

# The Invisible Victims of the School-to-Prison Pipeline: Understanding Black Girls, School Push-Out, and the Impact of the Every Student Succeeds Act

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THE INVISIBLE VICTIMS OF THE SCHOOL-TO-PRISON  
PIPELINE: UNDERSTANDING BLACK GIRLS,  
SCHOOL PUSH-OUT, AND THE IMPACT OF  
THE EVERY STUDENT SUCCEEDS ACT

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INTRODUCTION

A stigma follows Black girls: they are said to be unruly, defiant, unsophisticated, and to have bad attitudes.<sup>1</sup> This stigma is reinforced through popular television shows. Black actresses are often given roles as the “sassy Black woman.”<sup>2</sup> These stigmas are particularly dangerous because of the way that Black girls are treated in schools. Teachers are more inclined to judge and more harshly punish Black girls based on subjective opinions on Black girls’ behaviors.<sup>3</sup> This type of harsh judgment and punishment perpetuates the school-to-prison pipeline and disadvantages Black girls’ abilities to continue their educations.<sup>4</sup>

The school-to-prison pipeline endangers Black boys in the same way it endangers Black girls.<sup>5</sup> However, discussions pertaining to the school-to-prison pipeline largely fail to discuss the repercussions that Black girls face within the pipeline.<sup>6</sup> This is surprising because

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1. Tanzina Vega, *Schools’ Discipline for Girls Differs by Race and Hue*, N.Y. TIMES (Dec. 10, 2014), [http://www.nytimes.com/2014/12/11/us/school-discipline-to-girls-differs-between-and-within-races.html?\\_r=0](http://www.nytimes.com/2014/12/11/us/school-discipline-to-girls-differs-between-and-within-races.html?_r=0) [<https://perma.cc/MLZ6-QVSR>].

2. Zeba Blay, *Franchesca Ramsey Breaks Down 3 Stereotypes That Plague Black Women*, HUFFINGTON POST (May 17, 2016), [http://www.huffingtonpost.com/entry/franchesca-ramsey-breaks-down-3-stereotypes-that-plague-black-women\\_us\\_573b2607e4b08f96c1841ea4](http://www.huffingtonpost.com/entry/franchesca-ramsey-breaks-down-3-stereotypes-that-plague-black-women_us_573b2607e4b08f96c1841ea4) [<https://perma.cc/44HG-YJXX>].

3. Vega, *supra* note 1.

4. Melinda D. Anderson, *The Black Girl Pushout*, ATLANTIC (Mar. 15, 2016), <https://www.theatlantic.com/education/archive/2016/03/the-criminalization-of-black-girls-in-schools/473718> [<https://perma.cc/8SHR-ZQL5>].

5. *See id.*

6. Margaret Goff, *African American girls and the school-to-prison pipeline: Who are our sisters’ keepers?* URBAN INST.: URBAN WIRE (May 25, 2016), <http://www.urban.org/urban-wire/african-american-girls-and-school-prison-pipeline-who-are-our-sisters-keepers> [<https://perma.cc/Q462-8A8Q>].

there are very real effects that plague the over-policing of young Black girls in school.<sup>7</sup> Furthermore, just as there is not any attention brought to the difficulties that Black girls face within the school-to-prison pipeline, the same types of programs that are provided to Black boys are not provided to Black girls.<sup>8</sup> Throughout the years, many different legislative initiatives have been implemented in order to decrease the gap in education levels between Black students and White students. Signed in 2015 by President Obama, the Every Student Succeeds Act (ESSA) is the most recent reauthorization.<sup>9</sup> ESSA has much more potential than its predecessors to curb the problems of the academic gap and push-out of Black girls, however, this potential remains unseen as the Trump administration has paused the full implementation of the ESSA.<sup>10</sup>

This Note advocates for the implementation of programs that decrease the school-to-prison pipeline for Black girls by looking at the legislative history of the Elementary and Secondary Education Act (ESEA) and by tracking the original implementation of the law to its current iteration, the ESSA. This Note will also address the harsher punishments and more severe disciplinary actions that Black girls receive that further perpetuate the school-to-prison pipeline. Finally, this Note also looks at whether or not ESSA will benefit Black girls, how the bill can go further in providing opportunities for Black girls, how different states and districts have educated administrators and teachers in order to protect Black girls from the school-to-prison pipeline, and how the new administration plans to regulate ESSA's initiatives.

## I. BRIEF HISTORY

Despite *Brown v. Board of Education* being noted as a landmark case for desegregation of public schools, it was largely a failure.<sup>11</sup> In finding school discrimination unconstitutional, the Court sought to end school segregation and to ensure that both Black and White children had equal opportunities for education.<sup>12</sup> However, a large

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7. Anderson, *supra* note 4.

8. Goff, *supra* note 6.

9. *Every Student Succeeds Act (ESSA)*, U.S. DEP'T OF EDUC., <https://www.ed.gov/essa?src=rn> [<https://perma.cc/GA4W-Z6QH>].

10. This is due to the factors that ESSA requires states to look at and discussed *infra*. See *School Discipline*, NAT'L EDUC. ASS'N, <http://myschoolmyvoice.nea.org/indicators/school-discipline> [<https://perma.cc/5VCG-TCPM>].

11. Sarah Garland, *Was 'Brown v. Board' a Failure?*, ATLANTIC (Dec. 5, 2012), <https://www.theatlantic.com/national/archive/2012/12/was-brown-v-board-a-failure/265939> [<https://perma.cc/F8Z6-P5HP>].

12. *Id.*

disparity in Black children's educational gains in comparison to White children's still exists, even after the mandate of the decision.<sup>13</sup> As a result of this disparity, the Elementary and Secondary Education Act was born.<sup>14</sup> President Johnson passed this Act as a part of his "War on Poverty campaign."<sup>15</sup> The Act "provid[ed] federal funds to school districts" that served students in impoverished neighborhoods.<sup>16</sup> Reauthorization has occurred eight times since ESEA's initial authorization in 1965.<sup>17</sup> One of the most famous reauthorizations transpired under President George W. Bush's administration. Called No Child Left Behind (NCLB), the Bush administration sought to end poverty and create school equality.<sup>18</sup> Although NCLB was pushed as a program that would close the achievement gap by making teachers accountable for a student's performance in school, the Act actually had severely negative effects.<sup>19</sup> NCLB did not close the gaps between White and minority students, but instead, the gap between the students remained largely unchanged.<sup>20</sup> Although Black students' test scores increased under the law, White-Americans' test scores also improved.<sup>21</sup> Therefore, the gap has not closed; instead, it continues. Furthermore, because of the importance of testing placed on teachers and schools by NCLB, testing became the principal focus for schools.<sup>22</sup> This limited students of color because they were less prepared for college.<sup>23</sup> NCLB funding took money away from poorer school districts due to allocation formulas which left many minority students with a lesser quality of education.<sup>24</sup>

After NCLB ended, President Obama reauthorized ESEA, once again, through the Every Student Succeeds Act.<sup>25</sup> ESSA has many

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13. *See id.*

14. *The ABC's of ESEA, ESSA and No Child Left Behind*, EDUC. POST, <http://educationpost.org/the-abcs-esea-essa-and-no-child-left-behind> [<https://perma.cc/5N74-E7L3>].

15. *Id.*

16. *Id.*

17. *Id.*

18. Alyson Klein, *No Child Left Behind: An Overview*, EDUC. WEEK (Apr. 10, 2015), <https://www.edweek.org/ew/section/multimedia/no-child-left-behind-overview-definition-summary.html> [<https://perma.cc/2GAU-LFTU>].

19. *See* Sam Dillon, 'No Child' Law Is Not Closing a Racial Gap, N.Y. TIMES (Apr. 28, 2009), <http://www.nytimes.com/2009/04/29/education/29scores.html> [<https://perma.cc/F86W-BDFG>].

