

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

----- X
:
K.R., a minor, by and through his parent and :
natural guardian, Kali Proctor, G.H., a minor, by :
and through her parent and natural guardian, :
Katelyn Hansen, P.K., a minor, by and through his :
parent and natural guardian, Roynetter Birgans, :
L.G., a minor, by and through her parent and :
natural guardian, Desmond Gilbert, :
:
Plaintiffs, :
: Case No. 19-cv-00999 (DWF/LIB)
:
- against - :
:
Duluth Public Schools Academy d/b/a Duluth :
Edison Charter Schools, :
:
Defendant. :
:
:
:
:
:
----- X

BRIEF OF NATIONAL WOMEN’S LAW CENTER
AND COALITION OF PUBLIC INTEREST ORGANIZATIONS
AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS

Sabrina Bernadel
Adaku Onyeka-Crawford
Sunu Chandy
Emily Martin
NATIONAL WOMEN’S LAW CENTER
11 DUPONT CIRCLE, NW
WASHINGTON, D.C. 20036
(202) 588-6000

William C. Mattessich,
MN Bar No. 400513
Counsel of Record
Courtney M. Dankworth
Eric W. Silverberg
Adrian Gonzalez
DEBEVOISE & PLIMPTON LLP
919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 909-6000

Counsel for the National Women’s Law
Center, et al., as Amici Curiae

ADDITIONAL *AMICI CURIAE*

ACLU Women's Rights Project
American Civil Liberties Union of Minnesota
Atlanta Women for Equality
Black Women for Wellness
Black Women's Roundtable
Black Women's Health Imperative
Bold Futures
California Women Lawyers
Chicago Lawyers' Committee For Civil Rights
Colorado Organization for Latina Opportunity & Reproductive Rights (COLOR)
Desiree Alliance
Disability Rights Advocates
Family Equality
Girls for Gender Equity
Girls Inc.
If/When/How: Lawyering for Reproductive Justice
Know Your IX
KWH Law Center for Social Justice and Change
LatinoJustice PRLDEF
Legal Aid at Work
National Association of Social Workers (NASW)
National Association of Women Lawyers
National Crittenton
National Women's Political Caucus
Reproaction
Sikh Coalition
SisterSong: National Women of Color Reproductive Justice Collective
The Womxn Project
Washington Lawyers' Committee for Civil Rights & Urban Affairs
Women's Bar Association of the State of New York
Women's Law Project
Women's Media Center

RULE 7.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned counsel of record certifies that none of the amici curiae is a nongovernmental entity with a parent corporation or a publicly held corporation that owns 10 percent or more of its stock. This representation is made in order that this Court may evaluate possible disqualification or recusal.

Respectfully submitted,

Dated: September 10, 2021

s/ William C. Mattessich

William C. Mattessich,
MN Bar No. 400513
DEBEVOISE & PLIMPTON LLP
919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 909-6000

*Counsel for the National Women's Law
Center, et al., as Amici Curiae*

TABLE OF CONTENTS

STATEMENT OF INTEREST OF AMICI CURIAE 1

BACKGROUND & SUMMARY OF ARGUMENT 2

ARGUMENT..... 4

I. Black Students Are Subject to Excessive Exclusionary Discipline That Denies Them Equal Educational Opportunities and Benefits Based on Race. 4

 A. Black Students, Especially Black Students with Disabilities and Black Girls, Are Disproportionately Removed from the Classroom for Subjective, Minor Offenses..... 5

 B. Discriminatory Discipline Practices Can Have Lasting and Devastating Effects on Black Students. 11

II. Afrocentric Hairstyles, Particularly Dreadlocks or Locs, Hold Cultural Significance for Many in the Black Community..... 12

III. Dress Codes Are Often Enforced in Harmful Ways, Reflecting Intersecting Race- and Gender-Based Stereotypes and Leading to Discrimination Against Black Students. 16

CONCLUSION 20

TABLE OF AUTHORITIES

CASES

Davis v. Monroe County Board of Education, 526 U.S.629 (1999) 10

EEOC v. Catastrophe Mgmt. Sols., 852 F.3d 1018 (11th Cir. 2016)..... 14

J.H. v. Indep. Sch. Dist. No. 623, No. CV 20-2038, 2021 WL 1986124 (D. Minn. May 18, 2021)..... 10

K.R. v. Duluth Edison Charter Schs., No. 19-cv-00999, 2019 WL 13020703 (D. Minn. Jun. 11, 2019) 7, 9, 10, 18

