

ESSAY

WHAT’S HAIR GOT TO DO WITH IT?: HOW SCHOOL HAIR POLICIES VIOLATE THE UNITED STATES CONSTITUTION

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INTRODUCTION

Discrimination against Black hair is not a new phenomenon.¹ Disdain for Black² hair existed as early as the seventeenth century, where “British colonists deemed African hair as closer to sheep wool than human hair, setting the precedent that white hair is preferable—or “good.”³ Such disdain toward Black hair results in many⁴ people losing their jobs or facing punishment.⁵ For example, in 2014, the U.S. Army issued a policy that banned certain hairstyles, including cornrows, twists, and dreadlocks.⁶ The policy described these styles

1. See NAACP Legal Defense Fund (@naacp_ldf), *History of Hair Discrimination and LDF Cases in the United States*, INSTAGRAM, <https://www.instagram.com/p/CEFEImUBYBy/> (last visited Mar. 29, 2021) (providing several examples of natural hair discrimination in the United States).

2. Throughout this Essay, the author capitalizes the word “Black” when referring to people of African descent individually or collectively because “Blacks, like Asians, Latinos, and other ‘minorities’, constitute a specific cultural group and, as such, require denotation as a proper noun.” Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 n.6 (1991). It follows that we do not capitalize “white,” “which is not a proper noun, since whites do not constitute a specific cultural group.” *Id.*

3. Areva Martin, *The Hatred of Black Hair Goes Beyond Ignorance*, TIME (Aug. 23, 2017, 4:01 PM), <https://time.com/4909898/black-hair-discrimination-ignorance/>.

4. D. Sharmin Arefin, *Is Hair Discrimination Race Discrimination?* AM. BAR ASS’N (Apr. 17, 2020), https://www.americanbar.org/groups/business_law/publications/blt/2020/05/hair-discrimination/ (“A recent study found that African American women face the highest instances of hair discrimination and are more likely to be sent home from the workplace because of their hair. The study also uncovered that 80 percent of African American women felt they needed to switch their hairstyle to align with more conservative standards in order to fit in at work.”).

5. See, e.g., Christina Santi, *Black News Anchor Fired After Wearing “Unprofessional” Natural Hair*, EBONY (Jan. 16, 2019), <https://www.ebony.com/culture/black-news-anchor-fired-unprofessional-natural-hair/> (detailing the story of a Black news anchor who was fired after she asked if she could stop straightening her hair); Alexia Campbell, *A Black Woman Lost a Job Offer Because She Wouldn’t Cut Her Dreadlocks. Now She Wants to Go to the Supreme Court*, VOX (Apr. 18, 2018, 11:20 AM), <https://www.vox.com/2018/4/18/17242788/chastity-jones-dreadlock-job-discrimination> (explaining how a Black woman in Alabama had a job offer rescinded when she refused to cut her dreadlocks).

6. See Meghann Myers, *Soldiers Cheer Army’s Decision to Authorize Dreadlocks in Uniform*, ARMYTIMES (Jan. 30, 2017), <https://www.armytimes.com/news/your-army/2017/01/30/soldiers-cheer-army-s-decision-to-authorize-dreadlocks-in-uniform/> (detailing Army Regulation 670-1 which allowed women to have “locks” so long as they conform with regulations); see also Christopher Mele, *Army Lifts Ban on Dreadlocks, and Black Servicewomen Rejoice*, N.Y. TIMES (Feb. 10, 2017), <https://www.nytimes.com/2017/02/10/us/army-ban-on-dreadlocks-black-servicemen.html?smid=url-share> (“The Army directive says that each lock, or dreadlock, “will be of uniform dimension; have a diameter no greater than a half-inch; and present a neat, professional and well-groomed appearance.”); Gabrielle Kwarteng, *Why I Don’t Refer to My Hair as ‘Dreadlocks’*,

as “unkempt” and “matted.”⁷ Following swift backlash, the Army changed the policy.⁸ These discriminatory policies go beyond our servicemembers in uniform and impact students in public schools across the United States. Often, discriminatory hair policies punish students for wearing their hair the way it grows naturally, or in styles typically reserved for African Americans.⁹

The arguments in this Essay highlight how discriminatory school hair policies reinforce the idea that natural Black hair is inherently “bad,” and that these policies likely violate Title VI of the Civil Rights Act.¹⁰ While the right to an education is not guaranteed by the U.S. Constitution, all fifty states have incorporated a right to education in their individual state constitutions.¹¹ Although there is not an explicit right to education in the Constitution, there *is* an explicit right to equal protection under the laws. An individual’s constitutional rights do not end at the schoolhouse doors¹² and, therefore, discriminatory hair policies arguably violate the Constitution.¹³ Finding a workable solution to this type of discrimination in schools is complicated and

VOGUE (July 16, 2020), <https://www.vogue.com/article/locs-history-hair-discrimination> (providing more information about the negative connotation of “dread” with this hairstyle).

7. Kenya Downs, *For Dreadlocked Servicewoman, the Fight for Acceptance is Both a Military and Civilian Battle*, ROOT (Oct. 17, 2017, 9:15 AM), <https://www.theroot.com/for-dreadlocked-servicewomen-the-fight-for-acceptance-1819476260>.

8. See Emma Green, *Coming Soon to the U.S. Army: Turbans, Beards, Hijabs, and Dreadlocks*, ATLANTIC (Jan. 4, 2017), <https://www.theatlantic.com/politics/archive/2017/01/coming-soon-to-the-us-army-turbans-beards-hijabs-and-cornrows/512204/> (explaining the military did not provide a motive for the change in policy, but may have done so due to external pressures).

9. These policies are not limited by geography or by age of the student. See D. Sharmin Arefin, *Is Hair Discrimination Race Discrimination?*, AM. BAR ASS’N (Apr. 17, 2020) https://www.americanbar.org/groups/business_law/publications/blt/2020/05/hair-discrimination/ (providing several examples of hair discrimination in schools across the country).

10. 42 U.S.C. § 2000(d); U.S. CONST. amends. I, XIV.

11. See Robert Jensen, *Advancing Education Through Education Clauses of State Constitutions*, 1997 BYU EDUC. & L.J. 1, 3 (“All fifty state constitutions contain an education clause designed to establish some form of educational system.”).

12. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”).