20. *Id.*

21. *Id.*

22. *See id.*

23. *See id.*

24. *No Child Left Behind funding formula hinders schools like Harrisburg*, PENNLIVE.COM (July 13, 2010), [http://www.pennlive.com/editorials/index.ssf/2010/07/post\\_66.html](http://www.pennlive.com/editorials/index.ssf/2010/07/post_66.html) [<https://perma.cc/L392-6SZH>].

25. *Every Student Succeeds Act (ESSA)*, *supra* note 9.

benefits that are supposed to serve impoverished neighborhoods.<sup>26</sup> These include, but are not limited to: affordable early childhood education opportunities, federal oversight in education, holding states accountable for equitable distribution of resources to schools, and providing support for educators.<sup>27</sup> Additionally, ESSA offers opportunities for schools to dismantle school push-out.<sup>28</sup> School push-out “refers broadly to disciplinary policies, practices, conditions, and mindsets that result in students being targeted and excluded from the general classroom.”<sup>29</sup> This often leads them toward the juvenile justice system.<sup>30</sup> ESSA offers discipline reform options that schools can implement in order to avoid explicit and implicit bias “in discretionary discipline decisions.”<sup>31</sup> Under this law, discipline data will be collected, and the school climate measures (“rates of suspensions, expulsions, referrals to law enforcement, and efforts to reduce the overuse of exclusionary discipline”) will also be calculated to help identify discipline disparities and develop measures to intervene.<sup>32</sup>

## II. UNDERSTANDING BLACK GIRLHOOD AND THE SCHOOL-TO-PRISON PIPELINE

According to “an analysis of 2006–07 data on the suspension of middle school students . . . African American girls in urban middle schools had the fastest growing rates of suspension of any group of girls or boys.”<sup>33</sup> “Ohio [is] one of the few states where school discipline data are disaggregated and cross-tabulated by race, gender, type of disciplinary sanction, and type of offense . . .”<sup>34</sup> Data taken from the state of Ohio from the 2012–13 school year shows that Black girls were disproportionately disciplined for subjective or vague offenses such as disobedience and disruptive behavior.<sup>35</sup> Black girls

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26. Catherine E. Brown, *The Promise of Fairer School Spending*, U.S. NEWS (Dec. 10, 2015), <https://www.usnews.com/opinion/knowledge-bank/2015/12/10/the-every-student-succeeds-act-promotes-fairer-school-spending> [<https://perma.cc/S66N-XU8C>].

27. See *Every Student Succeeds Act (ESSA)*, *supra* note 9.

28. Janel George, *ESSA Offers Opportunity to Combat School Pushout*, EDUC. WEEK: OPEducation (Jan. 8, 2016), [http://blogs.edweek.org/edweek/op\\_education/2016/01/essa\\_opportunity\\_school\\_pushout.html](http://blogs.edweek.org/edweek/op_education/2016/01/essa_opportunity_school_pushout.html) [<https://perma.cc/2XRE-ECX8>].

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. NAACP LEGAL DEF. & EDUC. FUND & NAT'L WOMEN'S LAW CTR., UNLOCKING OPPORTUNITY FOR AFRICAN AMERICAN GIRLS 15 (2014), [https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/unlocking\\_opportunity\\_for\\_african\\_american\\_girls\\_report.pdf](https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/unlocking_opportunity_for_african_american_girls_report.pdf) [<https://perma.cc/ER5S-V6MX>] [hereinafter UNLOCKING OPPORTUNITY].

34. *Id.*

35. *Id.*

receive discipline for fighting or violence and truancy; however, the “disobedience and disruptive behavior” category was the category in which Black girls overall received the most discipline.<sup>36</sup> Additionally, Black girls make up a significantly small portion of the total female student population in Ohio, but they were more likely than other young girls to be disciplined for the violations mentioned above.<sup>37</sup> “Between 1996 and 2011, the number of juvenile delinquency cases dropped”; however, during this same period Black girls’ “share of [girls’ juvenile] cases increased from 28 percent to 33 percent.”<sup>38</sup> “[W]hite girls’ share of [girls’ juvenile] cases declined from 68 percent to 64 percent.”<sup>39</sup> According to a recent study, Black girls are not being incarcerated or detained at high rates because of increased violence, but because of the criminalization of minor offenses that were largely ignored in the past.<sup>40</sup> “Experts agree that . . . [g]irls still commit far fewer violent crimes than boys.”<sup>41</sup> Girls are especially “more likely than boys to be detained for non-serious offenses such as truancy, running away and underage drinking or technical probation violations, such as missing a meeting with probation officer or violating curfew.”<sup>42</sup> Finally, these “defiant” offenses are often cries for help from Black girls over their “unaddressed health, emotional, economic and educational needs.”<sup>43</sup> “Girls’ unique path through the school-to-prison pipeline typically begins with their experiences as victims of physical and sexual abuse.”<sup>44</sup> “When girls who are dealing with violence and trauma go to school, they inevitably bring their experiences and coping mechanisms with them.”<sup>45</sup> “Girls who are maltreated or exposed to violence are more likely to demonstrate ‘[a]ggression, increased sexualization, and other deviant social behaviors.’”<sup>46</sup> Additionally, girls who face these issues at home “are

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36. *Id.*

37. *Id.* at 15–16.

38. *Id.* at 16.

39. UNLOCKING OPPORTUNITY, *supra* note 33, at 16.

40. *Id.* (citing Eric S. Hall & Zorka Karanxha, *School Today, Jail Tomorrow: The Impact of Zero Tolerance on the Over-Representation of Minority Youth in the Juvenile System*, 4 POWERPLAY: J. EDUC. JUST. 3–4 (2012)).

41. Bernardine Watson, *Black Girls Need Empowering, Too*, ROOT (Aug. 6, 2013, 5:22 PM), <https://www.theroot.com/black-girls-need-empowering-too-1790897598> [<https://perma.cc/FBF4-5NUB>].

42. *Id.*

43. UNLOCKING OPPORTUNITY, *supra* note 33, at 16.

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

45. *Id.*

46. *Id.* (quoting Frank W. Putnam, *The Impact of Trauma on Child Development*, 57 JUV. & FAM. CT. J. 1 (2006)).

more likely to have attendance issues.”<sup>47</sup> Furthermore, poverty is another issue that contributes to the discipline disparities with Black girls.<sup>48</sup>

The story of middle-schooler Mikia Hutchings is a simple yet startling illustration of how the school-to-prison pipeline affects Black girls.<sup>49</sup> Mikia is described as a student who is “very focused” and “someone who follows the rules and stays on task.”<sup>50</sup> This is why her suspension, disciplinary hearing, and charges from juvenile court came as a complete shock to her family.<sup>51</sup> This punishment came after Mikia and a friend got in trouble for writing the word “Hi” on the bathroom stall at school.<sup>52</sup> While Mikia’s White friend was let go after her parents paid a \$100 fine, Mikia met with a lawyer discussing her “right to remain silent.”<sup>53</sup> As a result of the allegations of “criminal trespassing” and in order to have the charges dismissed, Mikia had to admit to the allegations, spend the summer on probation and with a curfew, and complete sixteen hours of community service.<sup>54</sup> Stories like Mikia’s show how race and poverty play significant roles in punishment proceedings. When court proceedings take the place of school discipline, this perpetuates the school-to-prison pipeline. If a student continues to return to the court for misbehavior, the court may think that it is necessary to take a step further than probation and may assign jail time. This is an example of how discretionary punishments such as this one can disenfranchise Black students.