Shrum ex rel. Kelly v. Kluck, 249 F.3d 773 (8th Cir. 2001)..... 10

STATUTES

Title VI of the Civil Rights Act of 1964..... 4

OTHER AUTHORITIES

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-servicewomen.html>. 14

Elizabeth Heubeck, *Recruiting and Retaining Teachers of Color: Why It Matters, Ways to Do It*, EDUCATIONWEEK (June 30, 2020), <https://www.edweek.org/leadership/recruiting-and-retaining-teachers-of-color-why-it-matters-ways-to-do-it/2020/06> 19

Fourteenth Amendment to the U.S. Constitution 4

Leah Asmelash, *Black Students Say They Are Being Penalized for Their Hair, and Experts Say Every Student Is Worse Off Because of It*, CNN (Mar. 8, 2020), <https://www.cnn.com/2020/03/08/us/black-hair-discrimination-schools-trnd/index.html>..... 16

Princess Gabbara, *The History of Dreadlocks*, Ebony (Oct. 18, 2016), <https://www.ebony.com/style/history-dreadlocks/> 14

U.S. Dep’t of Educ., *Civil Rights Data Collection*, <https://ocrdata.ed.gov/> (last visited Sept. 1, 2021)..... 6

STATEMENT OF INTEREST OF *AMICI CURIAE*

The National Women’s Law Center (“NWLC”) is a nonprofit organization that advocates for gender justice in the courts, in public policy, and in broader society to ensure that women and girls can live free of sex discrimination. Since its founding in 1972, NWLC has focused on issues of key importance to women and girls, including economic security, reproductive rights and health, workplace justice, and education, with special attention to the needs of low-income women and those who face multiple and intersecting forms of discrimination, including women and girls of color and LGBTQ people. NWLC has participated in numerous cases, including before the federal Courts of Appeals and the Supreme Court, to ensure that rights and opportunities are not restricted based on sex and that all enjoy the protections against sex discrimination as promised by federal law.

NWLC and the 32 additional *amici* listed on the inside of the front cover submit this brief to highlight the ways that discriminatory race- and sex-based stereotypes, cultural ignorance, and deep-seated biases frequently underlie schools’ disciplinary decisions, dress codes, and practices, such as the ones at issue in this case. Specifically, excessive exclusionary discipline and rigid appearance and grooming policies deprive Black and brown students of all genders equal educational opportunities. Accordingly, *amici’s* perspective and experience in addressing such issues would assist the Court in its resolution of this case.

BACKGROUND & SUMMARY OF ARGUMENT

Black¹ students at the Duluth Public Schools Academy d/b/a Duluth Edison Charter Schools (“DECS” or “Defendant”) have been subjected to pervasive racial harassment and discrimination. Their fellow students taunted them, hurled racial slurs in their direction, and physically assaulted them, all because of their race.

This case is about DECS and its shocking indifference to this very racism that permeated its schools. DECS ignored and minimized the behavior of white students who frequently used the word n**** and slurs like “half-breed,” wished death upon Black people, and scrawled swastikas and “KKK” on bus windows and bathroom walls. Racist behavior at DECS was not confined to its students. A DECS paraprofessional publicly opined that “Black families have lots of children and they are all awful.” A dean told a Black student’s grandmother that she needed to “[get] past” a white student saying n***** and suspended the Black student for two days after she voiced displeasure with the dean repeating the slur. Staff and students were generally not disciplined for voicing these extreme and anti-Black sentiments. At the same time, DECS disciplined Black students at higher rates and more harshly than white students. It failed to notify parents when their Black children were bullied. One teacher cut off a boy’s dreadlocks. Another physically grabbed a Black student’s face. Neither was disciplined.

¹ This brief refers to “Black” rather than “African-American” students to incorporate the broader group of individuals who may identify as such, including those who may not have been born in or naturalized to the United States. This brief also acknowledges that students who are bi-racial and are of Black or African descent often experience similar racial discrimination as detailed herein, regardless of whether they identify as Black.

DECS's administration enabled this racism. It shielded teachers who were the subject of complaints. It ignored pleas to intervene, instead encouraging parents to pull their children out of DECS if they wanted a school that valued their children's safety and needs.

Amici submit this brief to highlight what is at stake in this action. The discriminatory acts exercised by DECS are not isolated events. Rather, they are both contributors to and symptoms of a racially hostile learning environment for Black students. Black students at DECS regularly face selective and discriminatory enforcement of exclusionary discipline, neglect for their safety, and insensitivity to their cultural heritage, and DECS failed to correct these discriminatory acts in its schools. As the data show, these daily acts of discrimination leave lasting harms, denying Black students the equal educational opportunities enjoyed by their peers—opportunities that are supposed to be guaranteed by law.