13. See Anna-Lisa F. Macon, Comment, *Hair’s the Thing: Trait Discrimination and Forced Performance of Race Through Racially Conscious Public School Hairstyle Prohibitions*, 17 U. PA. J. CONST. L. 1255, 1256–57, 1265, 1281 (2015) (detailing the history of hair discrimination in the court system and concluding that while the Supreme Court has not yet ruled on the matter, it should find hair discrimination unconstitutional); Imani Gandy, *Black Hair Discrimination Is Real—But Is It Against the Law?*, REWIRE NEWS GRP. (Apr. 17, 2017, 4:58 PM) <https://rewirenewsgroup.com/abc/2017/04/17/black-hair-discrimination-real-but-is-it-against-law/> (explaining that the U.S. Equal Employment Opportunities Commission believes hair discrimination is unconstitutional).

will require collaborative efforts from the federal government, state legislatures, and individual schools and teachers to achieve the goal of eliminating these hair policies across the country.

I. BACKGROUND

A. *Discriminatory Hair Policies*

School hair policies are typically embedded in dress code policies. If a student violates a hair policy, the punishment varies but may include in-school and out-of-school suspension, exclusion from extracurricular activities, being sent home, and being publicly reprimanded.¹⁴ One example of a discriminatory hair policy comes from Mystic Valley Regional Charter School, located north of Boston, Massachusetts.¹⁵ Hair extensions are banned within the dress code because they are labeled “distracting.”¹⁶ When two sixteen-year-old sisters came to school with braid extensions, they were told that their hair needed to be “fixed”; if they refused to change their hairstyle, they would be removed from their extracurricular activities, barred from attending prom, and possibly suspended.¹⁷ Similarly, at The School for Creative Studies in North Carolina, several girls wore headwraps (also known as geles) to celebrate Black History month and symbolize their connection to Africa.¹⁸ A school administrator responded by telling the girls they were required to remove the headwraps as they violated the dress code.¹⁹

No age limit exists within these policies. For example, seven-year-old Tiana Parker was sent home from Deborah Brown Community School in Tulsa, Oklahoma for having dreadlocks.²⁰ The administration sent her home because the dress code stated that “hairstyles such as dreadlocks,

14. See, e.g., Kayla Lattimore, *When Black Hair Violates the Dress Code*, NPR (July 17, 2017, 5:45 AM), <https://www.npr.org/sections/ed/2017/07/17/534448313/when-black-hair-violates-the-dress-code> (listing removal from extracurricular activities, banishment from prom, and detention as possible punishments for dress code violations).

15. *Id.*

16. *Id.*

17. *Id.*

18. Taryn Finley, *Parents Demand School Let their Kids Wear African Headwraps*, HUFFPOST (Feb. 9, 2016, 4:51 PM), https://www.huffpost.com/entry/parents-demand-school-let-their-kids-wear-african-head-wraps_n_56ba2b43e4b0c3c5504ef267.

19. *Id.*

20. Ellie Hall, *7-Year Old Tulsa Girl Sent Home From School Because of Her Dreadlocks*, BUZZFEED.NEWS (Sept. 4, 2013, 4:56 PM), <https://www.buzzfeednews.com/article/elliethall/7-year-old-tulsa-girl-sent-home-from-school-because-of-her-d>.

afros[,] and other faddish hairstyles are unacceptable.”²¹ The policy has since been amended to state, “the Administration reserves the right to contact the parents/guardians regarding any personal hygiene issues that it believes causes a risk to the health, safety and welfare of the student, his or her classmates, and faculty or staff or detracts from the educational environment,” instead of specifying what styles are allowed.²² The school’s administration stated that Tiana’s hair “did not look ‘presentable.’”²³ Within the Deborah Brown Community School’s policy, words like “faddish” and “unacceptable” presumptively included hairstyles such as afros and dreadlocks—hairstyles that are predominately worn by Black students.²⁴

Although one might contend that these hair policies are not facially discriminatory, these policies do implicitly target hairstyles that are unique to Black students.²⁵ Accordingly, “[i]n order to protect Black children’s rights, Americans must recognize that physical and cultural traits, such as hair texture and hairstyle, are increasingly used as a proxy for race.”²⁶ Additionally, these policies target African American students who wear their hair in its natural form. Black students who wear their hair naturally are “substantially more likely than white students to ‘violate’ the ban on an ‘Afro’ over 1 inch in height” by virtue of how African American hair grows in its natural state.²⁷

21. DEBORAH BROWN CMTY. SCH., PARENT/STUDENT HANDBOOK 2007-2008, at 13–14 (2006), <http://www.dbcschool.org/admin/files/P46e588228bde4/SY%2007%20Parent%20Student%20Handbook.pdf>.

22. *Tulsa Charter School Board Votes to Change Controversial Dress Code Policy*, NEWS ON 6 (Sept. 9, 2013, 6:02 PM), <http://www.newson6.com/story/5e363a442f69d76f620577c9/tulsa-charter-school-board-votes-to-change-controversial-dress-code-policy>.

23. Rebecca Klein, *Tiana Parker, 7, Switches Schools After Being Forbidden From Wearing Dreads*, HUFFPOST, https://www.huffpost.com/entry/tiana-parker-dreads_n_3873868 (Sept. 5, 2013, 11:57 AM).

24. See, e.g., Vanessa King, *Race, Stigma, and the Politics of Black Girls Hair* (2018) (M.A. thesis, Minnesota State University, Mankato) (on file with Cornerstone: A Collection of Scholarly and Creative Works for Minnesota State University, Mankato) (detailing the story of a three-year-old boy who was suspended for wearing dreadlocks since the school’s policy “forbids extreme faddish hairstyles, including the use of rubber bands or the twisting of hair.”).

25. See A.B. Wilkinson, *No Dreadlocks Allowed*, ATLANTIC (Nov. 3, 2016), <https://www.theatlantic.com/business/archive/2016/11/no-dreadlocks-allowed/506270/> (describing how cultural shifts in the 1960s and 1970s “persuaded more African Americans to begin embracing hairstyles that didn’t require them to transform the texture of their natural hair, such as Afros, braids, and dreadlocks.”).

26. See Macon, *supra* note 13, at 27 (explaining that “the prohibition of cornrows, afros, dreadlocks, and other ethnically Black hairstyles implicitly devalues Black persons and Black culture.”).