Black students are over-policed in schools. In February 2015, a video was released from a Baltimore middle school showing a young girl being “summoned down a flight of stairs by a school police officer.”<sup>55</sup> “The officer pins her against a wall” and when other girls try to intervene the officer hits one of the girls with a baton, “bloodying that girl’s head” and causing her to need stitches.<sup>56</sup> After, the girls “were rushed to the hospital for treatment and then taken by police

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47. *Id.* Truancy, mentioned above, is one of the main issues that Black girls are punished for and, as a result, pushed out of school into the prison pipeline. See UNLOCKING OPPORTUNITY, *supra* note 33, at 15–16.

48. See Burt, *supra* note 44, at 97, 100.

49. See Vega, *supra* note 1.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. Dani McClain, *This Is How Black Girls End Up in the School-To-Prison Pipeline*, NATION (Feb. 5, 2015), <https://www.thenation.com/article/too-many-black-girls-school-prison-pipeline> [<https://perma.cc/2XGY-BGN7>].

56. *Id.*

to Baltimore's juvenile justice center, where they were charged with assaulting the officer."<sup>57</sup> Although the charges were dropped after a prosecutor viewed the video, the school still suspended the girls.<sup>58</sup>

Another example comes from Denver, Colorado, where an officer named Ben Fields assaulted a young Black girl by flipping her over a desk and dragging her across the floor.<sup>59</sup> The city of Denver has a population of 663,862; fourteen percent of the student population is Black.<sup>60</sup> Although this particular incident was heavily publicized, Black girls are often invisible in school discipline literature.<sup>61</sup>

"[T]here is a need for research to better understand Black girls' experiences with discipline in urban schools, particularly studies that demonstrate how national trends occur in local contexts and potential reasons for these patterns."<sup>62</sup> "In the last decade, Black girls have had the fastest growing suspension rates of all students" (greater than sixty-seven percent of boys).<sup>63</sup> "[R]acial disparities in exclusionary school discipline outcomes appear to be driven by minor infractions and subjective categories of student misconduct, rather than more objective and serious behaviors . . ."<sup>64</sup> As mentioned above, "[t]he increased likelihood of suspension among Black girls" leads to Black girls being incarcerated; it is further noted that "the 'single largest predictor' of later arrest among adolescent females is having been suspended, expelled or held back during the middle school years."<sup>65</sup> Illustrating further the effect that the school-to-prison pipeline has on Black girls are statistics showing how Black girls

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57. *Id.*

58. *Id.*

59. SUBINI ANCY ANNAMMA ET AL., URBAN EDUC., BLACK GIRLS AND SCHOOL DISCIPLINE: THE COMPLEXITIES OF BEING OVERREPRESENTED AND UNDERSTUDIED 2 (2016), <http://journals.sagepub.com/doi/pdf/10.1177/0042085916646610> [<http://perma.cc/5DE9-G94P>].

60. *Id.*

61. *Id.* at 3; see also Richard Fausset & Ashley Southall, *Video Shows Officer Flipping Student in South Carolina, Prompting Inquiry*, N.Y. TIMES (Oct. 26, 2015), <https://www.nytimes.com/2015/10/27/us/officers-classroom-fight-with-student-is-caught-on-video.html> [<https://perma.cc/4KSP-WXMY>]; Jenny Jarvie, *Girl thrown from desk didn't obey because the punishment was unfair, attorney says*, L.A. TIMES (Oct. 29, 2015), <http://www.latimes.com/nation/la-na-girl-thrown-punishment-unfair-20151029-story.html> [<https://perma.cc/QK7P-8DSE>]. Further detailing the situation, the officer asked the student to put her cell phone away and asked her to leave the classroom, and when she did not respond quick enough, he assaulted her. The student received several injuries and had to get a cast on her right arm. She also had a swollen neck and back. The officer was fired after the incident for using excessive force. However, the student still faced a misdemeanor charge for "disturbing schools" which carries a 1,000 dollar fine and up to 90 days in prison. This is another example of how non-violent offenses such as "disturbing school"—an "objective" offense—puts Black girls in prison.

62. ANNAMMA ET AL., *supra* note 59, at 4.

63. *Id.*

64. *Id.*

65. *Id.*

constitute thirty-one percent of the girls “referred to law enforcement by school officials,” as well as forty-three percent of girls “arrested on school grounds,” despite constituting only seventeen percent of the student population.<sup>66</sup> Investigations into why Black girls are more likely to be recommended to law enforcement, arrested on school grounds, or more harshly disciplined than other girls are few.<sup>67</sup> If there was more focus on Black girls and discipline, education could focus more on intersectionality of race and gender and have more gendered reform in targeting racial discipline gaps.<sup>68</sup>

Even more so than being over-policed, “black girls [are] suspended *six times* more than white girls.”<sup>69</sup> Zero tolerance discipline policies are one of the main causes of school push-out.<sup>70</sup> “A ‘zero tolerance policy’ is a school or district policy that mandates predetermined consequences or punishments for specific offenses that are intended to be applied regardless of the seriousness of the behavior, mitigating circumstances, or situational context.”<sup>71</sup> “Zero tolerance policies” began in the mid-1990s.<sup>72</sup> During this time, “Congress and many State legislatures passed laws that allow, encourage and in some cases mandate that schools and school districts implement harsh disciplinary policies—such as expulsion and out-of-school suspension . . . .”<sup>73</sup> Many states and school districts include non-violent acts, such as insubordination, in their zero tolerance policies.<sup>74</sup> Research shows that zero tolerance policies are not effective because they result in many students being labeled delinquents or criminals and then losing educational opportunities.<sup>75</sup> Even more startling is that the conversation on the school-to-prison pipeline often centers around Black males while disciplinary cases in large cities, like New York and Boston, involve Black girls at a higher level than Black boys.<sup>76</sup>

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66. *Id.*

67. *Id.* at 5.

68. ANNAMMA ET AL., *supra* note 59, at 5.

69. *Black Girls Matter: Pushed Out, Overpoliced and Underprotected*, AFRICAN AM. POLICY FORUM (Feb. 4, 2015), <http://www.aapf.org/recent/2014/12/coming-soon-blackgirls-matter-pushed-out-overpoliced-and-underprotected> [<https://perma.cc/9B7D-DALM>] [hereinafter *Black Girls Matter*].

70. See *Position Statement 46: Zero Tolerance Policies in Schools*, MENTAL HEALTH AM., <https://www.justice4all.org/wp-content/uploads/2016/04/Position-Statement-46-Zero-Tolerance-Policies-in-Schools.pdf> [<https://perma.cc/KF4E-XVJ9>].

71. *Id.*

72. *Id.*

73. *Id.* (citation omitted).

74. *Id.*

75. *Id.*

76. *Black Girls Matter*, *supra* note 69. “In New York, the number of disciplinary cases involving Black girls was more than *10 times* more than those involving their white counterparts and the number of cases involving black boys was six times the number of

Outside of the harsh discipline from zero tolerance schools and increased levels of law enforcement involvement in school disciplinary actions, Black girls have other barriers. Due to stereotypes, Black girls' achievements are overlooked or undervalued by teachers.<sup>77</sup> Moreover, at zero tolerance schools, there are no restorative responses to misbehavior, only swift, harsh, punitive responses that lead to suspensions.<sup>78</sup> Likewise, because of the negative stigma on Black girls, teachers and administrators are less likely to intervene in sexual harassment and bullying of Black girls.<sup>79</sup> Zero tolerance schools exacerbate the sense of vulnerability that Black girls experience because they fear they will be seen as aggressive for defending themselves against bullies' behaviors.<sup>80</sup> Furthermore, school-age Black girls experience high incidences of interpersonal violence, making it more difficult for them to stay in school without adequate counseling or support.<sup>81</sup> "Black . . . girls are often [also] burdened with familial obligations that undermine their capacity to achieve their academic goals."<sup>82</sup> Family caretaking responsibilities fall more heavily on girls, and caretaking roles become greater with "[s]hrinking budgets to support social welfare needs, along with the prevalence of addiction [and] incarceration . . . ."<sup>83</sup> Finally, because the effects of the school-to-prison pipeline are largely focused around Black boys, Black girls' barriers and needs are not addressed.<sup>84</sup> Policy-makers only look at racial opportunity gaps rather than gender, which does not allow for policies that directly affect the gender disparities.<sup>85</sup>

### III. THE NECESSITY OF PROGRAMS FOR BLACK GIRLS

Due to the many impediments to Black girls' educations (as mentioned *supra*), Black girls are often behind other girls in almost

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those involving white boys . . . ." *Id.* The numbers are similar in Boston with Black girls being involved 11 times and Black boys being involved eight times. *Id.*

77. KIMBERLÉ WILLIAMS CRENSHAW ET AL., AFRICAN AM. POLICY FORUM, BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED 10, 27, 29, 32 (2015), [https://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/54dcc1ece4b001c03e323448/1423753708557/AAPF\\_BlackGirlsMatterReport.pdf](https://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/54dcc1ece4b001c03e323448/1423753708557/AAPF_BlackGirlsMatterReport.pdf) [<https://perma.cc/2LP7-HRU7>].

