

²¹ Sasha Smith, *The Meaning of #BlackGirlMagic and why it's so important Right now*, YMCA Child Care (Jul. 2, 2019).

²² *Id.*

²³ *About IDEA*, Individuals with Disabilities Education Act (Jul. 19, 2019), <https://sites.ed.gov/idea/about-idea/>.

²⁴ *Id.*

into law on November 29, 1975.²⁵ The law guaranteed access to a free appropriate education in the least restrictive environment for every child with a disability.²⁶ Since 1975, this country has progressed from excluding nearly 1.8 million children with disabilities in special education and related services designed to meet their individual needs.²⁷

Some of the stated purposes of the IDEA are (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the right of children with disabilities and parents of such children are protected.²⁸ In the law, Congress states, “Improving education results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”²⁹ Congress adopted IDEA with the intent of providing opportunities to all students, including those with diagnosed disabilities beyond the classroom.³⁰ Congress’ ability to recognize the importance that programs such as IDEA have to provide Americans with the skills and education necessary to contribute to society is just one example of the longitudinal impact of adequate special education programs in America’s public schools.

Under IDEA schools receive money based upon the number of children diagnosed with a learning or behavioral problem which needs to be addressed.³¹ Because boys are more represented in special education settings, schools are receiving more federal money

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ J.M. Stolzer, *Boys and the American Education System: A Biocultural Review of the Literature*, 10 ETHICAL HUMAN PSYCHOLOGY & PSYCHIATRY 80, 89 (2008).

for boys than girls.³² Monies that are received under section 1463 of IDEA are used to “support activities to improve services provided under this title, including the practices of professionals and others involved in providing such services to children with disabilities that promote academic achievement and improve results for children with disabilities.”³³ More specifically, these funds can be used to promote academic achievement by providing training for both the general population and special education teachers to address the needs of students with different learning styles.³⁴ It is important to emphasize that the statute provides for adequate training for teachers to be able to address different learning styles.³⁵ Different learning styles can be encompassed in cultural and gender differences. With that being said, schools have an equal responsibility to address the training of teachers in properly identifying students with learning and behavioral disabilities not only in learning styles but also based on racial, gender and socioeconomic differences. It is obvious from the two-third male population in special education³⁶ that IDEA funding has not been utilized to its greatest potential to provide adequate training to educators in ways that can stop gender disparity in special education.

C. Education for all Handicapped Children Act of 1975

The Education for All Handicapped Children Act of 1975 requires that children with disabilities have the right to public education and should not be discriminated against because of their disabilities.³⁷ The Education for All Handicapped Children Act was combined with IDEA in 1975.³⁸ From here on out, this essay will refer only to IDEA and its requirements.

³² J.J. Haggerty, *Gender Disparity: Boys v. Girls in Special Education*, 5 (2009).

³³ 20 U.S.C.S. § 1463 (2009).

³⁴ *Id.*

³⁵ *Id.*

³⁶ J. Haggerty, *Gender Disparity: Boys v. Girls in Special Education*, 5 (2009).

³⁷ *Archived: A 25 Year History of the IDEA*, U.S. Department of Education (Jul. 19, 2019), <https://www2.ed.gov/policy/speced/leg/idea/history.html>.

³⁸ *Id.*

D. Title IX

Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 was signed into law on June 23, 1972.³⁹ Title IX is a comprehensive federal law that states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”⁴⁰ Title IX applies to institutions that receive federal financial assistance from the Department of Education.⁴¹ These institutions include approximately 16, 500 local school districts, 7,000 postsecondary institutions, as well as charter schools, for-profit schools, libraries, and museums.⁴² Also included are vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia and territories and possessions of the United States.⁴³ Most public schools are receiving funding and are therefore governed by Title IX.⁴⁴

Some areas where Title IX applies are recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment.⁴⁵

ANALYSIS

II. DUE PROCESS

A. Due Process

These days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an

³⁹ *Title IX and Sex Discrimination*, U.S. Department of Education (Jul. 22, 2019), https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

education.⁴⁶ Despite the court's acknowledgment in *Brown v. Board of Education* that education is essential to success in this country, it has declined to state that education is a right originating in the Constitution.⁴⁷ In a Supreme Court decision in *San Antonio Independent School District v. Rodriguez*, the court held that education is a benefit, or property interest, conferred by the states.⁴⁸ It is not a fundamental right proceeding from the United States Constitution.⁴⁹ When discussing a right to education then, one is referring to her property interest to a free appropriate public education.