27. Maiysha Kai, *Education, Not Discrimination: NAACP Legal Defense Fund Asks Florida Schools to End Biased Hair Policies*, ROOT (Oct. 12, 2018, 10:47 AM), <https://theglowup.theroot.com/education-not-discrimination-naacp-legal-defense-fund-1829708128>.

Black female students with kinky hair are more likely to wear braids that utilize hair extensions or weaves “as a form of hair maintenance/and or cultural expression.”²⁸ Therefore, it follows that Black female students would be “substantially more likely than white students to violate [a school’s] ban on hair extensions.”²⁹ While students of other racial backgrounds are seemingly not required to do anything in regard to their hair, Black students—primarily Black girls—face more punishment as a result of wearing their hair naturally or expressing themselves through different hairstyles, like braids or hair extensions.³⁰ This policing of Black students’ hair has and will continue to detrimentally impact their education by providing schools with additional opportunities to discipline or suspend Black students.

II. ANALYSIS

A. *History of Black Hair in the United States*

It is essential to understand the historical oppression of Black people, theories of assimilation, and intersections of race, class, and beauty when analyzing hair policies within schools.³¹ For purposes of this Essay, Black hair refers to naturally curly- or coily-textured hair, as well as traditional Black hairstyles such as locs, braided extensions, twists, and fades. Hairstyle and hair grooming are ways to express individual style, culture, and even a political stance; in some instances, Black hairstyles can represent a rejection of dominant European beauty ideals. Historically, Black girls and women were subjected to scrutiny that suggests their bodies and hairstyles are deviant from a European standard of beauty,³² and have endured centuries of systemic discrimination and institutionalized racism based solely on their hair.³³

28. *Id.*

29. *Id.*

30. See P.R. Lockhart, *Black Girls are Disciplined More Harshly in School. Dress Codes Play a Big Role.*, VOX (Apr. 26, 2018, 7:30 AM), <https://www.vox.com/identities/2018/4/26/17274996/dress-codes-uniforms-black-girls-race-school-discipline-disparity> (discussing how Black girls are disproportionately disciplined in school).

31. See, e.g., AYANA D. BYRD & LORI L. THARPS, *HAIR STORY: UNTANGLING THE ROOTS OF BLACK HAIR IN AMERICA* 61–67 (St. Martin’s Griffin rev. ed. 2014) (summarizing the growing depoliticization of hair during the 1970s).

32. See Martin, *supra* note 3 (noting that straightening natural hair was a product of trying to fit into the workplace).

33. Courtney Nunley, *Hair Politics: How Discrimination Against Black Hair in Schools Impacts Black Lives*, POLITIC, <https://thepolitic.org/hair-politics-how-discrimination-against-black-hair-in-schools-impacts-black-lives/> (last visited Mar. 29, 2021) (tracing the ways racism against Black

When Africans were forcibly transported from Africa to the United States in the seventeenth century, slave owners would shave off the hair of the enslaved Africans upon their arrival in the United States.³⁴ This act was one of the first steps in stripping Africans of their identity and culture; the removal of African-styled hair was one of the first racialized European standards that was forcefully imposed onto Black women and girls.³⁵ Significantly, white Americans did more than just strip Black women of their hair. They also systematically robbed Black women of African culture, community, and identity. For some of the enslaved women, certain body types and hairstyles defined not only their economic status but also how slave owners would treat them.³⁶ For instance, “house slaves” endured a different form of racialization than “field slaves,”³⁷ and some slave owners raped and exploited Black women, such that Black women were giving birth to children of their slave masters.³⁸ These mixed-race children had looser, straighter, and softer hair, which was deemed “good hair,” while children of African slaves had “bad hair” because of its non-Eurocentric texture.³⁹ These ideas influenced the ways that some Black communities adopted colorism⁴⁰ and Eurocentric standards of beauty and respectability.⁴¹ After a century of enslavement, Black women and girls began adapting to these European beauty standards.

people’s hairstyles has transcended generations, from European colonizers to modern-day language, societal expectations, and school policies).

34. *Id.*

35. *Id.*

36. Stephanie M. H. Camp, *The Pleasures of Resistance: Enslaved Women and Body Politics in the Plantation South: 1830-1861*, 3 J. S. HIST. 533, 564–65 (2002).

37. See Chanté Griffin, *How Natural Black Hair at Work Became a Civil Rights Issue*, JSTOR DAILY (Jul. 3, 2019), <https://daily.jstor.org/how-natural-black-hair-at-work-became-a-civil-rights-issue/> (comparing the hairstyles of enslaved women who worked the fields with enslaved women who worked in the house, noting that those who worked in the house often mimicked the hairstyles of the women who enslaved them).

38. King, *supra* note 24, at 5.

39. See Nunley, *supra* note 33 (explaining the role of slavery in hair texture perception).

40. *Colorism*, NAT’L CONF. FOR CMTY. JUST., <https://www.nccj.org/colorism-0> (last visited Mar. 21, 2021) (defining colorism as a “practice of discrimination by which those with lighter skin are treated more favorably than those with darker skin”). See generally Tayler J. Mathews & Glenn S. Johnson, *Skin Complexion in the Twenty-First Century: The Impact of Colorism on African American Women*, 22 RACE, GENDER, & CLASS 248, 249–74 (2015) (describing how colorism has impacted the lives of African American women for centuries, and specifically in America).

41. Shirley Tate, *Black Beauty: Shade, Hair and Anti-racist Aesthetics*, 30 ETHNIC & RACIAL STUD. 300, 318 (2007) (noting that traditional beauty standards in the United States render Black women as less beautiful).