78. *See id.* at 4–5, 10.

79. *See id.* at 34–35.

80. *Id.* at 10.

81. *Id.* at 37. One student tells the story of an attempt to talk to her guidance counselor about what was going on. The student recalls that the counselor would not listen to her, and without anyone to talk to, her emotions boiled up until she hit a teacher and was expelled from the school.

82. *Id.* at 38.

83. CRENSHAW ET AL., *supra* note 77, at 38.

84. *Id.* at 5.

85. *Id.* at 9.

all indicators of academic success.<sup>86</sup> This includes high school graduation rates, test scores, grades, grade promotion, school retention, AP courses, and college enrollment.<sup>87</sup> Black girls “are less likely than other girls to complete high school on time (within 4 years).”<sup>88</sup> In 2010, thirty-four percent of Black girls did not graduate on time compared to twenty-two percent of all other female students.<sup>89</sup> Mentorship for young girls, especially young Black girls is extremely important. An article in the *Huffington Post* details young Black girls’ experiences.<sup>90</sup> Step Up is a program in which young women are given mentors who encourage them and empower their confidence by helping them set goals and work toward achieving those goals.<sup>91</sup> The 2010 scholarship recipient for Step Up Inspiration Awards was Kara, a Black Los Angeles high school student.<sup>92</sup> In Los Angeles, one in three high school students drop out; however, Kara will defeat this statistic due to the mentoring she received from Step Up.<sup>93</sup> In fact Kara said, “I have escaped the dark place that they call the jungle, survived abuse, and am optimistic about all of the brighter birthdays I will celebrate in the future.”<sup>94</sup> This illustrates the importance of mentorship programs for Black girls.

There are more programs that focus on Black boys who face school push-out than programs for Black girls, and, in contrast, similar national mentorship programs that focus solely on Black girls do not exist to the same extent.<sup>95</sup> An example of this is President Obama’s My Brother’s Keeper program that provides mentorship for boys of color.<sup>96</sup> This program joins with cities, businesses, and foundations to connect young Black boys and men with mentoring, support networks, and the skills they need to find a good job or go to college.<sup>97</sup> The lack of counseling and other conflict resolution

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86. UNLOCKING OPPORTUNITY, *supra* note 33, at 27.

87. *Id.*

88. *Id.*

89. *Id.*

90. Tabby Biddle, *Why Mentoring Young Women and Girls is Important*, HUFFINGTON POST (May 24, 2010), [https://www.huffingtonpost.com/tabby-biddle/why-mentoring-young-women\\_b\\_584478.html](https://www.huffingtonpost.com/tabby-biddle/why-mentoring-young-women_b_584478.html) [<https://perma.cc/J7ZX-P2N9>].

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. See CRENSHAW ET AL., *supra* note 77, at 5, 8, 41–42.

96. *My Brother’s Keeper*, WHITE HOUSE, <https://obamawhitehouse.archives.gov/my-brothers-keeper> [<https://perma.cc/NL6Y-N6RF>].

97. *Become a Mentor*, NAT’L & CMTY. SERV., <http://www.nationalservice.gov/mentor> [<https://perma.cc/PGL5-UVT5>]; MY BROTHER’S KEEPER TASK FORCE: ONE-YEAR PROGRESS REPORT TO THE PRESIDENT 3 (2015), [https://obamawhitehouse.archives.gov/sites/default/files/docs/mbk\\_one\\_year\\_report\\_2.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/mbk_one_year_report_2.pdf) [<https://perma.cc/RL8C-6GQB>] [hereinafter MY BROTHER’S KEEPER TASK FORCE].

strategies often pushes many Black girls towards the juvenile system.<sup>98</sup> Although the White House does not have a similar program that focuses on Black girls, there are some organizations that seek to improve the future of Black girls.<sup>99</sup> An example of this program is called Black Girls Rock.<sup>100</sup> This program focuses on improving how Black women are portrayed in the media and has youth enrichment programs that “help to build self-esteem, and self-worth in women of color.”<sup>101</sup> Another example of an organization that seeks to improve Black girls’ self-worth and self-esteem is an organization called At the Well Conferences.<sup>102</sup> However, these two programs do not address the heart of the issue—the mentoring of Black girls and providing further success in classrooms—as the President’s My Brother’s Keeper does.<sup>103</sup> There is one well-known organization that goes to the crux of the issue: Black Girls Code.<sup>104</sup> There is unequal access to learning opportunities in science, technology, engineering, and math (STEM) for Black girls.<sup>105</sup> Black Girls Code strikes the heart of this issue by providing after school programs that teach young Black girls how to become computer programmers.<sup>106</sup> However, Black Girls Code does not have the national expansion that My Brother’s Keeper does, nor does it have the expansive list of supporters that My Brother’s Keeper has, limiting the effects it can have on the United States and Black girls within the United States.<sup>107</sup>

Schools should implement programs that identify some of the barriers against Black girls and address those through counseling rather than zero tolerance policies.<sup>108</sup> Additionally, there are examples of legislation (outside of ESSA) that show a decline in the funneling of Black girls to the prison system.<sup>109</sup> Texas, Minneapolis,

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98. CRENSHAW ET AL., *supra* note 77, at 42.

99. Nancy Laws, *4 Non-Profits That Empower Black Girls*, HUFFINGTON POST (Mar. 9, 2015), [https://www.huffingtonpost.com/nancy-laws/4-nonprofits-that-empower\\_b\\_6823204.html](https://www.huffingtonpost.com/nancy-laws/4-nonprofits-that-empower_b_6823204.html) [<https://perma.cc/LA9S-QUUM>].

100. *Id.*

101. *Id.*

102. *Id.*

103. *See id.*

104. *Id.*

105. *See* Laws, *supra* note 99.

106. *Id.*

107. *Compare VOLUNTEER WITH US!*, BLACK GIRLS CODE, <http://www.blackgirlscode.com/volunteer-signup.html> [<https://perma.cc/N4VH-87F3>] (showing volunteer locations), *with* MY BROTHER’S KEEPER TASK FORCE, *supra* note 97, at 3, 53–55 (showing national reach).

108. CRENSHAW ET AL., *supra* note 77, at 42.

109. *See Race & Justice News: Girls in the School-to-Prison Pipeline*, SENTENCING PROJECT (Mar. 16, 2014), <http://www.sentencingproject.org/news/race-justice-news-girls-in-the-school-to-prison-pipeline> [<https://perma.cc/7NAP-LH5T>] [hereinafter *Race & Justice News*].