Whenever the state has deprived a person of his or her liberty or property interests, protected by the Fourteenth Amendment, they are entitled to procedural due process.⁵⁰ Procedural due process has been defined by the United States Supreme Court in *Boddie v. Connecticut* as "the central concept in the implementation of a regularized, orderly process of dispute settlement."⁵¹ The court in *Boddie* required some form of a hearing for effective procedural due process to occur. In addition to a formal hearing, procedural due process requires notice. *Mullane v. Hanover Trust Co.* established that a person must be given notice, prior to a hearing, that allows the person the opportunity to contest the stated action.⁵² A formal hearing and notice together define the minimal due process.

B. Due Process: Special Education

Disciplining students with disabilities set out a group of challenges that are regulated by both the property interests under the Fourteenth Amendment and IDEA. The 1997 IDEA Amendments provide methods by which schools are allowed to discipline students

⁴⁶ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

⁴⁷ *Plyler v. Doe*, 457 U.S. 202, 221 (1982).

⁴⁸ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), *reh'g denied*, 411 U.S. 959, 35 (1973).

⁴⁹ *Id.*

⁵⁰ *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 567 (1972).

⁵¹ *Boddie v. Connecticut*, 401 U.S. 371, 373 (1971).

⁵² *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950).

with disabilities.⁵³ The law indicates that schools can suspend a student or move a student to an appropriate interim alternative educational setting for up to 10 days.⁵⁴ Any exclusion longer than that is considered a change in placement, which requires IDEA change in placement procedures or a court injunction.⁵⁵ There are a few exceptions to this 10-day rule. Some exceptions are if a student brings weapons or drugs to school or if the child has inflicted serious bodily injury upon another person.⁵⁶ In those cases, a student may be placed at an interim site for up to 45 days.⁵⁷ If an exception does not apply and a school would like to remove a student with a disability for longer than 10 days, the individualized education plan team must conduct a manifestation determination.⁵⁸ This will determine whether or not the behavior is related to the student's disability.⁵⁹ If it is, the student may not be suspended for more than 10 days without the permission of the student's parent.⁶⁰ If it is not, the student is subject to the same punishment as a student in general population classes.⁶¹ During this time however, the school must still provide educational services to the student to allow the child to make progress toward his or her IEP goals.⁶²

During the 2000-20001 school year, more than 91, 000 special education students in the United States were removed from their normal school settings for disciplinary reasons.⁶³ The majority of those students were placed in in-school suspension or out-of-school suspension for less than 10 days.⁶⁴ While in-school

⁵³ J.J. Haggerty, *Gender Disparity: Boys v. Girls in Special Education*, 5 (2009).

⁵⁴ *Id.*

⁵⁵ Mark C. Dickinson & Ted L. Miller, *Issues Regarding In-School Suspensions and High School Students with Disabilities*, 35 *American Secondary Education*, 74, 72-83 (2006).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 75.

⁶³ *Id.*

⁶⁴ *Id.*

suspension seems like a good alternative to removing students with disabilities out of the school building, it is not. In-school suspension is not counted as a day of suspension so long as the student continues to receive IEP services, continues to appropriately progress in the general curriculum, and continues to have the opportunity to participate with non-disabled students to the extent that the special education student would have in his normal placement.⁶⁵ However, many schools do not have the resources to assure this treatment during in-school suspensions occurs.⁶⁶ In the event that the school does not provide the required services during in-school suspensions that last more than 10 consecutive days, children are being deprived of their right to due process.