DECS educators punished Black students more frequently and more harshly for subjective, minor offenses, evidencing biases that view Black children as less innocent and less in need of care than their white peers. Excessive discipline that removes Black students from the classroom can have devastating effects on their long-term educational and economic opportunities. DECS also willfully ignored calls from the school community to deepen its understanding of diverse student heritages, including the cultural significance of Afrocentric hairstyles, such as dreadlocks. This lack of cultural competence led DECS educators to treat Black students differently, such as cutting off a student's dreadlocks without consent, making them feel unwelcome and unsafe.

Enforcement of DECS's uniform policy demonstrated race- and sex-based bias that also contributed to a racially hostile learning environment for Black students, especially Black girls.

This conduct violated DECS's own policies prohibiting racial discrimination, yet DECS declined to follow those policies. The evidence plainly shows genuine disputes of material fact about whether the school violated Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and Minnesota's Human Rights Act. *Amici* urge this Court to deny DECS's motion for summary judgment so that this matter can proceed to trial.

ARGUMENT

I. Black Students Are Subject to Excessive Exclusionary Discipline That Denies Them Equal Educational Opportunities and Benefits Based on Race.

As is the case with the disciplinary practices at DECS, Black students are generally subject to disproportionate rates of discipline, particularly exclusionary discipline, that deny them equal educational opportunities and benefits otherwise available to white students.² Studies show that race-based bias against Black students causes educators to discipline Black students, especially Black girls, more frequently and more harshly for subjective, minor offenses.³ Such discriminatory discipline practices can have lasting and devastating effects on Black children, as denying equal educational opportunities can impact graduation rates, access to higher education, and involvement in the criminal legal system.

² See, e.g., Exhibit A-1 at vi; Exhibit A-2.

³ See, e.g., Exhibit A-3; Exhibit A-4.

A. Black Students, Especially Black Students with Disabilities and Black Girls, Are Disproportionately Removed from the Classroom for Subjective, Minor Offenses.

Educators too often implement discipline policies and practices that marginalize and criminalize Black students in and out of the classroom.⁴ Some of the largest barriers to education are due to racial and gender biases embedded in school discipline policies and practices or codes of conduct.⁵ Systemic and individual biases may lead an educator to see a particular behavior as disruptive, disrespectful, or defiant for Black students but as something of little consequence for white students.⁶ One such bias is adultification bias, which is when adults see Black children as older and less innocent than their white peers.⁷ When paired with policies that allow for broad educator discretion in judging acceptable standards of behavior and imposing discipline accordingly, adultification bias leads educators to disproportionately punish or exclude Black students for the same behaviors that white students exhibit. DECS's discipline rates suggest that adultification bias plays a role in educator decision-making at both DECS locations. For example, DECS "immediately investigated" and suspended a Black student for punching K.R. (a biracial boy of Black descent) on the bus but failed to investigate or mete out any consequences when a white student punched L.G. (a biracial girl of Black descent) on the

⁴ See, e.g., Exhibit A-5; Exhibit A-6; Exhibit A-7.

⁵ See Exhibit A-8.

⁶ See, e.g., Exhibit A-9; Exhibit A-10; see also Exhibit A-5 at 2 ("Teachers were more likely to view Black students as troublemakers (troublemaker labeling) and to see Black students as engaging in a pattern of misbehavior (pattern prediction), and for any student deemed a troublemaker, teachers wanted to respond with harsher discipline.").

⁷ Exhibit A-7 at 1-6.

bus. *Compare* Defendant's Memorandum of Law in Support of Motion for Summary Judgment at 10–11, No. 19-cv-00999 (D. Minn. Aug. 13, 2021) *with id.* at 28.

When Black boys are adultified, they are more likely to be viewed as guilty of suspected misconduct and less in need of care.⁸ As a result, educators and school administrators punish and exclude Black boys more frequently or more harshly for minor infractions for which white children might just receive a warning.⁹ The effects of adultification bias are compounded when students face discrimination based on multiple, intersecting identities. For example, students with disabilities are also disciplined and excluded from classrooms at disproportionate rates.¹⁰ In the 2015-2016 school year, public high school students with disabilities lost about twice as many school days from exclusionary discipline as high school students without disabilities.¹¹ Thus, students who fall at the intersection of these identities, such as Black boys with disabilities, are doubly impacted by educator bias and discrimination.¹²

This was exactly the case for P.K., who is a Black boy with disabilities. P.K.'s referral report for September through December 2019 is 28 pages long. Pls.' Opp'n Mem.

⁸ *Id.* at 1 (citing Exhibit A-9).

