

TALKING BLACK: DESTIGMATIZING BLACK ENGLISH AND  
FUNDING BI-DIALECTAL EDUCATION PROGRAMS

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*During colonial and antebellum American history, slaveholding states enacted anti-literacy laws that prohibited teaching enslaved people how to read or write. Later iterations of these laws criminalized the education of African Americans—enslaved or free—in response to conspiracies and insurrections led by literate enslaved and free African Americans. These enactments along with the customs of violence on slave plantations inevitably resulted in a mostly illiterate enslaved population. The legacy of literacy proscription, through segregated schools, continued to impair the quality of education that Black children received. Because of unresolved opportunity gaps, the low literacy rates of Black children and the disparity in academic achievement between Black and White children remain pressing issues for school reformers.*

*Anti-literacy statutes also prevented enslaved Africans from formally learning the rules and grammar of standard American English. Consequently, enslaved Africans created their own English dialect—African American Vernacular English (“AAVE”). AAVE is an English language variety whose structure and grammar conflicts with standard English, at times. Today, many Black children enter school speaking AAVE. Furthermore, linguistic research documents the academic challenges faced by Black children who*

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*speak AAVE. Current education law does not explicitly account or provide remedial support for children who speak AAVE.*

*This Note argues that the often overlooked linguistic barriers presented by children who speak AAVE is the primary driver of low literacy rates among black children. This Note recommends allocating federal funding for the implementation of bi-dialectal programs for AAVE-speaking children to ensure that Black children have access to equal educational opportunities.*

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## I. INTRODUCTION

In *Notes on the State of Virginia*, in 1781, Thomas Jefferson “was utterly convinced” that members of the African race were intellectually inferior to Whites because of so-called biological or

racial characteristics<sup>1</sup>: “Comparing them [Blacks] by their faculties of memory, reason, and imagination, it appears to me, that in memory they are equal to the whites; in reason much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless, and anomalous.”<sup>2</sup>

In 1863, a runaway slave from Kentucky named Francis Frederic challenged Jefferson’s earlier articulation that Black people were intellectually inferior. Frederic questioned the reason why slaveholders prevented enslaved people from learning how to read and thereby “investigate” the teachings of Euclid.<sup>3</sup> Frederic asserted, “[i]t cannot be pretended for one moment, truthfully, that we are not capable of understanding if we were taught. I myself am a living witness against such absurdity; after fifty years of age I have learnt to read and write.”<sup>4</sup> It is doubtful that Thomas Jefferson, a slaveholder, was unaware of the barriers that prevented enslaved Black people from learning how to read. Mary Ella Grandberry, a formerly enslaved woman, bore witness to the punishment enslaved people faced if caught reading. She recalled, “[d]e white folks didn’t ‘low us to even look at a book. Dey would stol’ an sometimes whup us iffen dey caught us wid our head in a book.”<sup>5</sup>

Both Frederic and Grandberry used their personal experiences to expose the oppressive laws and customs that prevented enslaved people from learning how to read. Learning how to read and write in standard English gave Frederic’s narrative legitimacy in mainstream society. Whereas Grandberry’s narrative did not achieve the same legitimacy. Grandberry did not have the ability to write her own words

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<sup>1</sup> Span, *infra* note 54, at 30.

<sup>2</sup> THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 146–47 (Frank C. Shuffleton ed., Penguin Books 1999).

<sup>3</sup> FRANCIS FREDERIC, SLAVE LIFE IN VIRGINIA AND KENTUCKY; OR FIFTY YEARS OF SLAVERY IN THE SOUTHERN STATES OF AMERICA 53 (1863). When a spelling book was found on his person, Frederic’s mistress’ sister threatened to whip him with 100 lashes if Frederic was found with another book.

<sup>4</sup> *Id.*

<sup>5</sup> Span, *infra* note 54, at 32–33 (citing GEORGE RAWICK, THE AMERICAN SLAVE: A COMPOSITE AUTOBIOGRAPHY 160 (1972)).

and she spoke in a dialect of English, which today is referred to as African American Vernacular English (“AAVE”).<sup>6</sup> Access to learning opportunities distinguishes Fredric’s narrative from Grandberry’s. Denying Black people access to literacy ensured that Black people remained at the bottom of the American racial caste system.<sup>7</sup> Maintaining white supremacist ideologies like Jefferson’s required preventing enslaved persons of African descent from learning how to read and by extension how to speak standard English.<sup>8</sup> Otherwise, White people would no longer have reasons to claim intellectual superiority over Black people.<sup>9</sup>

Today, the “Achievement Gap” refers to the persistent disparities in the educational outcomes of Black and White children.<sup>10</sup> The underachievement of Black children reflects the laws, policies, and practices that continue to deny Black children access to quality educational opportunities since the colonial period in American history.<sup>11</sup>

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<sup>6</sup> See *infra* Part IIA & B for a detailed discussion on the linguistic origins and features of AAVE. One feature of AAVE includes the substitution of [ð] with [d] as can be seen in the quotation by Grandberry (i.e. replacing “they” with “dey”).

<sup>7</sup> See, e.g., Williams, *infra* note 65, at 460–67.