C. Due Process: Suspension and Expulsion

In *Goss v. Lopez*, a class of high school students challenged their suspension of more than 10 days from an Ohio public school.⁶⁷ The students claimed to have a legitimate claim of entitlement to public education.⁶⁸ The Ohio school system contended that there is no constitutional right to a secondary education at public expense.⁶⁹ However, Ohio laws provide for free public education to students between 6 and 21 years of age and a compulsory attendance law required attendance during the school year of not less than 32 weeks.⁷⁰ The Supreme Court in *Goss* held that “due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, and explanation of the evidence the authorities have and an opportunity to present his side of the story.”⁷¹ Ohio could not withdraw the right of free adequate public education on the grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct had occurred.⁷²

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Goss v. Lopez*, 419 U.S. 565 (1975).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 571.

⁷¹ *Id.* at 575.

⁷² *Id.*

The court further held that: Since misconduct charges, if sustained and recorded, could seriously damage the students' reputation as well as interfere with late educational employment opportunities, the State's claimed right to determine unilaterally and without process whether that misconduct has occurred immediately collides with the Due Process Clause's prohibition against arbitrary deprivation of liberty.⁷³ *Goss* set the stage for students attending public schools to be able to challenge their extended suspensions under a due process claim. Students post-*Goss* are now able to require procedural due process when suspended and expelled from schools for non-violent behaviors.

III. SPECIAL EDUCATION

A. Gender Disparity in Special Education

Student placements are considered disproportionate if one group is either overrepresented or underrepresented when comparing their presence in a particular class or category with their representation in the general population.⁷⁴ Girls make up one-third of the special education student population in American's K-12 public schools.⁷⁵ This leads to two crucial questions: (1) Are boys seriously suffering from learning disabilities at higher rates than girls? Or, (2) Is there a bias in special education referral and assessment procedures that lead to a disproportionate number of boys receiving special education services in K-12 public schools? Data points to the latter.

Researchers have spent a lot of time focusing on race disparities in special education with little explanation as to why girls only make up one-third of the special education student

⁷³ *Id.*

⁷⁴ Todd A. Gravois & Sylvia A. Rosenfield, *Remedial and Special Education*, 27 *Hammill Institute of Disabilities* 42, 42-52 (2011).

⁷⁵ *2018 Annual Report to Congress on the Individuals with Disabilities Education Act*, U.S. Department of Education (2018).

population.⁷⁶ Male students constitute roughly 70 percent of students identified as learning disabled, about 60 percent of those identified as mentally disabled, and about 80 percent of those who are identified as emotionally disabled.⁷⁷ In its 27th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, the U.S. Department of Education offered virtually no breakdown of numbers by gender.⁷⁸ There is a strong argument to be made that African American girls are indeed suffering from learning disabilities; they are merely going undiagnosed and unevaluated.⁷⁹

Gender equity has more to do with fairness than with sameness, and in that respect differs from equality.⁸⁰ Gender equity in education involves all aspects of learning, including access to opportunities, treatment, and educational outcomes.⁸¹ In contrast, gender bias, or sexism, involves discrimination against or stereotyping a student based on gender so that a student's gender predicts course placement, teacher expectations and attitudes, and test scores.⁸² While eliminating gender bias should be a focus on education, gender equity needs to be the starting point. In discussing issues of gender inequality and disability, it is important to articulate that any disadvantaged status associated with being female and/or disabled is rooted in society through pervasive biases, stereotypes, and discrimination. Through this articulation, it is crucial for the future of so many young girls that they are given the same access to special education services and adequate education.

Evaluations for special education services are sometimes subjective and are often influenced by school politics, teachers'

⁷⁶ J.J. Haggerty, *Gender Disparity: Boys v. Girls in Special Education*, 9 (2009).

⁷⁷ *Educating Girls with Disabilities*, AAUW 2 (Jul. 2009), <https://www.aauw.org/files/2013/02/position-on-disability-education-111.pdf>.