They often believed that lighter skin and straight hair would increase their social and economic status.⁴²

Recently, acceptance of natural hair in the Black community has steadily increased. However, acceptance actually began in the 1960s, when afros were a political statement during the Black Power movement.⁴³ This acceptance of natural hair is in opposition to Eurocentric beauty standards prominent throughout American history.⁴⁴ Nonetheless, within the Black community, hair is very important for Black women and is intricately linked to self-expression and identity—it is not just about race, but about both race and gender.⁴⁵ When schools have discriminatory policies, they are enforcing the institutionalized notion that Black hair is “bad” and it needs to change—the same rhetoric slave owners used when vilifying slaves. Generally, attitudes towards natural hair are changing, and Black girls and women are more accepting of their natural hair.⁴⁶ The design and enforcement of school hair policies directly impedes Black girls’ and women’s acceptance of their natural hair. Consequently, more Black girls will be disciplined in schools based on discriminatory hair policies that are unaccepting of natural hair or hairstyles. Naturally, more Black girls will be disciplined under discriminatory hair policies that do not accept natural hair or hairstyles.⁴⁷

42. Tabora Johnson & Teisha Bankhead, *Hair It Is: Examining the Experiences of Black Women with Natural Hair*, OPEN J. SOC. SCI. 2, 88 (2014); see also Nunley, *supra* note 33 (noting that attempts to “fix” Black beauty problems led to a boom within the Black beauty industry and the development of inventions, such as chemical straightening products. These developments would lead to the normalization of straightening Black hair.).

43. Lauren Booker, *More Black Women are Rocking Their Natural Hair. Get to Know the Movement in Atlanta*, WABE (Feb. 19, 2019), <https://www.wabe.org/natural-hair-movement-atlanta/> (noting that sales of hair relaxers among Black women have dropped since 2016).

44. See ALEXIS MCGILL JOHNSON ET AL., PERCEPTION INST., THE “GOOD HAIR” STUDY: EXPLICIT AND IMPLICIT ATTITUDES TOWARD BLACK WOMEN’S HAIR 2 (2017), <https://perception.org/wp-content/uploads/2017/01/TheGood-HairStudyFindingsReport.pdf> (finding that Millennial naturalistas have more positive attitudes toward textured hair than all other women).

45. Rumeana Jahangir, *How Does Black Hair Reflect Black History?* BBC NEWS (May 31, 2015), <https://www.bbc.com/news/uk-england-merseyside-31438273> (“‘Just about everything about a person’s identity could be learned by looking at the hair,’ says journalist Lori Tharps”).

46. Tiffany Thomas, “Hair” They Are: *The Ideologies of Black Hair*, YORK REV., Spring 2013, at 1 (explaining that “Black women’s return to the natural state of their hair is often an act of self-awareness” in which many Black women discover that “natural black hair is unattractive and unacceptable in society” resulting from oppression and racism”); see also Johnson & Bankhead, *supra* note 42.

47. Tracee Wilkins, *How Attitudes Toward Natural Hair are Changing*, NBC 4 WASH. (Nov. 27, 2019, 1:45 AM), <https://www.nbcwashington.com/news/local/How-Attitudes-Toward->

B. Data on School Discipline

When schools have discriminatory hair policies, those rules represent an effective way to criminalize the Black body.⁴⁸ These policies promote school “pushout”⁴⁹—effectively saying that a student’s appearance is more important than their right to an education.⁵⁰ Research consistently shows that Black children are subject to school discipline at much higher rates than their white peers.⁵¹ According to a 2018 study published by the U.S. Government Accountability Office, while Black students only make up 15.5% of all public school students, they make up approximately 39% of public school students suspended from school.⁵² Black students are even more overrepresented in the

Natural-Hair-Are-Changing_Washington-DC-565508232.html?_osource=SocialFlowTwt_DCBrand (“For decades, African Americans have faced social pressure to change their natural hair. Now, a rise in the number of people returning to their roots is raising questions about acceptance. Tracee Wilkins recently sat down with a group of ‘naturalistas’ get their thoughts.”).

48. See Torrie K. Edwards, *From the Editorial Board: Tangled Discrimination in Schools: Binding Hair to Control Student Identity*, 103 HIGH SCH. J. 53, 53 (2020) (referencing news stories in which dress code policies regulating hair resulted in students being refused entry or being sent home from school, having their natural hair cut off, being threatened with disciplinary action, or being removed from extracurricular activities).

49. *Pushout*, SCH. DISCIPLINE SUPPORT INITIATIVE, <https://supportiveschooldiscipline.org/push-out> (last visited Mar. 29, 2021) (“Pushout refers to practices that contribute to students dropping out. These include unwelcoming and uncaring school environments and over-reliance on zero tolerance school policies that push students out of school.”).

50. See MONIQUE MORRIS, *PUSHOUT: THE CRIMINALIZATION OF BLACK GIRLS IN SCHOOLS* 125 (2016) (discussing how dress codes result in schools actively turning away girls from school because of minor or arbitrary violations, and how this contributes to the objectification and sexualization of Black girls).

51. See, e.g., Travis Riddle & Stacey Sinclair, *Racial Disparities in School-Based Disciplinary Actions are Associated with County-Level Rates of Racial Bias*, 116 PROC. NAT’L ACAD. SCI. U.S. 8255, 8255–56 (2019) (finding Black students were more likely to receive each type of disciplinary action studied than white students, including school arrests, expulsions, law enforcement referral, and in-school and out-of-school suspension); German Lopez, *Black Kids are Way More Likely to be Punished in School than White Kids, Study Finds*, VOX (Apr. 5, 2018), <https://www.vox.com/identities/2018/4/5/17199810/school-discipline-race-racism-gao> (finding Black students in K-12 schools were far more likely to be disciplined than students of other races); *Teacher Treatment of Students Factor into Racial Gaps in School Suspensions*, BROWN UNIV. (July 18, 2019), <https://www.brown.edu/news/2019-07-18/discipline> (finding that teachers’ differing treatment of Black and white students accounted for 46% of the racial gaps in suspensions and expulsions from school among children aged 5 to 9 years old).

52. U.S. GOV’T ACCOUNTABILITY OFFICE, *GAO-18-258, K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES* 12–13 (2018), <https://www.gao.gov/assets/gao-18-258.pdf>.

rates of suspensions at magnet and charter schools.⁵³ Nationally, Black students are overrepresented in all types of discipline, including out-of-school suspensions, in-school suspensions, referrals to law enforcement, expulsions, corporal punishment, and school-related arrests.⁵⁴

The data demonstrates that Black students, especially boys, are suspended at a higher rate than all other students.⁵⁵ However, when comparing Black girls to their white classmates, race and ethnicity are pivotal factors that result in Black girls receiving more severe and frequent disciplinary action.⁵⁶ The Department of Education's (DOE's) data for the 2011–2012 school year shows that while Black boys were suspended more than three times as often as their white counterparts, Black girls were suspended six times as often.⁵⁷ Only 2% of white girls were subjected to exclusionary suspensions in comparison to 12% of Black girls.⁵⁸ Furthermore, in 2018, a study conducted by the National Women's Law Center revealed that Black girls in Washington, D.C. are 17.8 times more likely to be suspended than white girls.⁵⁹ Moreover, 74% of D.C.'s public high school dress codes allow for disciplinary action that can lead to missed class or school, despite a D.C. Public Schools policy that forbids suspensions for dress code violations.⁶⁰ These school hair policies are another

53. *See id.* at 20–21 (finding that these disparities were widespread and persisted regardless of the type of disciplinary action, level of school poverty, or type of public school attended).