New York, and California provide some examples of legislation.<sup>110</sup> Texas legislation that “restrict[s] police officers from issuing citations for most Class C misdemeanors that occur on school grounds, such as for fighting and disrupting class . . . kept nearly 90,000 juvenile cases out of adult court and [is] encouraging schools to handle most disciplinary issues internally.”<sup>111</sup> Minneapolis adopted standards that provide for alternatives to suspension and end suspensions altogether for young students with nonviolent infractions.<sup>112</sup> This led to “a nearly 50% drop in the city’s school suspensions and referrals . . . .”<sup>113</sup> In New York, principals must get approval from the education department before issuing suspensions for “defying authority.”<sup>114</sup> This is similar to California where teachers have only “suspended 200,000 students for ‘willful defiance’” compared to a previous year’s 350,000 students.<sup>115</sup>

#### IV. EVERY STUDENT SUCCEEDS ACT

The Every Student Succeeds Act was signed into law on December 10, 2015.<sup>116</sup> It rolls back many of the education policies instilled in No Child Left Behind.<sup>117</sup> Scheduled to take full effect during the 2017–18 school year, the Act proposes to help students avoid the school-to-prison pipeline.<sup>118</sup> This part of the Note details the content of ESSA. The executive summary of ESSA reads: “A core element of strengthening the middle class is building stronger schools.”<sup>119</sup> States would have to start submitting accountability plans to the Education Department.<sup>120</sup> The names of peer reviews for the accountability plans would be made public, and “[a] state can get a hearing if the department turns down its plan.”<sup>121</sup> Through ESSA,

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110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Race & Justice News*, *supra* note 109.

116. Alyson Klein, *The Every Student Succeeds Act: An ESSA Overview*, EDUC. WEEK (Mar. 31, 2016), <https://www.edweek.org/ew/issues/every-student-succeeds-act> [<https://perma.cc/6ZZT-AP3M>].

117. *Id.*

118. *See id.*

119. EXEC. OFFICE OF THE PRESIDENT, EVERY STUDENT SUCCEEDS ACT: A PROGRESS REPORT ON ELEMENTARY AND SECONDARY EDUCATION 1 (2015), [https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/ESSA\\_Progress\\_Report.pdf](https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/ESSA_Progress_Report.pdf) [<https://perma.cc/8CPS-LQ2Z>].

120. *The Every Student Succeeds Act: Explained*, EDUC. WEEK (Jan. 4, 2016), <https://www.edweek.org/ew/articles/2015/12/07/the-every-student-succeeds-act-explained.html> [<https://perma.cc/773G-B6S6>].

121. *Id.*

states can pick goals for their schools instead of the federal government deciding.<sup>122</sup> States would be able to pick both long-term and interim goals; however, “[t]hese goals must address: proficiency on tests, English-language proficiency, and graduation rates.”<sup>123</sup> Furthermore, “[g]oals have to set an expectation that all groups that are furthest behind close gaps in achievement and graduation rates.”<sup>124</sup> Under ESSA, schools are supposed to “identify and intervene in the bottom 5 percent of performers,” and they will also “have to identify and intervene in high schools where the graduation rate is 67 percent or less.”<sup>125</sup> Finally, “[s]tates, with districts, have to identify [and address] schools where subgroups of students are struggling.”<sup>126</sup> Interventions are supposed to help schools in the bottom five percent by “work[ing] with teachers and school staff to come up with an evidence-based plan . . . [while] [s]tates will monitor the turnaround effort.”<sup>127</sup> For schools where subgroups are struggling, the “[s]chools have to come up with an evidence-based plan to help the particular group of students who are falling behind,” and the districts are supposed to monitor the plans and step in if the school continues to fall short.<sup>128</sup> There is also something called a “comprehensive improvement plan” whereby states and districts have to take more aggressive action “in schools where subgroups are chronically underperforming, despite local interventions.”<sup>129</sup> The School Improvement Grant Program provides resources for these interventions.<sup>130</sup> The NAACP Legal Defense and Education Fund “vigorously promoted educational equity” through ESSA.<sup>131</sup> However, the NAACP has several concerns about the provision of ESSA because of the diminishing federal oversight and accountability.<sup>132</sup> ESSA diminishes this

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122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *The Every Student Succeeds Act: Explained*, *supra* note 120.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* “States could set aside up to 7 percent of all their Title I funds for school improvement, up from 4 percent in current law.” *Id.* However, this money can be used for whatever the states desire, meaning states can distribute the money to every school or even by formula. See *Fact Sheet: ESSA Title IV Part A*, INT’L SOC’Y FOR TECH. IN EDUC., [https://www.iste.org/docs/advocacy-resources/title-iv-fact-sheet-for-essa\\_final.pdf](https://www.iste.org/docs/advocacy-resources/title-iv-fact-sheet-for-essa_final.pdf) [<https://perma.cc/EYJ7-5JXU>]. This illustrates that much of ESSA rests in the states decisions. This will be addressed *infra*.

131. *LDF Statement on the Every Student Succeeds Act*, NAACP LEGAL DEF. FUND (Dec. 2, 2015), <http://www.naacpldf.org/press-release/ldf-statement-every-student-succeeds-act> [<https://perma.cc/4PP7-9RWR>].

132. *Id.*

accountability.<sup>133</sup> “This federal role is essential. When responsibility for education is left to the sole discretion of states, it is often the most vulnerable students, especially students of color . . . who are deprived of quality educational opportunities.”<sup>134</sup> Federal government oversight has been involved in education laws since the original education act, the Elementary and Secondary Education Act, was passed in 1965.<sup>135</sup> Furthermore, there are many states “that have been resistant to dealing with issues of race and equity,” which is why the NAACP is still facing ongoing school discrimination cases.<sup>136</sup> Since the law rests solely on the implementation by the states, it is critical that there is assurance that states and localities will “recognize and address the needs of the most vulnerable students.”<sup>137</sup> Although the NAACP is weary of the impacts of ESSA, one writer, Janel George, writing for *Education Week* describes ESSA as offering an opportunity to combat school pushout.<sup>138</sup> George writes, “ESSA includes provisions that could help dismantle one of the most discriminatory and insidious, yet often overlooked, phenomena in our nation’s public education system: school pushout.”<sup>139</sup> In order to close achievement gaps and improve school performance, discriminatory practices that fuel the school-to-prison pipeline must be eliminated, and ESSA provides many discipline reform options to achieve that.<sup>140</sup> However, ESSA also offers ample freedom to take steps backward and break down public education.<sup>141</sup> States and local districts receive major policy making authority on evaluating teachers and other standards.<sup>142</sup>

Many others also cite problems with ESSA, stating that the Act still leaves most vulnerable kids behind.<sup>143</sup> Although many believe that ESSA is better than its predecessor, NCLB, it still falls short of expectations.<sup>144</sup> ESSA “provides more flexibility on testing [and

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133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *LDF Statement on the Every Student Succeeds Act*, *supra* note 131.

138. George, *supra* note 28.

139. *Id.* In this Note, “school push-out” is the “school-to-prison pipeline.”

140. *Id.*

141. *See id.*

142. Valerie Strauss, *The successor to No Child Left Behind has, it turns out, big problems of its own*, WASH. POST (Dec. 7, 2015), [https://www.washingtonpost.com/news/answer-sheet/wp/2015/12/07/the-successor-to-no-child-left-behind-has-it-turns-out-big-problems-of-its-own/?utm\\_term=.d5375d1141aa](https://www.washingtonpost.com/news/answer-sheet/wp/2015/12/07/the-successor-to-no-child-left-behind-has-it-turns-out-big-problems-of-its-own/?utm_term=.d5375d1141aa) [https://perma.cc/84K3-57AM].

143. *Why Every Student Succeeds Act Still Leaves Most Vulnerable Kids Behind*, U.S. NEWS (Dec. 14, 2015, 2:32 PM), <https://www.usnews.com/news/articles/2015-12-14/why-every-student-succeeds-act-still-leaves-most-vulnerable-kids-behind> [https://perma.cc/4YFH-95YS].