⁷⁸ *Id.* at 4.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

perspectives and cultural biases.⁸³ Subjective testing methods leave educators with a wide discretion on whom to test, what to test, when to use alternative tests, interpretation of responses, and the type of weight given to each type of test.⁸⁴ If a teacher has two children, one boy (acting out) and one girl (not acting out), in a classroom, the boy acting out is more likely to get referred for special education than the girl who is not acting out.⁸⁵ This discrepancy is based solely upon behavior.⁸⁶ As a result, the girl who is not acting out is ignored and left without any referral to special education.⁸⁷ Other studies show that female teachers are more likely than male teachers to refer students to a special education program.⁸⁸ The likelihood of false diagnoses of males and missed diagnoses of females results in the overrepresentation of males in special education programs.⁸⁹

It is estimated that out of the eight million children in the United States that are disabled, three million are undeserved and one million are not being served at all by the public education system.⁹⁰ What is even more alarming is that the few African American girls that are receiving special education services are simultaneously being disciplined at higher rates.⁹¹ Among the nation's ten highest suspending school districts, African American girls with one or more disabilities experience the highest suspension rate of all girls

⁸³ Torin D. Togut, *The Gestalt of the School-to-Prison Pipeline: The Duality of Overrepresentation of Minorities in Special Education and Racial Disparity in School Discipline on Minorities*, 20 *Journal of Gender, Social Policy & the Law* 173, 163- 181 (2011).

⁸⁴ *Id.* at 173.

⁸⁵ *Id.*

⁸⁶ Skarbrevik, *supra* note 3, at 98-99.

⁸⁷ *Id.*

⁸⁸ Lance L. McIntyre, *Teacher Gender: A Predictor of Special Education Referral?*, 21J. *Learning Disabilities* 382. (1988).

⁸⁹ *Id.*

⁹⁰ Nancy Mamlin & Karen R. Harris, *Elementary Teachers' Referral to Special Education in Light of Inclusion and Prereferral: "Every Child Is Here to Learn...But Some of These Children Are in Real Trouble"*, 90 *J. EDUC. PSYCH.* 385 (1998).

⁹¹ Janice D'Arcy, "Salecia Johnson, 6, *Handcuffed After Tantrum: what's Wrong with This Picture?*", *Washington Post* (April 18, 2012).

in K-12.⁹² They are less likely to be referred to special education and when referred, they are more likely to be disciplined and pushed out of the school system through suspensions.⁹³ This places our minority girls at a double disadvantage.

When America's education system fails to identify, support, and remedy learning disabilities in K-12th grade, it drastically limits the available opportunities to those same students beyond the high school level.⁹⁴ A study by the U.S. Department of Health and Human Services revealed that a significant number of women who received dependent-child services from the government did not have high school diplomas, due in large part to learning disabilities that went undiagnosed and therefore untreated.⁹⁵ If African American girls are suffering from learning disabilities that are going undiagnosed, most commonly, as a result of biases, stereotypes, and discrimination, how then can America say that African-American girls are receiving an adequate education in public schools?

B. Racial Disparity in Special Education

Within the past three decades, studies have revealed a pattern of overrepresentation of African American students in special education classrooms for mental disability, specific learning disabilities, behavior disorders, physical impairments, visual impairments, and speech impairments.⁹⁶ African American boys are more likely than any other group to be placed in special education classes, with 80 percent of all special education students being either African American or Hispanic males.⁹⁷

Similar to the gender disparity in special education discussed above, racial disparity in special education exists largely in part to

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Educating Girls with Disabilities*, AAUW 2 (Jul. 2009), <https://www.aauw.org/files/2013/02/position-on-disability-education-111.pdf>.

⁹⁵ *Learning Disability and Gender Bias in an Employment Context*, National Center for Family Literacy, 3-5 (2000).

⁹⁶ A.M. Watkins & D.P. Kurtz, *Using solution-focused intervention to address African American males in special education: A Case Study*, *Children & Schools*, 234, 223-235 (2001).