54. *See id.* at 14 (finding that Black students are overrepresented at a rate 10 to 23% higher than white students).

55. *Id.* at 15 (examining data comparing students who received six types of disciplinary actions by race and ethnicity. Black boys and girls were the only racial group for which both sexes were disproportionately disciplined across all six disciplinary actions).

56. *Id.* at 14 (explaining that Black girls were suspended from school at higher rates than boys of multiple racial groups and every other racial group of girls).

57. KIMBERLÉ WILLIAMS CRENSHAW ET AL., BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED, AND UNDER PROTECTED 16 (2015), https://www.atlanticphilanthropies.org/wp-content/uploads/2015/09/BlackGirlsMatter_Report.pdf.

58. *Id.*

59. *See* AYIANA DAVIS ET AL., NAT'L WOMEN'S L. CTR., DRESSCODED: BLACK GIRLS, BODIES, AND BIAS IN DC SCHOOLS 1, 16 (2018), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/04/Final_nwlc_DressCodeReport.pdf (demonstrating that this discrimination of Black girls and hair is prevalent in many places including this nation's Capital). This piece was co-authored by 21 Black girls currently in D.C. public schools); *see also* ADAKU ONYEKA-CRAWFORD ET AL., NAT'L WOMEN'S L. CTR., LET HER LEARN: STOPPING SCHOOL PUSHOUT FOR GIRLS OF COLOR 1 (2017), <https://nwlc.org/resources/stopping-school-pushout-for-girls-of-color/> (demonstrating that Black girls are more likely to be suspended than white girls).

60. *See* Student Fair Access to School Amendment Act, 65 D.C. Reg. 7499, 7503 (July 20, 2018) (banning out-of-school suspension or disciplinary unenrollment for violating school dress codes or uniform rules for most students in grades nine through twelve); DAVIS ET AL., *supra* note 59, at 24.

way that school officials have—and will continue to—target Black girls with increased school discipline.⁶¹

Succinctly put, “[t]he forms of racial discrimination most commonly seen in education have evolved. It is now rare to find a policy that explicitly excludes potential students based on skin color, however, subtle rules and restrictions based on racial stereotypes and proxies have the same force and effect.”⁶² School policies concerning dress codes and hair allow for the increased likelihood that Black students will be disciplined for their natural or styled hair. These hair policies serve as yet another avenue through which the education system can target and discipline Black students, even though they are already disciplined at an unfair and discriminatory rate.⁶³

C. *Combatting Discriminatory School Hair Policies Through State and Federal Action*

There are several potential ways to combat discriminatory hair policies in schools, including (1) state legislatures passing laws like the CROWN Act and (2) the DOE’s enforcement of Title VI of the Civil Rights Act.

1. *CROWN Act*

One of the most effective means for protecting children against discriminatory hair policies is utilizing state laws.⁶⁴ In *San Antonio Independent School District v.*

61. See generally Ayana Byrd & Lori Tharps, Opinion, *When Black Hair Is Against the Rules*, N.Y. TIMES (Apr. 30, 2014), <https://www.nytimes.com/2014/05/01/opinion/when-black-hair-is-against-the-rules.html> (providing historical examples “in many settings” of when Black hair has been treated as “a battleground”).

62. See Letter from Angel S. Harris, Assistant Couns., NAACP Legal Def. & Educ. Fund, to Pam Stewart, Fla. Comm’n of Educ. (Oct. 2, 2018), <https://www.naacpldf.org/wp-content/uploads/10.02.18-LDF-Letter-to-FL-DOE-re-Hope-Scholarship-and-Florida-Tax-Credit.pdf>.

63. See generally Lopez, *supra* note 51 (reporting that the Government Accountability Office (GAO) found that Black students in K-12 schools are far more likely to be disciplined than their counterparts of other races).

64. See also Emma Dabiri, Opinion, *Black Pupils are Being Wrongly Excluded over Their Hair. I’m Trying to End this Discrimination*, GUARDIAN (Feb. 25, 2020, 4:32 AM), <https://www.theguardian.com/commentisfree/2020/feb/25/black-pupils-excluded-hair-discrimination-equality-act> (discussing the development and adoption of the Halo Code, the United Kingdom’s first antidiscriminatory Black hair code, developed by activists, which seeks to end hair discrimination in schools and workplaces); Hanna Ibraheem, *The Halo Code is the UK’s First Black Hair Code for School and Workplaces. Here’s Why it’s Needed*, STYLIST, <https://www.stylist.co.uk/beauty/hair/afro-hair-discrimination-halo-code/460838> (last visited Mar. 29, 2021) (“The UK has its first ever Black hair code for school and workplaces – named the Halo Code, thanks to the work

Rodriguez,⁶⁵ the Supreme Court explicitly stated that education is not a fundamental right⁶⁶ and, therefore, the onus is on state legislatures to address the discrimination that Black students face in public schools due to dress code and hair policies.

Fortunately, states are beginning to address this gap.⁶⁷ California was the first state to ban discrimination of natural hair for Black students and employees.⁶⁸ The catalyst for this new law came from its authors, who stated that “women with kinky and curly hair are sometimes subject to unequal treatment, and can even be viewed as inferior.”⁶⁹ Specifically, executives from Dove, a skincare company, spearheaded the CROWN coalition, a movement dedicated to ending hair discrimination and creating a more equitable and inclusive beauty experience for Black women and girls.⁷⁰ This coalition formed after Dove conducted a study that found Black women are 80% more likely to change their natural hair to conform to social norms or expectations at work.⁷¹ The study also found that Black women are 50% more likely to either be sent home or know of a Black woman sent home from the workplace because of her hair.⁷² The California Senate Bill 188 reads as follows:

of the Halo Collective. Founded by 30 young Black activists from The Advocacy Academy (a social justice youth organising movement dedicated to creating a more fair, just and equal society), the Halo Collective is an alliance of organisations coming together to combat hair discrimination. Their first major move comes in the form of the Halo Code, a set of simple and clear asks of UK schools and workplaces to help end hair discrimination.”)