144. *Id.*

provides] preschool development grants for low-income [students].”<sup>145</sup> However, ESSA does not combat the deep rooted problems with poverty and education.<sup>146</sup> Stanford’s Sean Reardon has examined how “family income closely correlates to academic achievement.”<sup>147</sup> The accountability required by ESSA has meant more testing and more school closures because in “monitor[ing] academic performance of vulnerable groups, . . . states will still have to test 95 percent of children, and intervene in the lowest performing schools.”<sup>148</sup> ESSA has been characterized as “a modest step forward”; however, it puts an end to NCLB that, ironically, left many children behind.<sup>149</sup> True access to free and high quality education is not universal, as there are many different populations that have been discriminated against. When it comes to free public education, minorities, the poor, students with mental or physical disabilities, and students with a lower English language proficiency have all suffered from not receiving a quality “free” public education.<sup>150</sup>

Many feel as if ESSA does not do enough to focus on equity in education by providing that these marginalized groups will receive further support in the education setting.<sup>151</sup> “[U]nder the ESSA, states are explicitly expected to intervene with schools struggling to improve outcomes for kids from low-income households as well as for students of color . . . .”<sup>152</sup> ESSA does call for the Department of Education to ensure that states are intervening with struggling schools; however, these schools are not facing a loss of funding and being forced to close down.<sup>153</sup>

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145. *Id.* Preschool is particularly important because scientific evidence shows that preschool helps develop a child’s socio-emotional health. HIROKAZU YOSHIKAWA ET AL., SOC’Y FOR RESEARCH IN CHILD DEV., INVESTING IN OUR FUTURE: THE EVIDENCE BASE ON PRESCHOOL EDUCATION 1, 4–5 (2013), <https://www.fcd-us.org/assets/2016/04/Evidence-Base-on-Preschool-Education-FINAL.pdf> [<https://perma.cc/L48K-JZNJ>]. Having supportive interactions with teachers provides a substantial boost to a child’s learning. *Id.* at 1.

146. *Why Every Student Succeeds Act Still Leaves Most Vulnerable Kids Behind*, *supra* note 143.

147. *Id.*

148. *Id.*

149. Jeff Bryant, *Go Ahead, Pass Every Student Succeeds Act, But Don’t Celebrate It*, EDUC. OPPORTUNITY NETWORK (Dec. 3, 2015, 3:33 PM), <http://educationopportunitynetwork.org/go-ahead-pass-every-student-succeeds-act-but-don’t-celebrate-it> [<https://perma.cc/TK5J-RT7H>].

150. *Id.*

151. *With the Every Student Succeeds Act, Have Policymakers and Educators Learned From the Past?*, U.S. NEWS (June 10, 2016), <https://www.usnews.com/news/articles/2016-06-10/with-the-every-student-succeeds-act-have-policymakers-and-educators-learned-from-the-past> [<https://perma.cc/NVE9-3AHF>].

152. *Id.*

153. *Id.*

## V. ENDING SCHOOL PUSH-OUT

ESSA clearly has its good parts by reinvigorating the original ESEA and by gutting NCLB. However, it is not without its own many flaws. There are doubts in the effectiveness of this law from states, school administrators, and education and civil rights activists.<sup>154</sup> Although it has its many flaws, the issue of school push-out and the school-to-prison pipeline for Black girls can be remedied in a variety of ways, *including* the ESSA.<sup>155</sup> There are many states that have begun their own processes in trying to eliminate school push-out and ESSA supports this by giving states more control over solving low performance issues with the states' minority and low-income areas.<sup>156</sup> For example, Arkansas passed a law on school reform in 2013.<sup>157</sup> "The law requires the Arkansas Department of Education to report discipline data for public school districts to the State Board of Education every year."<sup>158</sup> "The goal of the reporting requirements is to increase accountability and to track districts' progress."<sup>159</sup> Furthermore, "the Department of Education will survey districts to determine successful intervention strategies and report this, along with information about the resources required to implement these intervention strategies."<sup>160</sup> Arkansas is taking a step toward the right direction by first looking at the problem and then using the problem to find tailor-made solutions to these problems.

Another state that has implemented laws to reduce student push-out is Colorado. In 2012, the state "passed a bill to replace zero tolerance policies with a 'common sense' and 'proportionate' discipline approach."<sup>161</sup> This approach should reduce suspensions, expulsions, and law enforcement referrals.<sup>162</sup> "[D]istricts must implement 'prevention strategies, restorative justice, peer mediation, [and] counseling.'"<sup>163</sup>

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154. *Id.*

155. Note that under Trump's administration, with new appointees and initiatives in these federal agencies, the policies listed in this section may no longer be available.

156. DANYA CONTRACTOR & CHERYL STAATS, KIRWAN INST., INTERVENTIONS TO ADDRESS RACIALIZED DISCIPLINE DISPARITIES AND SCHOOL "PUSH OUT" 2 (2014), <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/05/ki-interventions.pdf> [<https://perma.cc/LN5Q-JCL3>] (state actions); *With the Every Student Succeeds Act, Have Policymakers and Educators Learned From the Past?*, *supra* note 151 (ESSA flexibility).

157. CONTRACTOR & STAATS, *supra* note 156, at 4.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 5.

163. CONTRACTOR & STAATS, *supra* note 156, at 5.

The bill also requires the reporting of school arrest data and court referrals and improves training for school resource officers.<sup>164</sup>

Maryland is another state that has passed new laws in an attempt to end school push-out. Maryland's State Board of Education voted to ban zero tolerance policies in 2012.<sup>165</sup> "The state policy now mandates that schools adopt rehabilitative practices for disruptive behavior, and that they use exclusionary practices like suspensions and expulsions only as a last resort."<sup>166</sup> As a result of these changes, the state saw a decreased number of students facing expulsion and suspension. However, many racial gaps were still present under the new mandate.<sup>167</sup> Due to these racial gaps, the state provided additional reform by adopting guidelines that recommended the adoption of alternatives to suspension and holding students accountable for their actions by keeping them in school.<sup>168</sup>

Finally, in Oregon, the legislature "passed a bill that eliminated mandatory expulsions and encouraged the use of Positive Behavioral Interventions and Supports [PBIS]."<sup>169</sup> "The new bill aim[ed] to reduce the number of students being pushed into the criminal justice system by overly harsh student discipline rules."<sup>170</sup> The bill "also hopes to decrease high dropout rates" by recommending "PBIS, restorative justice, or similar intervention strategies to reduce suspension rates and keep students in school."<sup>171</sup>

School district initiatives are more tailored to problem area schools rather than setting the standard for an entire state. For example, "Baltimore City Public School has a history of challenges"

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164. *Id.* Under Colorado's new bill, the state was able to decrease expulsion rates by 25 percent, suspension rates by ten percent, and law enforcement referrals by nine percent. *Id.* This difference was from the 2012–13 school year in comparison to the 2011–12 school year. *Id.* However, although the decrease in these numbers is a positive direction, the disparities between Whites and non-Whites receiving the discipline persisted. *Id.* Ways to combat this will be discussed further in this Note.

165. *Id.* at 5.

166. CONTRACTOR & STAATS, *supra* note 156, at 5.

167. *Id.* The expulsions and suspensions "decreased by approximately 8,000 exclusions, from 50,000 students in 2011–12, to 42,000 students in 2012–2013." *Id.*

168. *Id.* "Positive Behavioral Interventions and Supports (PBIS) constitute a non-traditional 'framework or approach for assisting school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavior outcomes for all students.'" *Id.* at 2. It is adopted by schools to maximize academic and social behavior outcomes for students. *Id.* The effectiveness of this and mandates/guidelines like this will be discussed *infra*.