⁹⁷ *Id.*

the referral process.⁹⁸ Research suggests that race has been an influential factor in the disparate treatment of students during the special education referral process.⁹⁹ One study found that teachers referred minority students to special education programs more frequently than non-minority students, and most often referred minority students for behavioral problems as opposed to academic difficulties.¹⁰⁰ Other race-linked factors to disparate treatment of black males include poorly trained teachers that are employed at majority-minority schools, teacher beliefs in black and Latino inferiority accompanied by subsequent low expectations, expressed cultural insensitivity, and fear and misunderstanding of black males. These factors are exacerbated in teachers referring to black males in majority-white school districts. Data shows that majority-white school districts enroll a greater percentage of minority students in special education than majority-minority school districts. It is not uncommon for a teacher to correlate disruptive behavior, particularly in minority males, to a learning disability. Too often, an African American male that engages in behavior within the norms of the local black community is perceived as disruptive or threatening to a teacher that is unfamiliar with that student's cultural context. Students who are viewed as disruptive or threatening are often the ones referred to special education. In one research study, a teacher stated, "African American children seem to be more outspoken. They seem to be louder. They seem to be active. They seem to be what we could call 'disrespectful,' and for those reasons, sometimes teachers don't want to deal with them."¹⁰¹ The common solution to not "dealing with" black and brown children is to refer them to special education programs. Thus, cultural differences and

⁹⁸ Georgios D. Sideridis, Faye Antoniou, & Susana Padelidu, *Teacher Biases in the Identification of Learning Disabilities: An Application of the Logistic Multilevel Model*, 31 *Learning Disability Q.*, 199, 205 (2008).

⁹⁹ *Id.*

¹⁰⁰ Lance L. McIntyre, *Teacher Gender: A Predictor of Special Education Referral?*, 21 *J. Learning Disabilities* 382. (1988).

¹⁰¹ Russell Skiba, *The Context of Minority Disproportionality: Practitioner Perspectives on Special Education Referral*, 108 *Teachers College Record* 1434, 1424-1459 (2006).

misunderstanding of their teachers lead them to be isolated from their peers and improperly diagnosed as needing special education services without any documented learning disability.¹⁰² When a black or brown child is ostracized because of his culture—mannerisms and behavior that would all be considered normal within his community—he is discriminated against.¹⁰³ America's acceptance of this discrimination and categorization of cultural behaviors as disruptive, bad, wrong or problematic, is an acceptance that one culture is superior to another and the students that behave in a way that is synonymous to the one that is inferior—the black culture—must be fixed through special education services.

Despite a common practice of racial discrimination, it is evident that not all teachers intentionally discriminate against minorities because of cultural differences and misunderstandings. Schools with a higher population of students in poverty are more likely to have fewer resources to properly identify and refer students for special education services.¹⁰⁴ These schools are also more likely to have a higher population of African American students.¹⁰⁵ For many of these teachers, special education is the only resource available at their school for helping students who are not achieving.¹⁰⁶ Because teachers often do not have the resources needed to effectively manage what they perceive as disruptive behavior, they unintentionally contribute to the racial disparity in referral and placement in special education programs.¹⁰⁷ The implications of the intersections of race, culture, gender, and disability in public education, especially the problems of overrepresentation and segregation of racial minority students in special education, has and will continue to be emphasized if schools continue to go without resources, teachers continue to be untrained in cultural biases, and black students continue to be

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 1438.

disproportionally referred to special education programs for subjective behavioral problems.¹⁰⁸

C. The Intersection of Race and Gender for African American Girls

The intersection of racial and gender inequities in U.S. public schools' impact African American girls in a delicate and unique way.¹⁰⁹ Racial inequity is revealed in public education through alarming suspension rates for African Americans. Gender inequity in education is revealed through a lack of referrals for specialized education plans for girls who suffer from learning disabilities. Although there is very little research on African American girls in special education, there is clear data that shows that African Americans are disproportionately placed at higher rates in special education than whites and girls and are unreasonably excluded from special education services at higher rates than boys.¹¹⁰ The fact that African American boys are placed in special education programs at higher rates than whites would lead to a healthy assumption that African American girls are disproportionately placed in special education programs as well. However, the opposite is occurring. Girls are referred to special education services at a five to one ratio compared to boys.¹¹¹ This means that for every five boys referred to special education for evaluation and individualized education plans, with four of those boys being African American or Latino, only one girl is referred for the same service.¹¹² Further, out of the one girl placed for every five boys placed, four are African American or minority. A significant number are also being suspended or expelled as opposed to being provided additional resources and special education services.¹¹³ This places America's black and brown girls at a double