65. 411 U.S. 1 (1973).

66. *See id.* at 35 (“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”).

67. *E.g.*, *What are the Implications of Black, Natural Hair Discrimination at School and Work?*, TEX. PUB. RADIO (Aug. 23, 2020), <https://www.tpr.org/show/the-source/2020-08-23/what-are-the-implications-of-black-natural-hair-discrimination-at-school-and-work> (showing that Texas, a state that has upheld discriminatory hair policies in the past, is now considering state legislation to combat hair discrimination in schools).

68. S.B. 188, 2019–2020 Reg. Sess., (Cal. 2019) (codified at Cal. Educ. Code § 212.1).

69. *California Becomes First State to Ban Discrimination Against Natural Hair*, CBS NEWS (Jul. 4, 2019, 08:48 AM), <https://www.cbsnews.com/news/crown-act-california-becomes-first-state-to-ban-discrimination-against-natural-hair/>.

70. *See id.* (explaining that the CROWN coalition, led by Dove executives, is an alliance established with the goal to demonstrate the oppressive prevalence of Eurocentric beauty standards and societies' attempts to force women to conform to such standards).

71. *The CROWN Act: Working to Eradicate Race-Based Hair Discrimination*, DOVE, <https://www.dove.com/us/en/stories/campaigns/the-crown-act.html> (last visited Mar. 21, 2021).

72. *Id.*

(a) The history of our nation is riddled with laws and societal norms that equated “blackness,” and the associated physical traits, for example, dark skin, kinky and curly hair to a badge of inferiority, sometimes subject to separate and unequal treatment.

(b) This idea also permeated societal understanding of professionalism. Professionalism was, and still is, closely linked to European features and mannerisms, which entails that those who do not naturally fall into Eurocentric norms must alter their appearances, sometimes drastically and permanently, in order to be deemed professional.

(c) Despite the great strides American society and laws have made to reverse the racist ideology that Black traits are inferior, hair remains a rampant source of racial discrimination with serious economic and health consequences, especially for Black individuals.

(d) Workplace dress code and grooming policies that prohibit natural hair, including afros, braids, twists, and locks, have a disparate impact on Black individuals as these policies are more likely to deter Black applicants and burden or punish Black employees than any other group.

(e) Federal courts accept that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, and therefore protects against discrimination against afros. However, the courts do not understand that afros are not the only natural presentation of Black hair. Black hair can also be naturally presented in braids, twists, and locks.

(f) In a society in which hair has historically been one of many determining factors of a person’s race, and whether they were a second-class citizen, hair today remains a proxy for race. Therefore, hair discrimination targeting hairstyles associated with race is racial discrimination.

(g) Acting in accordance with the constitutional values of fairness, equity, and opportunity for all, the Legislature recognizes that continuing to enforce a Eurocentric image of professionalism through purportedly race-neutral grooming policies that disparately impact Black individuals and exclude them from some workplaces is in direct opposition to equity and opportunity for all.⁷³

This piece of legislation is one example that acknowledges the historical significance of race, and how that understanding has contributed to many negative and discriminatory policies today. California led the way with this legislation and New York quickly followed suit, with a few notable differences. In 2012, a New York law, titled the Human Rights Law and Dignity for All Students Act,⁷⁴ took effect. The law states that racial discrimination extends to “traits historically associated with race, including but not limited to hair texture and protective hairstyles.”⁷⁵ New York Governor Andrew Cuomo signed an amendment to the law, Assembly Bill 07797, which “prohibits race

73. Cal. S.B. 188 § 1.

74. Dignity for All Students Act, N.Y. EDUC. LAW §§ 10–18 (McKinney 2021).

75. *Id.* § 11; Felicia S. O’Connor, *New York Second State to Prohibit Discrimination Based on Hairstyle*, NAT’L L. REV. (July 29, 2019), <https://www.natlawreview.com/article/new-york-second-state-to-prohibit-discrimination-based-hairstyle>.

discrimination based on natural hair or hairstyles.⁷⁶ Governor Cuomo declared that:

For much of our nation's history, people of color —particularly women— have been marginalized and discriminated against simply because of their hair style or texture . . . [b]y signing this bill into law, we are taking an important step toward correcting that history and ensuring people of color are protected from all forms of discrimination[.]⁷⁷

Similarly, Montgomery County, Maryland, became the first county to pass legislation similar to California's CROWN Act.⁷⁸ The Montgomery County Council voted unanimously for the bill, which prohibits discrimination in employment, housing, taxi service, and other public accommodations.⁷⁹ A person who is discriminated against can seek a civil penalty of up to \$5,000 through Montgomery County's Office of Human Rights.⁸⁰ However, there is one area in which the bill falls short: the law fails to explicitly state that these remedies apply to discrimination that students may face in school. Wisconsin, Kentucky, New Jersey, Tennessee, Illinois, and Michigan have introduced similar legislation.⁸¹ Despite the fact that these antidiscrimination policies have

76. Arris Folley, *New York Bans Discrimination Against Natural Hair*, HILL (Jul. 13, 2019, 9:37 PM), <https://thehill.com/homenews/state-watch/452959-new-york-bans-discrimination-against-natural-hair>.

77. Janelle Griffith, *New York is Second State to Ban Discrimination Based on Natural Hairstyles*, NBC NEWS (Jul. 15, 2019, 6:57 PM), <https://www.nbcnews.com/news/nbcblk/new-york-second-state-ban-discrimination-based-natural-hairstyles-n1029931> (quoting Governor Cuomo).

78. See Neal Augenstein, *Montgomery County Becomes First US County to Ban Discrimination Based on Natural Hairstyles*, WTOPNEWS (Nov. 7, 2019, 7:09 AM), <https://wtop.com/montgomery-county/2019/11/montgomery-county-becomes-first-u-s-county-to-ban-discrimination-based-on-natural-hairstyles/> (noting that CROWN (Creating a Respectful and Open World for Natural Hair) Act is similar to New York and California legislation).