⁹ For example, nearly one in five Black boys is suspended at least once each year, making them the most likely group to face suspensions. This statistic was based on internal Education Trust calculations of the 2015-2016 Civil Rights Data Collection data. *See* U.S. Dep't of Educ., *Civil Rights Data Collection*, <https://ocrdata.ed.gov/> (last visited Sept. 1, 2021); *see* Exhibit A-5 at 1 (citing Exhibit A-11).

¹⁰ Exhibit A-12 at 16.

¹¹ Exhibit A-1 at vi.

¹² *See* Exhibit A-13 (finding that schools suspended their Black students and students with disabilities at rates more than twice as high as, respectively, White and Hispanic students and students without disabilities during the 2017-18 school year).

26, ECF No. 129. P.K. was regularly disciplined for making “negative remarks” about things he viewed as discriminatory within the school environment, with DECS staff interpreting the remarks as “talking back.” *See* Pls.’ Opp’n Mem. 27, ECF No. 129. DECS also failed to provide P.K. with the appropriate font size for school texts and presentations to accommodate his disability. *See* First Amended Complaint (Jury Trial Demanded) at 31-32, *K.R. v. Duluth Edison Charter Schs.*, No. 19-cv-00999, 2019 WL 13020703 (D. Minn. Jun. 11, 2019). Instead, DECS staff saw P.K. as less in need of care than his peers, labeling his requests to accommodate his disability as behavioral issues and further contributing to the unreasonable number of referrals P.K. received over time. *See id.* at 31. Despite P.K.’s documented cognitive and visual impairments, DECS failed to consider them and intervene as instructed on P.K.’s Individualized Education Program (IEP) before taking disciplinary action. *See* Pls.’ Opp’n Mem. 27, ECF No. 129 (The DECS social worker expressed serious concerns that P.K.’s impairments were not being considered and that the appropriate steps were not being taken before DECS added infractions to P.K.’s disciplinary record.).

Similarly, Black girls are disproportionately disciplined relative to white girls.¹³ Combined sex and race stereotypes lead educators and school administrators to adultify Black girls in a different way than they adultify Black boys. Educators perceive Black

¹³ For example, Black girls are four times more likely to receive out-of-school suspensions than white girls. *See* Exhibit A-14 at 1.

girls as too loud, defiant, and hypersexual¹⁴—as the opposite of stereotypes associated with white femininity, which emphasize traits such as docility and modesty. With these biased lenses, educators see Black girls as less in need of protection, such as from harassment, and more deserving of punishment than their white peers. When educators act on adultification bias, they are more likely to discipline Black girls for minor, subjective offenses,¹⁵ such as defiance or “talking back”—seemingly rebellious behaviors that are actually developmentally appropriate for children and teens.¹⁶ This is particularly so given that offenses such as “defiance” are typically not clearly defined and rely on an educator to determine exactly which behaviors deserve punishment. Educators are also more likely to ignore or blame Black girls who are victims of harassment.¹⁷

Adultification bias applied in the education context has meant that Black girls are overrepresented in every aspect of the school discipline continuum, leading to lost instruction time, school pushout, and long-term economic consequences.

In DECS, the role of adultification bias in educator decision-making is apparent. Although Black students only made up 4.7% and 4.0% of the student population at DECS’s Raleigh and North Star campuses,¹⁸ respectively, they accounted for 12.5% and 14.8% of in-school suspensions in the 2017-18 school year.¹⁹ Data from that same year in

¹⁴ Exhibit A-8 at 1; *see also* Exhibit A-7 at 1 (finding educators adultify Black girls as young as age 5).

¹⁵ *See* Exhibit A-8 at 4; Exhibit A-4 at 13-15; Exhibit A-10 at 18.

¹⁶ *See* Exhibit A-16.

¹⁷ *See, e.g.*, Exhibit A-8 at 11; Exhibit A-10 at 25; Exhibit A-17 at 6-7.

¹⁸ Exhibit A-18.

¹⁹ Exhibit A-19.

the Civil Rights Data Collection reveal that Black students without disabilities made up 3.8% of district enrollment yet accounted for 20% of the district's one-time out-of-school suspensions²⁰ and 16.7% of students who received more than one out-of-school suspension.²¹ These differences in suspension rates are not due to differences in student behavior, but rather adultification bias in the enforcement of school policies.²²