¹⁰⁸ Amanda L. Sullivan & Alfredo J. Artilles, *Theorizing Racial Inequity in Special Education: Applying Structural Inequity Theory to Disproportionality*, XX(X) *Urban Education* 2, 1-23 (2016).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Educating Girls with Disabilities*, AAUW 2 (Jul. 2009), <https://www.aauw.org/files/2013/02/position-on-disability-education-111.pdf>.

¹¹² *Id.*

¹¹³ *Id.*

disadvantage. They are given the option between staying in public school classrooms without adequate education or being removed from those classrooms for the very same reason. Neither is advantageous for her.

In, *Blunt v. Lower Merion School District*, the court struck down discriminatory practices in special education evaluations.¹¹⁴ In *Blunt*, the plaintiff brought a complaint for the overrepresentation of African Americans at a Pennsylvania public school without individualized evaluation and learning plans.¹¹⁵ The students were grouped into categories based on race, gender, and performance on in-class assignments¹¹⁶. African American boys were grouped into classes that reduced their time in the general population while the African American girls were left in the general population without any additional educational assistance.¹¹⁷ Throughout this grouping process, students were not given individualized education plans.¹¹⁸ *Blunt* is an example of the many ways that America's public schools discriminate based on race and gender in special education. The court's holding in striking down these discriminatory practices in special education evaluations set precedent for other courts to hold public schools to the same standards as Lower Merion School District¹¹⁹. Boys, girls, African Americans, and whites should all be referred to special education and given individualized education plans using the same methods and criteria. This case is just one of many examples of the racial and gender disparity of African American girls in special education.

IV. SCHOOL DISCIPLINE

A. The Impact of the Ghetto Black Girl

Black girls seem to be “disappearing” from public education as a result of their exclusion from special education and over-

¹¹⁴ *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247 (3d Cir. 2014).

¹¹⁵ *Id.* at 243.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 247.

inclusion in the school-to-prison pipeline. There is a clear correlation between the discriminatory treatment of African American children in school discipline and the overrepresentation of minorities in special education. Even if discrepancies in discipline are not racially motivated, the overrepresentation of African American students and those of lower socioeconomic status in school discipline contribute to racial stratifications in school and society.¹²⁰ Nationally, African American girls represent thirty-one percent of the girls referred to law enforcement by school officials and forty-three percent of those arrested on school grounds, but only constitute seventeen percent of the overall student population.¹²¹ America's black and brown girls are being funneled through the school to prison pipeline at disturbing rates and for non-violent offenses.¹²² Meanwhile, African American boys' behavioral issues are being separated from their academic performance while African American girls are not afforded the same justifications.¹²³ African American girls are instead either ignored in the special education referral process or shunned through zero-tolerance disciplinary processes.¹²⁴

The common question is, why are African American girls suspended at higher rates today than three decades ago? There are several hypotheses to answer this question. The first is the placement of white feminist standards on African American girls leading to a misunderstanding of characteristics that define their behavior.¹²⁵ When Black girls engage in acts that are deemed ghetto—often a euphemism for actions that deviate from social norms tied to a narrow, White middle-class definition of

¹²⁰ Monique W. Morris, *Pushout: The Criminilization of Black Girls in Schools*, 21 (2016).

¹²¹ *Id.*

¹²² Subini Ancy Annamma et al., *Black Girls and School Discipline: The Complexities of Being Overrepresented and Understudied*, *Urban Education*, 7, 1-32 (2016).

¹²³ Pamela J. Smith, *Looking Beyond Traditional Educational Paradigms: When Old Victims Become New Victimizers*, 23 *Hamline L. Rev.* 101, 164-66 (1999).