79. See Chelsey Cox, *Protecting Afros, Twists, Braids: Maryland County Becomes First to Ban Hair Discrimination*, USA TODAY, (Feb. 6, 2020, 10:43 PM), <https://www.usatoday.com/story/news/2020/02/06/montgomery-county-bans-hair-discrimination-maryland/4683361002/> (protecting hairstyles and textures such as braids, afros, and curls).

80. Augenstein, *supra* note 78; see also Press Release, Montgomery Cnty. Council, Montgomery County Council Enacts CROWN Act (Nov. 6, 2019), https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail.aspx?Item_ID=23615&Dept=1 (noting that employees should not have to fear retaliation for their natural hair).

81. See Grace A. Byrd, *Hair Today, Gone Tomorrow: New Jersey Proposes Legislation Proscribing Hairstyle Discrimination Similar to Current New York and California Laws*, NAT'L L. REV. (Oct. 31, 2019), <https://www.natlawreview.com/article/hair-today-gone-tomorrow-new-jersey-proposes-legislation-proscribing-hairstyle> (amending New Jersey's Law Against Discrimination by broadening the term "race"); Nicquel Ellis & Charisse Jones, *Banning Ethnic Hairstyles 'Upholds this Notion of White Supremacy.' States Pass Laws to Stop Natural Hair Discrimination*, USA TODAY, <https://www.usatoday.com/story/news/nation/2019/10/14/black-hair-laws-passed-stop-natural-hair-discr>

failed to expressly extend the right to sue to students in school settings, this Essay argues that students will have standing to sue if a school violates these laws by disciplining students for their hairstyles.

Under the Equal Protection Clause of the Fourteenth Amendment, “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”⁸² To bring an Equal Protection claim, a plaintiff must assert that when compared with others similarly situated, the plaintiff was treated differently based on a government classification.⁸³ The Supreme Court developed three different tests to evaluate these claims; which test the Court employs depends on the type of government discrimination or classification involved.⁸⁴ The three tests include: (1) “strict scrutiny,” which applies to racial classifications and creates a heavy burden for the government to overcome;⁸⁵ (2) “intermediate scrutiny,” which applies to classification or discrimination on the basis of sex and gender;⁸⁶ and (3) “rational basis scrutiny,” which is the test that is most deferential to governmental action.⁸⁷

Courts should use strict scrutiny to review the constitutionality of these hair policies because they disparately impact racial minorities, thus triggering the highest standard of review. Strict scrutiny requires that the governmental classification be “narrowly tailored” to achieve a “compelling interest.”⁸⁸ Given that racial classifications must pass this high constitutional muster, these hair policies are not likely to pass the test. There is no compelling governmental interest in prohibiting students from wearing their hair as it grows out of their heads or styling their hair in a manner that is unique to Black women. An

mination-across-us/3850402002/ (Oct. 14, 2019) (following California and New York); e.g., Jatar McGee, *Kentucky Could Become Third State to Ban Discrimination Based on Natural Hairstyles*, WLWT5, <https://www.wlwt.com/article/kentucky-could-become-third-state-to-ban-discrimination-based-on-natural-hairstyles/28864284#> (Aug. 29, 2019) (hoping to make Kentucky the third state to ban laws discriminating natural hairstyles).

82. U.S. CONST. amend. XIV, § 1.

83. See, e.g., Russell W. Galloway Jr., *Basic Equal Protection Analysis*, 29 SANTA CLARA L. REV. 121, 121 (1989) (specifying that the government must have a legitimate purpose for its actions and the actions must not treat any individual or group discriminatorily).

84. See, e.g., Ashutosh Bhagwat, *Purpose Scrutiny in Constitutional Analysis*, 85 CAL. L. REV. 297, 303 (1997) (setting out the three different test the Supreme Court employs when evaluating whether certain actions are discriminatory).

85. See *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (establishing the “strict scrutiny” test).

86. See *Craig v. Boren*, 429 U.S. 190, 191–92 (1976) (applying some scrutiny to legislation that constituted a denial of equal protection to males aged 18 to 20 years of age).

87. See *Nebbia v. New York*, 291 U.S. 502, 537 (1934) (establishing that a court should uphold a decision if there is a reasonable basis for the government action).

88. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505–06, 508 (1989).

alternative finding would again underline the notion that Black women need to assimilate to Eurocentric beauty standards to thrive in the United States.

2. *Title VI of the Civil Rights Act*

Title VI of the Civil Rights Act of 1964 (Title VI) is an additional statutory mechanism that could be employed to protect Black children from discriminatory dress codes and hair policies. Title VI states that, “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁸⁹ Within the DOE, there is an office called the Office for Civil Rights (OCR). The OCR’s mission is “to ensure equal access to. . . and to promote education excellence through vigorous enforcement of civil rights in . . . schools.”⁹⁰ This office leads investigations after being notified that policies are negatively affecting students, and hears complaints based on violations of racial discrimination through Title VI.⁹¹ In fact, the OCR is the only government entity that has standing to bring these claims.⁹²

The OCR has the ability to play a distinct role in combatting discriminatory hair policies that demonstrably exacerbate the disproportionate rates at which Black girls are disciplined at school. In light of the ample data revealing that school discipline adversely affects Black girls at disproportionately higher rates, discriminatory hair policies can demonstrably exacerbate this problem. One legal theory that OCR could use to bring a claim would be proxy discrimination. Proxy discrimination is when a group, the school administrators in this case, use an identifying characteristic as a proxy for discriminating against a specific group.⁹³ Given that locs, afros, braided hair, or hair braided with extensions are a form of cultural identity and expression that often serve as a proxy for

89. 42 U.S.C. § 2000d; *see also Civil Rights Act of 1964*, HISTORY.COM, <https://www.history.com/topics/black-history/civil-rights-act> (Jan. 25, 2021) (recounting the history of the Civil Rights Act and related legislation that followed the Act).

90. *Office for Civil Rights*, U.S. DEP’T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/index.html> (last modified Mar. 3, 2021).

91. *How the Office for Civil Rights Handles Complaints*, U.S. DEP’T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/complaints-how.html> (last modified Jan. 10, 2020).