For example, L.G. was treated as less in need of protection when a white student threatened to stab her in the eye because she “looked different,” but DECS took little action to ensure her safety, neither notifying L.G.’s father nor meaningfully disciplining the student who made the threat. *See* Pls.’ Opp’n Mem. 31-32, ECF No. 129. Rather, DECS treated L.G.’s report of harassment as a reason to pull both L.G. and the harasser out of class to “problem-solve,” causing L.G. to lose even more instruction time even though she was the victim of harassment. *See* Opp’n Mem. 31, ECF No. 129. L.G. was also treated as an aggressor when she defended herself against repeated physical assaults by three classmates. *See* Pls.’ Opp’n Mem. 33, ECF No. 129. Rather than investigating the incident as bullying and notifying L.G.’s parent, DECS gave L.G. a major referral for “inappropriate conduct,” framing L.G. as an “offender,” and sent her home. *Id.* As a result of this and other differential treatment, L.G. was constructively pushed out of DECS. *See* First Amended Complaint (Jury Trial Demanded) at 38, *K.R. v. Duluth Edison Charter Schs.*, No. 19-cv-00999, 2019 WL 13020703 (D. Minn. Jun. 11, 2019).

²⁰ Exhibit A-20.

²¹ Exhibit A-21.

²² Exhibit A-8 at 2 (citing Exhibit A-43; Exhibit A-45 (examining racial/ethnic disparities in school discipline in the context of student-reported behavior infractions)).

The disproportionate rates of discipline in DECS schools are not only reflected in its discipline data, but also in students' perceptions. Black and other students of color attending DECS reported a noticeable discrepancy in the frequency with which DECS staff single them out for "disruptive" behavior compared to white students. *See* Pls.' Opp'n Mem. 5, ECF No. 129. Students of color also reported experiencing frequent racial taunting that DECS staff minimized or failed to recognize. *Id.* Indeed, students of color felt it was more likely that staff would criticize or punish them, as the victim, rather than addressing the harasser. *See* Pls.' Opp'n Mem. 5, 16, ECF No. 129.²³ Although adultification manifests differently for Black girls, the outcome for all Black students is the same: broad administrator discretion in imposing discipline leads to more frequent and harsher punishment of Black students for developmentally appropriate behaviors typically overlooked in white students.²⁴ When schools treat Black students differently based on such deeply ingrained biases and minimize racial harassment against Black students, they create a racially hostile learning environment, as was the case with DECS.²⁵

²³ *See also* Exhibit A-10 at 25 (finding that school administrators and teachers often misidentified Black girls who physically defended themselves against their harassers as the aggressors).

²⁴ Exhibit A-8 at 2.

²⁵ *See Davis v. Monroe County Board of Education*, 526 U.S.629, 650-51 (1999) (outlining the liability standard for sexually hostile environment under Title IX); *J.H. v. Indep. Sch. Dist. No. 623*, No. CV 20-2038 (DWF/TNL), 2021 WL 1986124, at *3 (D. Minn. May 18, 2021) (quoting *Shrum ex rel. Kelly v. Kluck*, 249 F.3d 773, 782 (8th Cir. 2001)).

B. Discriminatory Discipline Practices Can Have Lasting and Devastating Effects on Black Students.

Discriminatory, exclusionary discipline can have a lasting effect on Black students and their future access to educational and economic opportunities. Because Black students are more likely to face harsh discipline that excludes students from the classroom, or “exclusionary discipline,” they are more likely to lose critical instruction and face-to-face engagement with educators. Before the coronavirus pandemic in 2020 and 2021, students missed eleven million school days annually, or sixty-three thousand school years, due to exclusionary disciplinary actions.²⁶ Among those lost school days, Black students were five times more likely to lose instructional time than white students.²⁷

When Black students are afforded fewer opportunities than their peers in the classroom, they are deprived of educational opportunities that lead to college and career success. For example, a student with a single suspension is less likely to graduate from high school, threatening severe, negative, long-term career and economic consequences.²⁸ Merely attending a school with high suspension rates increases the likelihood of having future interactions with the criminal legal system.²⁹ Conversely, schools with lower suspension rates are correlated to higher rates of graduates enrolling in four-year colleges.³⁰

²⁶ Exhibit A-2 at 4.

²⁷ *Id.* at 5.

²⁸ *See, e.g.*, Exhibit A-23; Exhibit A-24; Exhibit A-25.

²⁹ Exhibit A-8 at 2.

³⁰ *Id.*

Adultification bias and discriminatory discipline not only have a negative effect on academic performance, but also harm the social-emotional wellbeing of students. All students need positive relationships with staff; a safe, inclusive environment; and equitable support to thrive in school.³¹ However, discriminatory discipline fractures these relationships and communicates to Black students that they are unwelcome and unsafe at school—a communication conveyed to Black preschool students as young as three years old³² and throughout their educational careers—creating a negative school climate³³ and loss of academic engagement and aspirations.