¹²⁴ *Id.*

¹²⁵ Monique W. Morris, *Pushout: The Criminilization of Black Girls in Schools*, 10 (2016).

femininity—they are frequently labeled as nonconforming and thereby subjected to criminalizing responses.¹²⁶ This forces them to reinvent the characteristics that others have defined as ghetto.

For Black girls, to be “ghetto” represents a certain resilience to how poverty has shaped racial and gender oppression. To be “loud” is a demand to be heard. To have an “attitude” is to reject a doctrine of invisibility and mistreatment. To be flamboyant – or “fabulous” – is to revise the idea that socioeconomic isolation is equated with not having access to materially desirable things. To be a ghetto black girl, then, is to reinvent what it means to be black, poor, and female. Under these conditions, volume and force are powerful tools.¹²⁷

African American girls are being punished for these characteristics instead of being recognized as having developed tools of resilience.¹²⁸ Their nonconformity to traditional gender expectations often leads educators to perceive them as loud, defiant, and precocious.¹²⁹ African American students’ academic performance is more directly linked to their relationship with their teachers than their white counterparts.¹³⁰ Educators’ perceptions of brown and black girls being “ghetto” can diminish the relationship young black girls form with these teachers.¹³¹ Instead of being supported in the classroom, they are removed. When they are not removed, they are often ignored or silenced to avoid confrontation or a “bad attitude.”¹³² Consequently, African American girls have been permitted to fail by the implicit biases of teachers that lower expectations for them.¹³³

¹²⁶ *Id.*

¹²⁷ *Id.* at 19.

¹²⁸ *Id.* at 20.

¹²⁹ *Id.* at 11.

¹³⁰ *Id.* at 38.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 50.

B. School Discipline for African American Girls

The problem with school discipline does not begin when our girls reach a certain age. The disparity in suspensions begin as early as preschool. African American children are 18 percent of preschool enrollment but 42 percent of preschool-age children who have had one out-of-school suspension, and 48 percent of preschool-age children who have experienced more than one out-of-school suspension.¹³⁴ Between 2002 and 2006, per-district suspension rates of African American girls increased by 5.3 percent compared to a 1.7 percent increase for African American boys.¹³⁵ This is often driven by what is called zero-tolerance policies. A zero-tolerance policy is defined as a form of school discipline that imposes removal from school for a broad array of school code violations – from violent behavior to truancy and dress code violations.¹³⁶ Students of color are disproportionately affected by zero-tolerance policies. Compared with White students, African American children are suspended two to three times higher than other students and are similarly overrepresented in office referrals, expulsions, and corporal punishment.¹³⁷ Black students are more likely to be disciplined through a form of punishment by removal through measures such as suspension or expulsion.¹³⁸ Hines-Datiri argues that exclusionary discipline has been a feeder for the school to prison pipeline and has been a tactical method for sanctioning, removing, and criminalizing students of color that fail to adhere to dominant normative behaviors and expectations in the classroom.¹³⁹ Zero-tolerance policies act as a vehicle that is inherently racialized and pushes students out of school through implicit and explicit racial bias and gender inferiority.¹⁴⁰ Specifically, African American girls

¹³⁴ *Discipline Snapshot: School Discipline, Issue Brief No. 1*, U.S. Department of Education Office of Civil Rights (2014).

¹³⁵ *Id.*

¹³⁶ Dorothy Hines-Datiri and Dorinda J. Carter Andrews, *The Effects of Zero Tolerance Policies on Black Girls: Using Critical Race Feminism and Figured Worlds to Examine School Discipline*, *Urban Education*, 5, 1-22 (2017).

¹³⁷ *Id.* at 20.

¹³⁸ *Id.* at 5.

¹³⁹ *Id.* at 5.

¹⁴⁰ *Id.* at 10.

often experience exclusionary discipline outcomes more than many males across the country, a trend that is paralleled in the criminal legal system.¹⁴¹ Through zero-tolerance policies, African American girls are disappearing from America's public education system.