92. *See id.* (identifying the Office of Civil Rights (OCR) as the government entity with standing to charge and hear cases arising under Title VI).

93. *See* Angela Onwuachi-Willig & Mario L. Barnes, *By Any Other Name?: On Being “Regarded As” Black, and Why Title VII Should Apply Even if Lakisha and Jamal Are White*, 2005 WIS. L. REV. 1283, 1324 (concluding that proxy discrimination cases involve policies that target traits, factors, or qualities that belong to select groups of persons or a particular race).

race,⁹⁴ no school receiving federal funding should be permitted to implement policies that discriminate on such a basis.⁹⁵ However, a large drawback to relying on the OCR to remedy these claims is that the office and its investigations are often politically motivated. Therefore, the incumbent presidential administration has complete control over what types of claims the OCR should focus on and pursue. Regardless, the OCR's power to bring claims against schools receiving federal funding is one extremely potent method of combatting discriminatory hair policies in schools.

III. RECOMMENDATIONS

A. *Guidance from the Department of Education*

DOE, specifically the OCR, has utilized data and investigations to create policies and guidelines for states, school districts, and specific schools to follow, and ensure compliance with federal regulations.⁹⁶ These DOE policies incorporate OCR research and reports, allowing DOE to create and promote best practices for schools nationwide.⁹⁷ In the past, the OCR has issued “Dear Colleague Letters” on topics such as race and national origin discrimination, school discipline, retaliation, and many more topics.⁹⁸ Issuing guidelines regarding school hair policies would be innumerable useful because different groups could look to them to understand why current dress codes and hair policies have disparate and discriminatory effects on Black students.

Furthermore, if a federal agency issues guidance or rules, these policies are given *Skidmore* deference when challenges are brought in federal

94. See *id.* at 1287–89 (providing that certain proxy discriminations, like hairstyle types, are a way for people to discriminate without being immediately identifiable as discriminatory).

95. See U.S. Dep't of Educ. & U.S. Dep't of Just., *Joint “Dear Colleague” Letter*, U.S. DEP'T OF EDUC. [hereinafter *Dear Colleague Letter*], <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html> (last modified Dec. 4, 2020) (stating that unlawful intentional discrimination occurs when a school policy targets a particular race while being facially neutral, even if the policy also punishes students of a different race than the one that the policy targets, and that frequently, these policies penalize students for dressing in a way that is associated with one particular race.)

96. *Civil Rights Data Collection (CRDC)*, U.S. DEP'T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/crdc.html> (last modified Jan. 15, 2021) (expanding on how the OCR has utilized its data to create policy).

97. *Id.* (listing the variables that OCR's research and reports focus on and how data is collected).

98. *Dear Colleague Letter*, *supra* note 95 (discussing school discipline); see also Letter from Russlynn Ali, Assistant Sec'y for C.R., U.S. Dep't of Educ., to Colleague 4–5 (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (discussing race and national origin discrimination).

court.⁹⁹ In *Skidmore v. Swift & Co.*,¹⁰⁰ the Supreme Court found that an administrative agency's action may receive deference (later recognized in *Chevron* and *Auer* as "entitled to respect"), but only to the extent an interpretation would have the "power to persuade."¹⁰¹ Analysis of agency action under *Skidmore* requires a court to look at the thoroughness of the evidence, the validity of its reasoning, and the consistency with earlier and later pronouncements.¹⁰²

This deference is important given the political nature of the OCR, which sways depending on the presidential administration in office. For example, in 2017, the former Secretary of Education Betsy DeVos rescinded the "Dear Colleague Letter" regarding school discipline that the Obama Administration issued in 2014.¹⁰³ Although *Skidmore* deference is not a particularly high bar, it requires a new administration to acknowledge the past guidelines that were enacted and it allows courts to use past guidelines while determining a case.¹⁰⁴

CONCLUSION

Students come to school to learn.¹⁰⁵ Discriminatory hair policies make it difficult for Black students to authentically express themselves and simultaneously receive the same access to quality education as their white classmates.¹⁰⁶ These hair policies create another barrier for Black students,¹⁰⁷

99. See *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000) (holding that "[i]nterpretations such as those in opinion letters—like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant *Chevron*-style deference.").

100. 323 U.S. 134 (1944).

101. *Id.* at 140.

102. See *id.* (explaining that an agency's rulings, interpretations and opinions are not controlling on courts, but constitute information courts and litigants may look to for guidance).

103. Anya Kamenetz, *DeVos to Rescind Obama-Era Guidance on School Discipline*, NPR (Dec. 18, 2018, 9:52 AM), <https://www.npr.org/2018/12/18/675556455/devos-to-rescind-obama-era-guidance-on-school-discipline>.

104. See *Christensen*, 529 U.S. at 587 (holding interpretations in opinion letters, policy statements, agency manuals, and enforcement guidelines—all of which lack the force of law—do not warrant *Chevron* deference).

105. "[Education] . . . is a right which must be made available to all on equal terms." *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

106. Brenda Alvarez, *When Natural Hair Wins, Discrimination in School Loses*, NAT'L EDUC. ASS'N (Sept. 17, 2019), <https://www.nea.org/advocating-for-change/new-from-nea/when-natural-hair-wins-discrimination-school-loses> (emphasizing the psychological effect these policies can have).

107. DESHAWN PRESTON, S. EDUC. FOUND., INC., *UNTOLD BARRIERS FOR BLACK STUDENTS IN HIGHER EDUCATION: PLACING RACE AT THE CENTER OF DEVELOPMENTAL EDUCATION* 30 (2017), <https://files.eric.ed.gov/fulltext/ED585873.pdf>.

particularly girls, largely because the policies have a disparate, negative effect on Black students.¹⁰⁸ Furthermore, these hair policies spring from institutionalized racism and should not be allowed to persist. Eradicating these policies will take time and collaboration from students, teachers, administrators, state legislatures, and the federal government. Regardless of what a partnership between state and federal government looks like, or what and how federal administrative guidance might manifest as, schools across the United States have a responsibility to eradicate discriminatory policies that punish Black students simply for how their hair grows naturally out of their head.

108. See Nunley, *supra* note 33 (providing examples of how school policies have negatively impacted Black students).

* * *