<sup>8</sup> HEATHER ANDREA WILLIAMS, SELF-TAUGHT: AFRICAN AMERICAN EDUCATION IN SLAVERY AND FREEDOM 7 (Waldo E. Martin Jr. & Patricia Sullivan eds., 2005) (ARGUING THAT “[m]aintaining a system of bondage in the Age of Enlightenment depended on master’s being able to speak for the slave, to deny his or her humanity, and to draw a line between slave consciousness and human will. The presence of literate slaves threatened to give lie to the entire system”).

<sup>9</sup> *Id.*

<sup>10</sup> The “Achievement Gap” refers to the disparities between Black and White children on reading and mathematics outcomes. According to the 2019 NAEP Report, White students performed 26 points higher than Black children in 4th grade reading and 28 points higher in 8th grade reading. DEP’T EDUC., NAEP REPORT CARD: 2019 NAEP READING ASSESSMENT, <https://www.nationsreportcard.gov/highlights/reading/2019/> (last visited Apr. 02, 2020).

<sup>11</sup> Beyond assessing Black children in relation to the achievement of their White counterpart, many Black children are not performing on grade level and are falling behind. Thus, some scholars have taken issue with the term “Achievement Gap” because “such nomenclature tends to obscure the reality

This Note will argue that the legacy of anti-literacy laws<sup>12</sup> is the underlying driver behind the low achievement of Black children. State legislatures passed these laws during the antebellum era, which prevented enslaved Black people and even free Blacks from learning how to read or write in standard English.<sup>13</sup> A secondary consequence of anti-literacy laws is that they denied African Americans the opportunity to learn the grammar of Standard English.<sup>14</sup> Thus, African Americans created their own linguistic tradition whose features and grammar, at times, contradict the grammar of standard English.<sup>15</sup> This linguistic tradition continues to pass down to African American children. Academic challenges arise because the American school system erroneously expects children to know the foundational grammar of standard American English; instead, schools need to teach Black children who speak AAVE the language system of standard English.<sup>16</sup>

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that these disparities are the predictable manifestations of ‘opportunity gaps’ rooted in our nation’s legacy of slavery, segregation, and racism.” Kelley, *infra* note 57, at 138.

<sup>12</sup> In this Note, “anti-literacy laws” refers to statutes passed in southern states during the colonial antebellum period that prohibited, penalized, and/or criminalized Black people, whether enslaved or free, from learning how to read and write. See *infra* Part I, for further discussion.

<sup>13</sup> WILLIAMS, *supra* note 8, at 13–16, 27 (describing a series of anti-literacy laws that proscribed teaching enslaved and/or free Black people how to reading and/or write in the following states: South Carolina, Georgia, Louisiana, North Carolina, Virginia, and Alabama).

<sup>14</sup> See Smitherman, *infra* note 143, at 547 (noting that “there was no concern about the language or education of Africans” during the centuries of enslavement in colonial and antebellum America. Smitherman further asserts that the relationship between AAVE and “the education of US slave descendants was not addressed until the Black Freedom Struggle of the mid-twentieth century”).

<sup>15</sup> See Newkirk, *infra* note 111, at 439 (noting that AAVE is a “native English dialect primarily spoken by African Americans with an indigenous slave history and ancestral ties to Sub-Saharan Africa”).

<sup>16</sup> *Id.* at 439 (noting that “the initial three years of the life span are a critical time period during which the foundation of a language is established”). Children who speak AAVE have acquired this language system because they were exposed to it, which suggests more exposure to AAVE than standard

By analyzing the literacy rates of Black children from a historical perspective, we can see that the legacy of anti-literacy laws, which barred Black people from learning how to read, write, and speak standard English, is the underlying issue Black children confront when learning how to read. This history is often overlooked because of the assumption that African American children do not face linguistic barriers, or because AAVE is erroneously considered a slang used colloquially by urban youth.<sup>17</sup> Furthermore, schools implicitly presume that children enter school knowing standard English.<sup>18</sup> This presumption does not hold true for many Black children.<sup>19</sup>

This is important because Black children may continue to struggle even if structural inequities in our school systems are rectified.<sup>20</sup> That is, increased resources or school funding will not completely remedy the achievement gap if linguistic challenges are not also

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English. However, standard English is the dominant language variety used in classroom instruction and educational materials. Students who have been exposed to standard English prior to school entry may experience less difficulty learning standard English. If AAVE-speaking children are unable to master standard English, they face “well-documented challenges” to academic achievement in reading. *See id.* at 441; Mills & Washington, *infra* note 131, at 568.

<sup>17</sup> *See* Baugh, *infra* note 227, at 668 (arguing that “Racism against Blacks in America accounts, in part, for some of the lingering linguistic stigma and misconceptions that many uninformed people harbor about AAVE”).

<sup>18</sup> The presumption that children enter school knowing standard English contradicts “long standing evidence that children [including African American children who speak AAVE] acquire the language system to which they are exposed from a very early age.” *See* Newkirk, *infra* note 111, at 441.

<sup>19</sup> *See* Craig & Washington, *infra* note 130 (estimating that 90% of African American children speak AAVE upon school entry).

<sup>20</sup> Increasing funding to underperforming schools does not, by itself, address the linguistic barriers that AAVE speakers face in school. Reform efforts must explicitly prescribe pedagogical programs that target the differences between AAVE and Standard English. *See*, Mills & Washington *infra* note 131, at 576 (noting that structural differences between AAVE and standard English “may place children at risk for underachievement in reading, decoding in particular”).

targeted.<sup>21</sup> Moreover, because of the concrete injury inflicted by literacy proscription, legal redress may be warranted.