V. LONG-TERM EFFECTS OF THE DISAPPEARANCE OF BLACK GIRLS IN PUBLIC EDUCATION

The disparity in education has led to disturbing long-term issues for African American girls. Author, Monique W. Morris, eloquently explains that their ability to develop agency in shaping professional and personal futures where they can live with dignity, respect, and opportunity suffers.¹⁴² About 58 percent of black students and 50 percent of Latino students who decided to leave school were being educated in one of our nation's high-poverty, low-performing schools.¹⁴³ This suggests that a higher percentage of African American girls who dropped out of school—and who were likely struggling in school—were also likely to have been attending a low-performing school.¹⁴⁴ The impact of suspension and inadequate education impacts African American girls beyond high school.¹⁴⁵ One in nineteen African American women will be incarcerated at some point in her lifetime.¹⁴⁶ For African American girls under the age of eighteen, the poverty rate is 35 percent. African American girls drop out of school at a rate of 7 percent, compared to 3.8 percent of White girls. At 18.9 percent, African American girls have the highest case rate of person offenses and they have a higher rate (21.4 percent) of being assigned to residential placement than Latinas (8.3 percent) and White girls (6.9 percent) combined.¹⁴⁷ The heightened discipline procedures are impacting

¹⁴¹ *Black girls and discipline* 4.

¹⁴² Monique W. Morris, *Pushout: The Criminalization of Black Girls in Schools*, 13 (2016).

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 31.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Subini Ancy Annamma et al., *Black Girls and School Discipline: The Complexities of Being Overrepresented and Understudied*, *Urban Education*, 7, 1-32 (2016).

the trajectory for so many young African American girls in negative ways.

VI. THE INTERSECTION OF IT ALL

The question left to answer is how does due process relate to African American girls, school discipline and special education? This essay has already shown how African American girls are less likely than African American and White boys to be referred to special education programs. It has also been shown that they are also less likely than White girls to develop a healthy and productive relationship with their teachers that often leads to additional assistance and improved academic performance. If African American girls are not given the opportunity to receive special education services, they surely cannot be receiving the free adequate public education that they are entitled to under the 14th Amendment.

Additionally, African American girls are being pushed out of public schools through zero-tolerance policies without any additional safeguards. This essay has shown that African American girls are being suspended and expelled at higher rates than their peers, leading to additional time out of school. Any suspension longer than 10 days requires procedural due process. Without procedural due process and a right to confront their accuser or address the alleged misbehavior, they are being deprived of their liberty to their property right of a free adequate public education. Most girls, additionally, do not have the safeguards of special education. Students with disabilities are required to be provided with additional services, even when suspended, in order to assure they work towards achieving their individualized education plan. If African American girls are not even referred to special education programs to receive that safeguard and still suspended at disturbing rates without procedural due process, how can this country say that they are being provided with an equal opportunity to succeed in society? Some suggestions to address the disappearance of African American girls in public education are (1) develop a less biased way to evaluate special education students and programs; (2) better train teachers on race, diversity and its values to eliminate biases and misdiagnoses in special education and discipline referrals; (3) work

to adjust society's views on black women through embracing both black and white feminist standards and rejecting the idea that one is inferior to the other; and (4) promote an equitable, rather than equal, school discipline model so fewer African-Americans are pushed out of the school system for non-violent behaviors.

CONCLUSION

The impact of the disappearance of girls in public education results in inadequate education for those African American students along with an increased rate in behavioral problems. African American girls deserve to receive the same evaluation for specialized education as Black boys and White girls. Instead, African American girls are being overlooked and pushed out of America's education systems because of their race and sex. They are not given the ability to develop agency in shaping their professional and personal futures where they can live with dignity, respect, and opportunity. Public schools must stop contributing behavior problems of black girls to aggressive stereotypes without evaluating their academic performance and providing them with adequate education through evaluations and access to special education services. Black girls have proven to be magic through their resilience, power, and acceptance of themselves. The question left to answer is, why do black girls have to be magic to survive in America?