II. Afrocentric Hairstyles, Particularly Dreadlocks or Locs, Hold Cultural Significance for Many in the Black Community.

For many Black individuals, hair is an expression of their identity and culture.³⁴ Black hair holds historical, emotional, and spiritual significance.³⁵ For example, for centuries the Fulani people, among others, in West Africa wore a specific style of braids, now called Fulani braids, which could identify a person's marital status, age, class, and geographic origin.³⁶ Over time, hair has become a link between Black history and current identities, as it represents a centuries-long pushback against Eurocentric notions that the

³¹ *Id.* at 6.

³² During the 2015-2016 schoolyear, Black girls made up 20% of girls enrolled in pre-school nationally but 53% of out-of-school suspensions for pre-school girls. *Id.* at 2.

³³ *Id.* at 6 (“School climate is a measure of how students and adults experience school.”).

³⁴ Exhibit A-26.

³⁵ *See* Exhibit A-27; Exhibit A-28 at 240-241 (“To black women, ‘[h]air is beauty, hair is emotion, hair is our heritage, hair tells us who we are, where we’ve been, and where we’re going.”).

³⁶ Exhibit A-27 at 40.

texture of white or European hair is inherently good and beautiful, while the texture of Black hair is inherently bad and undesirable.

The hairstyles that Black individuals wear are not only culturally significant, but also practical for maintaining healthy Black hair. Many of these hairstyles are called “protective styles,” which prevent knots, tangles, and breakage; promote easy upkeep and care; and maintain curls, among other things.³⁷ Some protective styles include braids, twists, Bantu knots, cornrows, hair wraps, and durags. As the physical attributes of natural Black hair can be more susceptible to breakage, protective styles can be necessary for some individuals to maintain healthy hair and minimize manipulation that can damage it.³⁸

Despite the deep significance of Black hair and the practicality of protective hairstyles, Black individuals are often discriminated against in the workplace and in education based on their hair.³⁹ This occurs when the intersection of race- and sex-based biases and unfamiliarity with Black hair cause those with authority to penalize Black people—particularly Black women and girls—for displaying or preserving their hair

³⁷ Exhibit A-29 at 266.

³⁸ *Id.*; *see also* Exhibit A-26.

³⁹ Exhibit A-28 at 241 (“In an attempt to make black professionals assimilate to white majority culture, grooming codes have historically been implemented to pressure black women into wearing styles that are not natural. . . Black women exchange moisturized, long, and healthy hair for hair that can become brittle, dry, and significantly shorter all to make the white majority more comfortable to see styles that they are used to in the workplace and schools.”); *see also* Exhibit A-30 (citing Duke research that found study participants discriminated against fictional job candidates with natural hair when evaluating the participants for consulting jobs).

without conforming to Eurocentric notions of beauty and professionalism.⁴⁰ In the education context, Black students are often subjected to race-based hair discrimination when they are disciplined, forced to cut or straighten Afrocentric hair, asked to leave the school, or excluded from educational programs and opportunities, such as clubs, sports, prom, and graduation, based on their hair.⁴¹

Black boys also experience hair discrimination in schools as a result of a lack of understanding and awareness of the cultural and personal significance of Black hairstyles⁴²—particularly as it relates to the style of dreadlocks or locs.⁴³ Locs are a hairstyle with ancient roots, as evidenced by historical artifacts that are at least 2,500

⁴⁰ The NAACP Legal Defense and Educational Fund uploaded a document from the American Eugenics Party called “The Ugliest Race” (circa 1966). The document disparages Black hair, saying that “Negro hair is considered to be more like wool than hair and suggests association with more primitive animals.” It also states that Black hair suggests poor health, uncleanliness, stuntedness, and disease. Exhibit A-26. Based on these notions, Black women have lost job opportunities and have even been barred from serving in public institutions, including the U.S. Army, because of their hair. *See, e.g., EEOC v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018 (11th Cir. 2016); Exhibit A-34; *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-servicewomen.html>.

⁴¹ Exhibit A-26.

⁴² In 2018, a six-year-old Black boy attending a school in Florida was turned away on the first day of a school because his hair violated a strict “no dreads” policy. Exhibit A-31. Later that same year, a Black high school student in New Jersey was forced to choose between forfeiting a wrestling match and cutting his locs. Exhibit A-32.