Part I will trace the history of literacy proscription in the antebellum South and describe how anti-literacy laws became increasingly stringent in response to the threat and actualization of slave insurrections. Furthermore, Part I will note how the legacy of literacy proscription persisted even after the Civil War and the passage of the 14th amendment and denied Black children an equitable education. Part II will discuss the origins of AAVE and the features that distinguish it from standard English. Part II will also analyze how the unique features of AAVE and the perception of AAVE pose academic challenges for young Black children in schools today. Finally, Part III will propose a federal funding to implement bi-dialectal programs<sup>22</sup> to ensure that schools offer Black children an equal opportunity to learn.

## II. THE CAUSE AND EFFECTS OF LITERACY PROSCRIPTION: FROM THE COLONIAL SOUTH TO THE CONTEMPORARY ERA

Anti-literacy statutes passed during the colonial and antebellum era of the American South were implemented as a means of maintaining a racialized social order, with the descendants of African people at the bottom. Beginning in the mid-18th Century, slaveholding colonies began to pass anti-literacy statutes in order to subjugate enslaved Black people to an inferior status to the White population.<sup>23</sup> More slaveholding states enacted more stringent anti-

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<sup>21</sup> *Id.*; see also Smitherman, *infra* note 143, at 547 (arguing that language intervention for AAVE-speaking students “has to be holistic, encompassing analysis and teaching of discourse, cultural-communication styles, and rhetorical strategies”).

<sup>22</sup> Bi-dialectal programs are educational programs that teach children who speak a non-standard dialect to acquire the dominant or mainstream language system used in school and the professional context. That is, the objective of bidialectalism is to teach children how to “code-switch”. The ability to code-switch is “necessary for academic achievement because of the predominant use of a single code in the written and spoken context of schooling.” *Id.* at 566.

<sup>23</sup> May, *infra* note 41, at 242.

literacy statutes during the 19th Century in response to notable slave revolts.<sup>24</sup> The letter of the law and the force of violence proved effective in barring enslaved people from accessing literacy—at the start of the Civil War, an estimated five to ten percent of enslaved people were literate.<sup>25</sup>

Today, the legacy of literacy proscription continues to negatively impact the literacy rates of Black children. The disparity in literacy between Black and White children persists; Black and Hispanic twelfth grade students perform, on average, at the same rate as White eighth grade students in reading.<sup>26</sup> Black<sup>27</sup> children will continue to face barriers to education if the underlying history of literacy proscription is not addressed.

#### A. Literacy Proscription as Racial Subjugation in the Slave-holding South

Legislatures of the colonial and antebellum south passed legislation prohibiting slaves from learning how to read or write, in part, as a response to uprisings led by enslaved and free Blacks.<sup>28</sup> Southern state legislatures recognized a relationship between literacy and liberation—literacy could provide enslaved Black people with the practical and symbolic tools to agitate and dismantle the institution of American chattel slavery.<sup>29</sup> Thus, it should be understood that

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<sup>24</sup> *Id.* at 252–54.

<sup>25</sup> Kelley, *infra* note 57, at 157.

<sup>26</sup> SONIA NIETO & PATRICIA BODE, *AFFIRMING DIVERSITY: THE SOCIOPOLITICAL CONTEXT OF MULTICULTURAL EDUCATION* 13 (6th ed. 2012).

<sup>27</sup> This note will primarily focus on addressing the barriers Black children face in schools. This Note begins with the history of literacy proscription against Black people and attempts to understand how that legacy has impacted Black children since the antebellum period. An opportunity gap does exist between White and Hispanic children. However, by law, Spanish-speaking children should have access to bilingual services.

<sup>28</sup> May, *infra* note 41, at 237.

<sup>29</sup> *Id.* (arguing “white Southern states regulated slave religion to prevent the potential twin dangers it created: 1) a moral indictment of the institution of slavery; and (2) [sic] a pretense by which slaves could assemble for insurrectionary purposes”).

slaveholding states passed anti-literacy statutes in order to subjugate enslaved Black people to an inferior status to Whites.

Anti-literacy laws prevented the overwhelming majority of slaves from learning how to read or write.<sup>30</sup> However, proscribing literacy was not a uniform interest within the White political establishment in slaveholding states. Many church denominations, religious leaders, and some slaveholders advocated for teaching slaves how to read in order to authenticate conversion into the Christian faith.<sup>31</sup> In contrast, state legislatures and many slaveholders advocated for increased restrictions on the movement and mobility of enslaved people.<sup>32</sup> Ultimately, slaveholding states enacted a series of anti-literacy laws primarily in response to enslaved individuals taking up arms to claim their liberation.<sup>33</sup>

The colonial legislature of South Carolina enacted the Negro Act of 1740, a “compulsory illiteracy” act, making South Carolina the first state to forbid and criminalize educating enslaved persons.<sup>34</sup> The 1740 Act only prohibited teaching enslaved individuals how to write.<sup>35</sup> The legislators in South Carolina believed slaves that enjoyed

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<sup>30</sup> Only five to ten percent of about four million enslaved African Americans were literate at the start of the Civil War in the American South. Span, *infra* note 53, at 56; *see also* Denise C. Morgan, *What is Left to Argue in Desegregation Law: The Right to Minimally Adequate Education*, 8 HARV. BLACKLETTER J. 99, 102 (1991).