169. CONTRACTOR & STAATS, *supra* note 156, at 6.

170. *Id.* Previously, the law mandated a one-year expulsion for any student who brought an item considered dangerous to school, whether or not that student intended any harm or not. *Id.*

171. *Id.*

including: high poverty, high crime rates, and a high dropout rate.<sup>172</sup> In 2007, the superintendent spearheaded the “revis[ion] [of] the student code of conduct with the intention of reducing the number of students removed from schools.”<sup>173</sup> “The new code of conduct dramatically reduced student pushout by disfavoring suspensions and expulsions while emphasizing prevention and intervention.”<sup>174</sup> As a result, “[i]n 2008, Baltimore City Public Schools administered 16,500 suspensions; by 2011–12, that number had fallen to 9,271.”<sup>175</sup> Graduation rates also increased as a result of the new code.<sup>176</sup> The superintendent also “made each [individual] school principal responsible for decreasing suspension rates at their respective schools.”<sup>177</sup>

Revisiting Colorado, and focusing now on one particular school district—the Denver Public School District—the effects of school district intervention can be seen.<sup>178</sup> There was a time when students would be “‘ticketed and . . . escorted away’ for talking back to teachers or speaking without permission”; however, after “Denver Public Schools abandoned the state’s zero tolerance discipline policies in 2008,” (prior to the 2012 changes mentioned above) the overall number of suspensions and law enforcement referrals decreased.<sup>179</sup> In 2013, due to ongoing racial disparities,<sup>180</sup> the Denver Public Schools and Police Department signed an Intergovernmental Agreement limiting the role between police and schools.<sup>181</sup> Furthermore, the “administrators and police officers in Denver are expected to attend training on implicit bias, adolescent development, and working with LGTBQ youth.”<sup>182</sup> Moreover, police officers underwent training that helped them differentiate between criminal matters and matters that should be left to the schools’ jurisdictions.<sup>183</sup> “Within schools, administrators implement restorative justice practices to address

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172. *Id.* Maryland is known for having an excellent public school system. In 2015, an article placed them third for the national education ranking. Liz Bowie, *Maryland slips from first to third in national education ranking*, BALT. SUN (Jan. 8, 2015), <http://www.baltimoresun.com/news/maryland/education/bs-md-maryland-number-three-20150108-story.html> [<https://perma.cc/SS6H-CMRU>].

173. CONTRACTOR & STAATS, *supra* note 156, at 6.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *See id.* at 8.

179. CONTRACTOR & STAATS, *supra* note 156, at 8.

180. *Id.* Further, “[d]uring the 2011–2012 academic school year, Latino students were suspended twice as often as White students, while Black students were suspended approximately five times as often as White students.” *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

less serious misbehavior,” rather than strict expulsions or suspensions under the zero tolerance policies.<sup>184</sup>

With many states making an effort to end school push-out, ESSA seems to be a promising bill that gives states more power in decision making for the betterment of its schools. However, many states are not listed in this Note.<sup>185</sup> Although there are some states making strides that are simply not included here as examples, there are many other states that are not making similar strides.<sup>186</sup>

### CONCLUSION

President Johnson’s Elementary and Secondary Education Act was created to help create more equality in funding in the education system.<sup>187</sup> It has been reauthorized eight times, each time with the same purpose in mind.<sup>188</sup> The most recent authorization under President Obama’s administration, the Every Student Succeeds Act, is another reauthorization of the original bill.<sup>189</sup>

Research indicated “that African American girls in urban middle schools had the fastest growing rates of suspension of any group of girls or boys.”<sup>190</sup> The criminalization of minor school offenses has caused more and more Black girls to become stuck in the school-to-prison pipeline.<sup>191</sup> Minor offenses such as writing the word “hi” on a bathroom stall can dictate the rest of a student’s life if not properly handled by the school.<sup>192</sup> As we see from the example *supra*, poverty and race play a major role in the decision making of school administration.<sup>193</sup> The middle schooler discussed in the prior sections, Mikia, was unable to pay the \$100 fine for writing on the bathroom stall and because of that she was charged with criminal trespassing and put on probation for an entire summer.<sup>194</sup> This is an extreme punishment for a middle school girl writing something in a bathroom stall.<sup>195</sup>

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184. CONTRACTOR & STAATS, *supra* note 156, at 8.

185. *Id.* at 6–12. From this article, California, Illinois, Mississippi, Pennsylvania, New York, and Florida are states that were not used as examples in this Note but were discussed in the article as states that were working on ending school push-out/the school-to-prison pipeline.

186. *See id.* at 2.

187. *The ABC’s of ESEA, ESSA and No Child Left Behind*, *supra* note 14.

188. *Id.*

189. Brown, *supra* note 26.

190. UNLOCKING OPPORTUNITY, *supra* note 33, at 15.

191. Vega, *supra* note 1.

192. *Id.*; *see also* Jarvie, *supra* note 61.

193. *See infra* Part II discussing how the school-to-prison pipeline affects Black girls.

194. Vega, *supra* note 1.

195. *Id.*

There was no detention, not even a long suspension, and instead, criminal charges were brought against her at her tender pre-teen age.<sup>196</sup>

Currently there is far too much discretion in schools and Black girls are over-policed because of this. Offenses like having a bad attitude or not listening enough to a teacher can get you flipped in front of your classmates.<sup>197</sup> Zero tolerance school policies leave students suspended and expelled.<sup>198</sup> Repeat offenses can lead to harsher punishments by the court.

ESSA takes some important stances in remedying this serious problem.<sup>199</sup> Under ESSA, schools would be required to draft accountability plans and identify and address where subgroups within their school districts are struggling.<sup>200</sup> Schools that are in the bottom five percent of their state would receive interventions by staff and teachers who would help the school find an evidence based plan that they would utilize to work toward improvement.<sup>201</sup> Districts can take a more aggressive approach with the schools that are chronically underperforming by creating a more aggressive plan.<sup>202</sup>

Although ESSA takes many strides to end school push-out with district accountability toward states, there is not much by way of state accountability toward the federal government.<sup>203</sup> As this was a bipartisan bill, much of the oversight is state into district and not as much federal into state.<sup>204</sup> This becomes problematic when the entire purpose of the original bill, ESEA, was to create equality in schools by increasing federal oversight.<sup>205</sup> ESSA does not have as much vigor as would be expected for a bill that would end the school-to-prison pipeline for Black girls throughout the United States. Although it was necessary to replace NCLB, and even though this replacement is a huge and important improvement, it does not do enough to protect young Black girls like Mikia. Many states have taken notice of the school-to-prison pipeline and have taken steps to end school push-out, ensuring that their students not only graduate, but also avoid being dumped into the juvenile system for petty offenses.<sup>206</sup> The strides that states like Colorado are taking are the

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196. *Id.*

197. Jarvie, *supra* note 61; Vega, *supra* note 1.

198. *See Position Statement 46: Zero Tolerance Policies in Schools, supra* note 70.

199. *See* Klein, *supra* note 116.

200. *Id.*

201. *Id.*

202. *Id.*

203. *See id.*

204. EXEC. OFFICE OF THE PRESIDENT, *supra* note 119, at 1, 7–9.

205. *The ABC's of ESEA, ESSA and No Child Left Behind, supra* note 14.