⁴³ This brief will refer to the style as locs, but another common term for the style is “dreadlocks.” “Locs” is a widely used term describing the tightly-knit style created when natural hair is left uncombed, and individual strands begin to mesh together. Exhibit A-33; *see also* Exhibit A-36; Princess Gabbara, *The History of Dreadlocks*, *Ebony* (Oct. 18, 2016), <https://www.ebony.com/style/history-dreadlocks/>.

years old depicting locs.⁴⁴ Locs underwent a revival with the growth of Rastafarianism and the Pan-African movement.⁴⁵ Under Rastafarian beliefs, the commitment to growing locs is meaningful for a number of reasons, including spiritual and religious reasons.⁴⁶

Beyond the cultural and spiritual symbolism connected to locs, the style takes enormous dedication, requiring years of ongoing maintenance and growth, especially for those who choose to roll their locs.⁴⁷ For a more uniform look with locs, individuals may have to roll or “re-twist” their locs by hand as often as every six to eight weeks but sparingly enough to avoid breakage.⁴⁸ Individuals may choose to grow locs as a connection to community and loved ones, such as the six-year-old turned away from school in Florida, who chose to grow locs to emulate his godfather.⁴⁹ Such dedication and community connection in growing locs often means that they are a source of identity and pride for those who grow them.

Yet too often, schools disregard or willfully ignore the cultural significance of locs when they force students to cut them to participate in school activities. In 2020, an eighteen-year-old high school student who had been growing his locs since he was in the seventh grade was told to cut his locs or face in-school suspension and risk missing the school prom and graduation.⁵⁰ Although DECS does not have an official policy against

⁴⁴ Exhibit A-34.

⁴⁵ Exhibit A-35.

⁴⁶ Exhibit A-34.

⁴⁷ See Gabbara, *supra* note 43.

⁴⁸ See *id.*

⁴⁹ See Exhibit A-31.

⁵⁰ Exhibit A-37.

locs, DECS committed a similarly egregious act when P.K.'s teacher cut a loc from his head without consent or appreciation for the care and significance growing and maintaining locs entails, leaving him humiliated and denigrated. *See* Pls.' Opp'n Mem. 24-26, ECF No. 129.

Such actions subject Black students to psychological harm that white students are not subject to, resulting in racially discriminatory treatment for students with Black hair. Treating Black students as if key aspects of their cultural heritage are not part of the school "norm" can lead Black students to question their self-worth and feel inferior.⁵¹ It also can create an environment ripe for racial bullying and harassment,⁵² such as the racial taunts, slurs, and jeers that white students regularly used against Black students that DECS administration largely ignored or minimized.

III. Dress Codes Are Often Enforced in Harmful Ways, Reflecting Intersecting Race- and Gender-Based Stereotypes and Leading to Discrimination Against Black Students.

Dress codes, such as those requiring uniforms, frequently promote stereotypes and are often discriminatorily enforced against Black students because of intersecting race- and gender-based discrimination. Educators are more likely to dole out discipline to Black students than white students based on uniform policies because dress code infractions are discretionary—meaning subjective and depending on school administrator bias and interpretation of student behaviors. Thus, dress codes tend to be another area of

⁵¹ *See* Exhibit A-44 at 1280-81.

⁵² Leah Asmelash, *Black Students Say They Are Being Penalized for Their Hair, and Experts Say Every Student Is Worse Off Because of It*, CNN (Mar. 8, 2020), <https://www.cnn.com/2020/03/08/us/black-hair-discrimination-schools-trnd/index.html>.

discipline where educator adultification bias and other race and gender stereotypes are at play.⁵³

Dress codes, including uniform policies, frequently target girls by setting out rigid requirements for stereotypically feminine clothing, such as skirts and dresses of prescribed lengths or rules that police the exposure of undergarments.⁵⁴ Such policies enforce gender stereotypes and invite educators to scrutinize girls' bodies and appearance for dress code infractions, which can damage students' confidence, psychological well-being, and sense of belonging in school.⁵⁵ Because Black girls sit at the intersection of these race and gender stereotypes, they are more likely than other demographics of students to lose instruction time through exclusionary enforcement of dress codes.⁵⁶ For example, L.G. was pulled out of the classroom, shamed, and lost valuable instruction time on more than one occasion for something as trivial as the design of her undershirt, even though L.G.'s teacher did not have the authority to enforce the dress code in this way. *See* Def.'s Mem. in Supp. of Mot. Summ. J. 29-30, ECF No. 109. In contrast, white students who violated the dress code were not pulled out of class or forced to change. Pls.' Opp'n Mem. 34-35, 56-57, ECF No. 129. Indeed, L.G.'s teacher admitted that L.G.

⁵³ At least one study notes that the racial demographics of a school may correlate with the strictness of its dress code. Exhibit A-38 at 6 (noting that public high schools in the District of Columbia in which Black students made up at least 51 percent of students enrolled had more dress code restrictions, on average, than other high schools. As a result, Black students were more likely to be disciplined for dress code infractions).

⁵⁴ For example, the DECS 2017-18 handbook regulates the length of skirts, shorts, dresses, and jumpers, as well as the width of tank tops or shoulder straps. Exhibit A-41.