<sup>31</sup> The Church of England promoted the conversion of enslaved Africans during the colonial era of American history. The society for the Propagation of the Gospel in Foreign Parts sent missionaries and catechists with the instruction to promote the conversion of the Black slave population. Marcus W. Jernegan, *Slavery and Conversion in the American Colonies.*, 21 THE AM. HIST. REV. 504, 509–10 (1916).

<sup>32</sup> May, *infra* note 41, at 245–48, 253–55.

<sup>33</sup> WILLIAMS, *supra* note 8, AT 13–16, 27 (describing anti-literacy laws that proscribed teaching enslaved and/or free Black people how to read and/or write in the following states: South Carolina, Georgia, Louisiana, North Carolina, Virginia, Alabama).

<sup>34</sup> Span, *infra* note 54, at 27; May, *infra* note 41, at 242.

<sup>35</sup> Monaghan, *infra* note 44, at 316–17.

the ability to write “may be attended with great inconveniences . . .”<sup>36</sup> The Negro Act of 1740 likely responded to the Stono Rebellion from the previous year.<sup>37</sup> On September 9, 1739, twenty slaves in South Carolina beheaded White employees of a store in Charleston and then journeyed south towards St. Augustine, Florida.<sup>38</sup> White planters suppressed the insurrection before the slaves could cross the South Carolina border.<sup>39</sup> Forty-four Blacks and twenty-one Whites died during the uprising.<sup>40</sup> Thus, the 1740 Negro Act also prohibited the assembly of more than seven slaves without a White chaperone and granted immunity to White persons that killed “rebellious Negroes.”<sup>41</sup> The stated legislative objective was to keep slaves “in due subjection and obedience.”<sup>42</sup> Yet African Americans continued to plot insurrections to liberate themselves, and these insurrections increasingly relied on the text of their slaveholder’s religion.<sup>43</sup>

At the turn of the 19<sup>th</sup> century, slave-holding states passed more stringent anti-literacy laws that proscribed writing *and* reading in response to major slave revolts that were led by literate Black

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<sup>36</sup> STATE OF SOUTH CAROLINA, THE STATUTES AT LARGE OF SOUTH CAROLINA: ACTS RELATING TO CHARLESTON, COURTS, SLAVES, AND RIVERS 413 (David J. McCord ed., vol. 7, 2017) (1840) (citing Article XLV of the Act for the Better Ordering and Governing Negroes and other Slaves in the Province, which South Carolina’s legislature passed in 1740).

<sup>37</sup> May, *infra* note 41, at 240–242.

<sup>38</sup> LEON HIGGINBOTHAM, IN THE MATTER OF COLOR 192–94 (1978).

<sup>39</sup> May, *infra* note 41, at 241.

<sup>40</sup> JOSEPH C. CARROLL, SLAVE INSURRECTIONS IN THE UNITED STATES, 1800–1865, 22–23 (2004).

<sup>41</sup> Nicholas May, *Holy Rebellion: Religious Assembly Laws in Antebellum South Carolina and Virginia*, 49 THE AM. J. LEGAL HIST. 237, 241–42 (2007).

<sup>42</sup> May, *infra* note 41, at 242.

<sup>43</sup> Free and enslaved Black people who plotted insurrections during the 19<sup>th</sup> century used the Bible to legitimize their cause for liberation. The use of the Bible to justify their liberation sheds light on African American interpretations of the Bible that directly contradicted how slaveholders used the text of the Bible to impose a Christian duty on enslaved people to submit to their enslavement. *Id.* at 243; *see also* ALLEN DWIGHT CALLAHAN, TALKING BOOK: AFRICAN AMERICANS AND THE BIBLE 6–10 (2006).

individuals.<sup>44</sup> In 1800, an enslaved man named Gabriel Prosser and an estimated seventy enslaved men were arrested for plotting a slave uprising in Henrico County, Virginia—twenty-six were executed.<sup>45</sup> Gabriel was a carpenter and a literate man who used religious gatherings and evening prayer meetings to orchestrate a plan intended to result in the enslaved population controlling the city of Richmond.<sup>46</sup> More importantly, Gabriel and his brother, Martin, cited the text of the Bible to legitimize the plot and quell concerns of their co-conspirators.<sup>47</sup> Furthermore, both Ben and Martin had the mobility needed to plan an insurrection in the city of Richmond. Indeed, Gabriel successfully amassed thousands of enslaved individuals because many co-conspirators were highly-skilled artisans who had the ability to travel between the city and the countryside.<sup>48</sup> It is believed that those plotting the insurrection forged passes for themselves in order to travel between the city and the countryside.<sup>49</sup>

Consequently, slave-holding states extended literacy proscription to include its free Black population throughout the first

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<sup>44</sup> For example, South Carolina's Negro Act of 1740 imposed criminal penalties for anyone who taught or caused an enslaved person to write. Whereas, South Carolina's compulsory illiteracy act of 1800 expanded the reach of literacy proscription: prohibiting the assembly of enslaved and free Black people for the purpose of "mental instruction," which could include reading, writing, memorization, arithmetic, etc. Georgia's 1829 act explicitly prohibited any enslaved person, free person, or any White person from teaching Black people—whether enslaved or free—from learning how to read or write. E. Jennifer Monaghan, Lecture, *Reading for the Enslaved, Writing for the Free: Reflections on Liberty and Literacy*, AM. ANTIQUARIAN SOC'Y 309, 316–17, 333 (2000); WILLIAMS, *supra* note 8, at 13.