206. *See infra* Part V of this Note for further detail on what different states have done. *See also* CONTRACTOR & STAATS, *supra* note 156, for more information on other states not

most important steps toward ending the school-to-prison pipeline.<sup>207</sup> Eliminating criminalization of school offenses, decreasing police presence in schools, and providing students with the comfort of talking to school counselors are some of the steps that can be taken in order to eliminate school push-out and to keep students out of juvenile centers.<sup>208</sup> ESSA provides a step towards this, but simply does not do enough. Currently, it is up to each individual state to take these steps toward eliminating their school-to-prison pipeline and to protect Black girls from serious charges for petty offenses.<sup>209</sup>

Although ESSA has pros and cons, under the new administration, the bill may not even get a chance to help invigorate districts and states that are interested in ending the school-to-prison pipeline.<sup>210</sup> Currently, all of former President Obama's ESSA Accountability Regulations have been paused.<sup>211</sup> The regulation would have taken place on January 30, 2017, but an executive order was issued by President Donald Trump delaying the implementation of the regulation for at least sixty days.<sup>212</sup> The question that remains now is what regulations the new administration will administer for guidance on how to implement ESSA and approving state plans. Currently, ESSA allows for the Education Secretary to give the stamp of approval or disapproval on state accountability plans after a group of peer reviewers examine them.<sup>213</sup> Betsy DeVos, the Secretary of Education under the Trump administration, would get to name and instruct peer reviewers, giving them guidance on what they are looking for state plans to include.<sup>214</sup> There is a higher chance that state accountability plans will have to reach a lower bar because of the Trump administration's stance on state rights in education.<sup>215</sup>

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included in this Note and a discussion on what they have done to remedy the school-to-prison pipeline.

207. Colorado was one of the states where a girl was flipped over her desk for being on her phone in the classroom. ANNAMMA ET AL., *supra* note 59, at 2. However, Colorado was also one of the states that began limiting the role of law enforcement and law enforcement referrals in the school in order to limit school push-out. CONTRACTOR & STAATS, *supra* note 156, at 4–5.

208. See CONTRACTOR & STAATS, *supra* note 156, at 4–5; *Race & Justice News*, *supra* note 109.

209. See *infra* Part V of this Note discussing the states ending school push-out.

210. Alyson Klein, *Trump White House Hits Pause on Obama's ESSA Accountability Regulations*, EDUC. WEEK (Jan. 22, 2017, 3:12 PM), [http://blogs.edweek.org/edweek/campaign-k-12/2017/01/essa\\_trump\\_white\\_house\\_hits\\_pa.html](http://blogs.edweek.org/edweek/campaign-k-12/2017/01/essa_trump_white_house_hits_pa.html) [<https://perma.cc/QF2G-MQCV>].

211. *Id.*

212. *Id.*

213. Alyson Klein, *Every Student Succeeds Act Under Trump: Five Things to Watch*, EDUC. WEEK (Nov. 10, 2016, 12:25 PM), [http://blogs.edweek.org/edweek/campaign-k-12/2016/11/five\\_things\\_to\\_watch\\_on\\_essa\\_u.html](http://blogs.edweek.org/edweek/campaign-k-12/2016/11/five_things_to_watch_on_essa_u.html) [<https://perma.cc/ZGG3-ADVF>].

214. *Id.*

215. *Cf. id.* (noting flexibility for the Trump administration regarding implementing ESSA).

States would have a lesser burden to meet due to the fact that the current administration does not want to push too much oversight on them.<sup>216</sup> This could have detrimental effects on states implementing policies and procedures that stop the school-to-prison pipeline and end school push-out for Black girls.

The objectives and focus of ESSA could also change under the current administration. “Trump . . . has pitched taking \$20 billion in federal money and directing it to school choice programs, including private school choice.”<sup>217</sup> A decrease in funding could negatively affect Title I schools.<sup>218</sup> This could ultimately affect schools that have a student body made up of almost entirely minority students.<sup>219</sup> Some of Trump’s representatives have spoken about pulling the oversight that the federal Office of Civil Rights has on enforcing regulations, such as school segregation and Title IX compliance.<sup>220</sup> A look at what Betsy DeVos contributed to Michigan’s education system may be telling about what to expect as she takes on the position of Secretary of Education.

Prior to taking office as the Secretary of Education, Secretary “DeVos [was] a . . . Republican Party chairwoman in Michigan and chair of the pro-school-choice advocacy group American Federation for Children . . .”<sup>221</sup> In Michigan she was “working to create programs and pass laws that require the use of public funds to pay for private school tuition in the form of vouchers and similar programs.”<sup>222</sup> She has also helped spread charter schools in Michigan.<sup>223</sup> The main problem with public funds being reallocated to private schools is that Title I schools need this money.<sup>224</sup> Instead of struggling schools receiving the benefits, Secretary DeVos could either split the money

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216. *Cf. id.* (highlighting changes the Trump administration could make to ESSA and the importance of interpretation).

217. *Id.*

218. *See id.*

219. *See* Klein, *supra* note 213.

220. Emily Richmond, *What Is the Future of Public Education?*, ATLANTIC (Jan. 10, 2017), <https://www.theatlantic.com/education/archive/2017/01/what-is-the-future-of-public-education/512651> [<https://perma.cc/P3PA-HE8F>].

221. Valerie Strauss, *A sobering look at what Betsy DeVos did to education in Michigan—and what she might do as secretary of education*, WASH. POST (Dec. 8, 2016), [https://www.washingtonpost.com/news/answer-sheet/wp/2016/12/08/a-sobering-look-at-what-betsy-devos-did-to-education-in-michigan-and-what-she-might-do-as-secretary-of-education/?utm\\_term=.3bb2163ef615](https://www.washingtonpost.com/news/answer-sheet/wp/2016/12/08/a-sobering-look-at-what-betsy-devos-did-to-education-in-michigan-and-what-she-might-do-as-secretary-of-education/?utm_term=.3bb2163ef615) [<https://perma.cc/Z8JK-BCPG>].

222. *Id.*

223. *Id.* However, often times, the charter schools which have recorded student test scores in reading and in math have scores below the states’ averages.

224. *See* Lauren Camera & Lindsey Cook, *Title I: Rich School Districts Get Millions Meant for Poor Kids*, U.S. NEWS (June 1, 2016), <https://www.usnews.com/news/articles/2016-06-01/title-i-rich-school-districts-get-millions-in-federal-money-meant-for-poor-kids> [<https://perma.cc/67PE-NK9G>] (highlighting preexisting inequality in Title I funding).

between lower income schools (giving them less money) or simply give more money to private and charter schools. In the case of private schools, this becomes an issue because often the school and the students are not struggling.<sup>225</sup> There are no accountability programs that private schools are under because they do not receive state funds.<sup>226</sup> Furthermore, voucher programs can “exacerbate existing inequalities” in education that already plague the United States education system.<sup>227</sup> It is unclear whether or not Secretary DeVos plans on implementing any of the programs she helped get started in Michigan.<sup>228</sup> With ESSA in place and much of the power belonging to the states on deciding the educational route that they want to go, Secretary DeVos may leave it up to states to decide whether they want to empower their public school system or defer money into their private schools.

Even with the administrative change, there are still many unanswered questions concerning the future of ESSA and its effects (if any) under the new administration in ending the school-to-prison pipeline for Black girls.

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225. See *Why Private School?*, PRIVATE SCH. REVIEW, <https://www.privateschoolreview.com/blog/why-private-school> [<https://perma.cc/TZ2M-QUHJ>].

226. Cf. *School voucher programs raise questions about transparency and accountability*, CBS NEWS (Aug. 11, 2017), <https://www.cbsnews.com/news/school-voucher-programs-raise-questions-about-transparency-and-accountability> [<https://perma.cc/CZD6-6TYS>].

227. Helin Jung, *11 Things You Need To Know About Betsy DeVos, Secretary of Education*, COSMOPOLITAN (Feb. 07, 2017), <http://www.cosmopolitan.com/politics/a8580091/betsy-devos-trump-administration-education-secretary> [<https://perma.cc/PZP2-WN5D>]; see also Casey Quinlan, *Why the racist history of school vouchers matters today*, THINK-PROGRESS (Jan. 10, 2017, 5:52 PM), <https://thinkprogress.org/why-the-racist-history-of-school-vouchers-matters-today-c972bec8a257#.be620gb93> [<https://perma.cc/XD9D-KTWS>] (discussing the voucher system which began shortly after *Brown v. Board of Education* in order to continue segregation. They accomplished this by putting White children in private schools so that they would not be required to integrate with Black children).

228. See Quinlan, *supra* note 227.

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