⁵⁵ *See* Exhibit A-14 at 1, 18-19.

⁵⁶ *See id.* at 23.

is the only student she has ever made change while enforcing the dress code—indicating differential treatment for the only Black student in her class. Pls.’ Opp’n Mem. 57, ECF No. 129.

The stereotypes baked into dress codes can impact students both academically and mentally. Punishments such as sending students home, to the principal’s office or to in-school suspension until a parent comes with a change of clothes, or ramping up disciplinary actions for repeat uniform offenses can cause students to miss critical instruction time.⁵⁷ Some schools utilize shame-based punishments, such as when DECS excluded students with disciplinary referrals from participating in “free dress day,” the rare occasion when students could wear their own clothes. *See* First Amended Complaint (Jury Trial Demanded) at 26, *K.R. v. Duluth Edison Charter Schs.*, No. 19-cv-00999, 2019 WL 13020703 (D. Minn. Jun. 11, 2019). Such shame-based punishments do less to modify behavior and more to lower students’ self-esteem and perceptions of self-worth.⁵⁸

For students who are struggling academically, missed class time puts them at risk of falling even further behind, and repeatedly being reprimanded for one’s clothing is embarrassing and discouraging, which further detracts from learning. Further, Black students who are reminded of racist stereotypes—even through dress codes—perform worse on academic exams, often because they are afraid of conforming to a negative stereotype about Black people.⁵⁹ Conversely, Black girls who have positive feelings

⁵⁷ *Id.* at 25.

⁵⁸ *Id.* at 22.

⁵⁹ *Id.* at 27.

about their racial identity are likely to be more academically engaged and curious, while those with negative feelings about their racial identity perform lower and have more symptoms of depression.⁶⁰

For a contingent of students of color attending DECS, these concerns caused by school dress codes are a reality. In the DECS Cultural Climate Assessment, students of color, including Black students, strongly conveyed that the uniform policy stifled their ability to express their cultural heritage and to dress in a way that would respect their culture but also conform to the policy.⁶¹ Sullivan Decl., Ex. D, at 6, ECF No. 110-4.

⁶⁰ See Exhibit A-42.

⁶¹ Indeed, the Cultural Climate Assessment highlighted myriad ways in which students of color were deprived of educational benefits white students enjoy. For example, students benefit from having a diverse school staff, and students of color, specifically, perform better academically, are more likely to graduate, and are more likely to attend college when they are taught by educators of color. Elizabeth Heubeck, *Recruiting and Retaining Teachers of Color: Why It Matters, Ways to Do It*, EDUCATIONWEEK (June 30, 2020), <https://www.edweek.org/leadership/recruiting-and-retaining-teachers-of-color-why-it-matters-ways-to-do-it/2020/06>. Also, when compared to white educators, Black educators are also less likely to respond punitively to normal, childlike behavior exhibited by Black children—indicating that a diverse faculty could mitigate racial disparities in exclusionary discipline. *Id.* Yet, in the 2016 Cultural Climate Assessment, staff members noted the lack of staff diversity and its negative impact on students from diverse backgrounds. Sullivan Decl., Ex. D, at 7, ECF No. 110-4. The assessment also cited DECS failure to implement culturally sustaining curriculum, despite evidence that it would build self-worth in students of color and desire from the broader school community for DECS to adopt a culturally sustaining curriculum. *Id.* at 8- 9. Perhaps most egregiously, while white students and their caregivers were able to directly communicate issues and work through solutions with their teachers, Black students and their caregivers were referred to cultural liaisons who were one step removed from those better able to improve classroom climate. *Id.* at 8, 13-14. As such, in policy and practice, DECS staff members treated Black students differently from white students.

These sentiments combined with the discriminatory enforcement of the dress code provide further evidence of the racially hostile environment that DECS perpetuated for Black students.

CONCLUSION

For the foregoing reasons, *amici* urge the Court to hold DECS responsible for addressing the harms outlined herein and join the Plaintiffs in requesting denial of Defendant's motion for summary judgment.

Dated: September 10, 2021
New York, N.Y.

Respectfully submitted,

/s/ William C. Mattessich

Sabrina Bernadel
Adaku Onyeka-Crawford
Sunu Chandy
Emily Martin
NATIONAL WOMEN'S LAW CENTER
11 DUPONT CIRCLE, NW
WASHINGTON, D.C. 20036
(202) 588-6000

William C. Mattessich,
MN Bar No. 400513
Counsel of Record
Courtney M. Dankworth
Eric W. Silverberg
Adrian Gonzalez
DEBEVOISE & PLIMPTON LLP
919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 909-6000

*Counsel for the National Women's Law
Center, et al., as Amici Curiae*