<sup>45</sup> Michael L. Nicholls, *Gabriel's Conspiracy (1800)*, ENCYCLOPEDIA VIRGINIA (Apr. 21, 2016), [https://www.encyclopediavirginia.org/Gabriel\\_s\\_Conspiracy\\_1800](https://www.encyclopediavirginia.org/Gabriel_s_Conspiracy_1800); MIDORI TAKAGI, REARING WOLVES TO OUR OWN DESTRUCTION: SLAVERY IN RICHMOND, VIRGINIA, 1782-1865 62–63 (2002).

<sup>46</sup> *Id.*; CALLAHAN, *supra* note 43, at 6.

<sup>47</sup> May, *supra* note 41, at 244.

<sup>48</sup> TAKAGI, *supra* note 45, at 62–63; CALLAHAN, *supra* note 43, at 6.

<sup>49</sup> Antonio T. Bly, *Slave Literacy and Education in Virginia*, ENCYCLOPEDIA VIRGINIA (July 11, 2017), [https://www.encyclopediavirginia.org/Slave\\_Literacy\\_and\\_Education\\_in\\_Virginia](https://www.encyclopediavirginia.org/Slave_Literacy_and_Education_in_Virginia).

half of the 19th Century.<sup>50</sup> South Carolina's statute of 1800 banned enslaved and free Black people from gathering with the purpose of "mental instructions" even in the presence of a White person—such assembly was deemed "unlawful".<sup>51</sup> The broad language of "mental instructions" could include reading, writing, memorization, arithmetic, and more.<sup>52</sup> The 1800 statute imposed a penalty for a maximum of twenty lashes to any person of color caught unlawfully gathering (i.e. gathering for mental instruction).<sup>53</sup> The Virginia Revised Code of 1819 also outlawed any enslaved or free Black person from attending any gathering or school for instruction in reading or writing.<sup>54</sup> The Mississippi legislature enacted a statute that banned the education of enslaved and free Black people; additionally, the Mississippi statute prohibited Black people from meeting at night in groups of more than five people.<sup>55</sup> Between 1829 and 1834, Alabama, Georgia, Louisiana, and North Carolina all passed similar legislation that prohibited schools from educating enslaved and free Black people in the instructions of reading or writing.<sup>56</sup>

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<sup>50</sup> Monaghan, *supra* note 44, 316–17, 333; WILLIAMS, *supra* note 8, at 13; CALLAHAN, *supra* note 43, at 10.

<sup>51</sup> AN ACT RESPECTING SLAVES, FREE NEGROES, MULATTOES, AND MESTIZOES, FOR ENFORCING THE MORE PUNCTUAL PERFORMANCE OF PATROL DUTY, AND TO IMPOSE CERTAIN REFLECTIONS ON THE EMANCIPATION OF SLAVES in ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY, OF THE STATE OF SOUTH-CAROLINA, PASSED IN DECEMBER, 1800 (printed by Daniel & J.J. Faust, 1801); WILLIAMS, *supra* note 8, at 13.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* See also Christopher M. Span, *Post-Slavery? Post-Segregation? Post-Racial? A History of the Impact of Slavery, Segregation, and Racism on the Education of African Americans*, 114 NAT'L SOC'Y STUDY EDUC. 56 (2015).

<sup>54</sup> Kelly, *infra* note 57, at 156; Christopher Span, *Learning in Spite of Opposition: African American and their History of Educational Exclusion in Antebellum America*, 131 POL. CURRICULAR CHANGE 26, 56 (2005).

<sup>55</sup> WILLIAMS, *supra* note 8, at 205.

<sup>56</sup> In 1829, Georgia's state legislature passed a law outlawing teaching any enslaved or free Black person to read and penalized the importation and circulation of "any printed or written pamphlet, paper or circular, for the purposes of exciting to insurrection, conspiracy or resistance among the slaves, negroes, or free persons." In 1830, Louisiana lawmakers criminalized enslaved

Lastly, Nat Turner, a literate, enslaved preacher, led the deadliest slave rebellion that resulted in the death of over fifty White people in South Hampton County, Virginia.<sup>57</sup> Religious experiences drove him to plan and execute the 1831 rebellion in South Hampton County, Virginia.<sup>58</sup> In his confession, Turner attested that a series of divine encounters, beginning in 1825, gave him the impetus to move the rebellion forward.<sup>59</sup> On May 12, 1828, Turner reported, “I heard a loud noise in the heavens, and the Spirit instantly appeared to me and said the Serpent was loosened, and Christ had laid down the yoke . . . and that I should take it on and fight against the Serpent . . . .”<sup>60</sup>

In the aftermath of Turner’s rebellion, Virginia and South Carolina passed new legislation that punished anyone caught teaching Black people—enslaved or free—how to read or write.<sup>61</sup> Unlike prior statutes, South Carolina’s 1834 legislation established criminal penalties for teaching Black people how to read or write.<sup>62</sup> Whether through the law or customs of slave plantations, literacy proscription proved to be an effective deterrent.

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people from learning to read or write. In 1830, North Carolina legislatures enacted a statute prohibiting any free or enslaved person from teaching an enslaved person to read or write, believing that literacy “has a tendency to excite dissatisfaction in [enslaved people’s] minds, and to produce insurrection and rebellion, to the manifest injury of the citizens of the State.” In November 1831, the Alabama legislature passed a law forbidding any person to teach any free or enslaved Black person how to spell, read, or write *Id.* at 13–15. See also Kelly, *infra* note 57, at 156.

<sup>57</sup> May, *supra* note 41, at 251–52; Melvin J. Kelley, IV, *Interpreting Equal Protect Clause Jurisprudence Under the Whiteness-Bell Curve*, 21 *J. Gender Race & Justice* 135, 156 (2017).

<sup>58</sup> Thomas Gray interviewed Nat Turner while Turner was incarcerated before his scheduled execution. Gray, then, transcribed his conversation with Turner. THOMAS R. GRAY, *THE CONFESSIONS OF NAT TURNER* 10 (1831).

<sup>59</sup> *Id.* at 9–10.

<sup>60</sup> *Id.* at 11.

<sup>61</sup> Span, *supra* note 53, at 56; CALLAHAN, *supra* note 43, at 10.

<sup>62</sup> May, *supra* note 41, at 253–54.

By the start of the Civil War, only five to ten percent of enslaved people had learned how to read.<sup>63</sup>

### B. De Facto Literacy Proscription Post-Bellum

Despite the passage and ratification of the Civil War Amendments, former slave-holding states continued to oppress Black people by denying access to equitable educational opportunities, and therefore literacy.<sup>64</sup> During the first decade after emancipation, free public schools under the Freedman's Bureaus were established throughout former Confederate states to educate newly freed slaves, as established by Congress in 1866.<sup>65</sup> On the state level, former Confederate states enacted provisions guaranteeing the civil and political rights of all citizens of the state in order to gain congressional readmittances into the Union.<sup>66</sup> In 1870, Virginia amended its Constitution to require free public education for all state children, without respect to race.<sup>67</sup> Furthermore, the 1870 Constitution of Virginia required the General Assembly to "make such laws as shall not permit parents and guardians to allow their children to grow up in ignorance and vagrancy."<sup>68</sup> Virginia's amended Constitution recognized extending a free formal education to all children of the

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<sup>63</sup> Kelley, *supra* note 57, at 157.

<sup>64</sup> Morgan, *infra* note 108, at 103–04 (noting that "even into the mid-twentieth century, when compulsory school attendance laws were in force in every state, segregated educational facilities for Black students continued to be unequal to those provided for white students").

<sup>65</sup> Verna L. Williams, *Reading, Writing, and Reparations: Systemic Reform of Public Schools as a Matter of Justice*, 11 MICH. J. RACE & LAW 419, 445 (2006) (citing the Civil Rights Act of 1866, 42 U.S.C. § 1981). From 1865 to 1870, The Freedmen's Bureau opened over 4000 schools, which were attended by over 250,000 Black people. The Bureau was shut down in 1870. Morgan, *infra* note 108, at 103.

<sup>66</sup> *Id.* at 446.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 447 (citing Va. Const. of 1870, art. VIII, §§ 3, 4 (1870)).

state regardless of their race or class as essential to the public good.<sup>69</sup>

The stark reversal from anti-literacy laws gave formerly enslaved people a newfound hope in obtaining an education. This hope quickly evaporated as northern troops departed from former Confederate states, which signaled the end of Reconstruction.<sup>70</sup> Legislators from these states structured their education system to provide a segregated and underfunded schooling for African American children.<sup>71</sup> These measures were taken to curb the political and economic progress made by Black people after the Civil War.<sup>72</sup> Furthermore, the Supreme Court's ruling in *Plessy v. Ferguson* recognized the constitutionality of laws mandating the separation of races as authorized by the police power of state legislatures.<sup>73</sup> The Court explicitly distinguished between laws that interfere with the political equality of Black people and laws that require the separation of races in schools.<sup>74</sup> Only the former constituted a violation of the 14th Amendment.<sup>75</sup>

The Supreme Court continued to defer to the police power of state legislatures in response to state funding schemes that unequally distributed funds between black and white schools. Three years after its decision in *Plessy*, the Court unanimously held that the school board of Richmond County, Virginia did not violate the 14th Amendment to the U.S. Constitution when it closed the only high school for Black students, though the school board continued to support a public high school for White girls.<sup>76</sup> In *Cumming*, the Court deferred to the discretion of the Richmond County School

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<sup>69</sup> *Id.* (noting that “[t]he framers of the 1870 constitution thus linked education with the overarching goal of assuring all persons meaningful participation in the civic and political life of the state”).

<sup>70</sup> Kelley, *supra* note 57, at 161.

<sup>71</sup> Williams, *supra* note 65, at 449–51 (citing the Virginia Constitution of 1901 stating, “[w]hite and colored children shall not be taught in the same school.”).

<sup>72</sup> *Id.*

<sup>73</sup> *Plessy v. Ferguson*, 163 U.S. 537, 544 (1896).

<sup>74</sup> *Id.* at 545.

<sup>75</sup> *Id.*

<sup>76</sup> *Cumming v. Bd. Educ. Richmond City*, 175 U.S. 528, 542–45 (1899).

Board. Justice Harlan stated, “it’s impracticable to distribute taxes equally.”<sup>77</sup> Thus, the descendants of formerly enslaved Black people had no recourse from attending unequal and inadequate schools.<sup>78</sup> Moreover, southern state legislatures took advantage of the Supreme Court’s decisions in *Plessy* and *Cumming* to institutionalize the segregation and inequitable funding of public schools in the Jim Crow South well through the mid-twentieth century.<sup>79</sup>

Even after the Court’s landmark decision in *Brown*, southern congressmen declared their intention to resist desegregation.<sup>80</sup> Like the Civil Rights Act of 1866, the Supreme Court’s decision in *Brown v. Board of Education* marked a significant shift in expanding the elementary and secondary educational opportunities for African American children by overruling the “separate but equal” doctrine in public education.<sup>81</sup> In the aftermath of the *Brown* decision, 100 Democratic congressmen from southern states drafted a manifesto describing the Supreme Court’s decision in *Brown* as an abuse of judicial power.<sup>82</sup> In 1956, Democratic Senator Walter George from Georgia read the “Southern Manifesto” before the Senate floor outlining the intention of the signatories to resist desegregation.<sup>83</sup> Prince Edward’s County, Virginia closed the entire school board

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<sup>77</sup> *Id.* at 542.

<sup>78</sup> See, e.g., Williams, *supra* note 65, at 454–56 (noting that “by 1922, the state of Virginia spent \$12 million to educate whites, compared to \$1 million to educate Blacks.”); see also NEIL MCMILLEN, *DARK JOURNEY: BLACK MISSISSIPPIANS IN THE AGE OF JIM CROW* 40 (1989) (explaining that in the 1949–1950 school year, the state of Mississippi expended \$32.55 per Black child and \$122.93 per White child).

<sup>79</sup> Morgan, *infra* note 108, at 104–05 (finding that “[i]n 1940 the South was spending more than twice as much to educate each White child, as it spent to educate each Black child”); see also MCMILLEN, *supra* note 78, at 40 (describing the inequitable funding for the public education of Black children in Mississippi).

<sup>80</sup> See “Southern Manifesto,” 102 Cong. Rec. 4459–61 (1956).

<sup>81</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

<sup>82</sup> Bryan L. Adamson, *A Thousand Humiliations: What Brown Could Not Do*, 9 THE SCHOLAR 187, 197 (2007) (citing Southern Manifesto, 102 CONG. RE. 4515–16 (1956)).

<sup>83</sup> 102 Cong. Rec. 4459–61 (1956).

system from 1959-1964, rather than integrate.<sup>84</sup> In 1977, the Fifth Circuit Court of Appeals found the school district in Lowndes County, Mississippi failed to remedy the unconstitutional levels of segregation in its public schools.<sup>85</sup>

Today, the disparity in literacy between Black and White children persists; Black and Hispanic twelfth grade students, on average, perform at the same rate of White eighth grade students in reading.<sup>86</sup> The problem is not simply a gap in outcome between students of color and White students—Black and Hispanic children are falling significantly behind.

### C. Traditional Explanations for the “Achievement Gap” Minimize the Effects of the History of Literacy Proscription

Researchers and scholars have come up with three main conclusions to explain what is referred to as the “Achievement Gap”<sup>87</sup> between White and Black students. First, structural inequities have long been held as the principle cause of disparities in outcomes between White and Black children. The scholarship within this framework charges that the inequitable distribution of

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<sup>84</sup> WILLIAMS, *supra* note 8, at 436.

<sup>85</sup> See *United States v. Columbus Mun. Separate Sch. Dist.*, 558 F.2d 228, 230–232 (1977) (citing evidence that “Hughes, by far the district’s largest elementary school, was 100% Black and gravely overcrowded. Coleman, Mitchell, and Union, the other traditionally Black elementary schools, remained predominantly Black. Two-thirds of the district’s Black elementary students attended identifiably Black schools. Sale and Brandon, on the other hand, were identifiably White, having White populations of 99.0 and 93.2%”).

<sup>86</sup> Nieto & Bode, *supra* note 26.

<sup>87</sup> The “Achievement Gap” occurs when a group of students (e.g. based on race/ethnicity) academically outperforms another group and “the difference in average scores for the two groups is statistically significant.” *Achievement Gaps*, NAT’L CTR. FOR EDUC. STATISTICS (last updated July 5, 2019), <https://nces.ed.gov/nationsreportcard/studies/gaps/>. The disparities in educational outcomes between White and Black students can best be understood as “the predictable manifestations of ‘opportunity gaps’ rooted in our nation’s legacy of slavery, segregation, and racism.” Kelley, *supra* note 57, at 138.

resources results from racist policies that are “designed to concretize failure in poor schools.”<sup>88</sup> High-poverty, majority-minority schools receive on average \$900 less per student than well-off, predominantly-white schools.<sup>89</sup> High-poverty schools are more likely to have underqualified and underexperienced teachers.<sup>90</sup> As a consequence, advocates continue to promote integration as a solution to these inequities.<sup>91</sup> In 1966, the seminal “Coleman Report” linked the achievement of children to the racial composition of a school; it concluded that Black children would benefit from learning in majority white schools.<sup>92</sup>

Contemporary advocates for integration shift their analysis towards the practical benefits of Black children learning alongside White children as the American political economy invests quality resources into the education of White children.<sup>93</sup> In fact, a recent report found that predominantly White school districts receive \$23 billion more in school funding than districts that primarily serve

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<sup>88</sup> Jeffrey M. Duncan-Andrade & Ernest Morrell, *The Challenge and Opportunities of Urban Education*, 285 *THE ART OF CRITICAL PEDAGOGY* 10 (2008).

<sup>89</sup> Chandra J. Foote, *The Challenge and Potential of High-Need Urban Education*, 74 *J. NEGRO EDUC.* 371, 372 (2005).

<sup>90</sup> *Id.*

<sup>91</sup> Hannah-Jones, *infra* note 93 (describing her positive experience attending integrated school in the 1980’s. Hannah-Jones cites a 2015 longitudinal study by the economist Rucker Johnson who found that black adults who had attended desegregated schools were more likely to go to college, reside in integrated neighborhoods, and even live longer in comparison to their counterparts who attended segregated schools.”

<sup>92</sup> Elizabeth Evitts Dickinson, *Coleman Report Set the Standard for the Study of Public Education*, *JOHNS HOPKINS MAGAZINE* (Winter 2016), <https://hub.jhu.edu/magazine/2016/winter/coleman-report-public-education/>.

<sup>93</sup> See, e.g., Nikole Hannah-Jones, *Choosing a School for My Daughter in a Segregated City*, *N.Y. TIMES MAGAZINE* (JUNE 9, 2016), <https://www.nytimes.com/2016/06/12/magazine/choosing-a-school-for-my-daughter-in-a-segregated-city.html> (citing a 2010 study by the Century Foundation which found that when children from public housing in Montgomery, Maryland enrolled in middle-class schools, the differences between their scores and those of their wealthier classmates decreased by half in math and a third in reading).

students of color.<sup>94</sup> Though a practical solution, in theory, undercurrents of white supremacy problematize the push for integration. School integration efforts implicitly rely on deficit models and suggest that the academic achievement of Black children depends on the norms and values of white, middle-class culture. In contrast, the culture of Black children, especially those from low-income backgrounds, is perceived as having no value to their learning.<sup>95</sup>

The movement for multicultural education responds to this critique. Led by James Banks, the multicultural education movement in the 90s found that issues of pedagogy could best explain the disparate academic outcomes between Black and White children.<sup>96</sup> Black children encounter a curriculum that is homogenous and reflective of middle-class, euro-centric values.<sup>97</sup> Thus, cultural clashes arise between the home culture of children of color and the culture of schools and teachers.<sup>98</sup> As the population of school children diversifies, the multicultural movement advocates for the need to transform the structure of school curriculum so that students may learn from a diversity of perspectives.<sup>99</sup> James A. Banks established a framework to integrate multiculturalism into class content. In Banks' framework, students engage with a multicultural curriculum that ultimately encourages students to address social

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<sup>94</sup> Clare Lombardo, *Why White School Districts Have So Much More Money*, NPR (Feb. 26, 2019, 2:00 PM), <https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-more-money>.

<sup>95</sup> See Nieto & Bode, *infra* note 26, at 258 (noting that school failure can be explained by “school *perception* of student’s language, culture, and class, as *inadequate* and *negative*”) (emphasis added).

<sup>96</sup> Orhan Agirdag et al., *Understanding of Multicultural Education and the Correlates of Multicultural Content Integration in Flanders*, 48(6) *EDU. & URBAN SOC’Y* 556, 560-561 (2014) (noting “[James Bank’s] approach is the most widely used framework in the field of multicultural education, though it has been criticized by both conservative and radical scholars”).

<sup>97</sup> James A. Banks, *Approaches to Multicultural Curriculum Reform*, in *MULTICULTURAL EDUCATION: ISSUES AND PERSPECTIVES* 234 (James A. Bank & Cherry A. Mcghee Banks eds., 2010).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

issues.<sup>100</sup> While engagement is often the critical first step in learning, students still need a pedagogy that targets the reading barriers that Black children face.

Similar to the multicultural movement, advocates for Culturally Responsive Pedagogy (“CRP”) viewed pedagogical inefficiencies as the driving factor for the underachievement of Black children.<sup>101</sup> CRP, in contrast to the multicultural movement, transforms the curriculum to reflect the specific culture of students and their communities.<sup>102</sup>

Lastly, other advocates for educational equity point to sociocultural factors that impede the academic success of Black children from low-income communities. Pedro Noguera details the external challenges that specifically affect the outcomes of African American males. According to Noguera, high rates of neighborhood violence, drug trafficking, and unemployment are factors that invariably contribute to low academic performance.<sup>103</sup> Not only must these issues be accounted for, Noguera argues that school reform cannot take place without acknowledging the lived experiences of inner-city youth: “Schools are inextricably linked to the social and economic environment where they are located, and the factors that influence child development—health, nutrition, safety, emotional support, among others—invariably influence learning and achievement.”<sup>104</sup> Pushing schools to provide services and resources to account for the sociocultural needs of children is important; however, overemphasizing sociocultural factors leaves room for schools to

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<sup>100</sup> Banks frames integrating multicultural content across four stages: the contributions approach, additive approach, transformation approach, and the social actions approach. *Id.* at 240–46.

<sup>101</sup> See Nawang Phuntsog, *The Magic of Culturally Responsive Pedagogy: In Search of the Genie’s Lamp in Multicultural Education*, 26 *TEACHER EDUC. QUARTERLY* 97, 97-100 (1999).

<sup>102</sup> *Id.* at 100.

<sup>103</sup> Pedro A. Noguera, *Urban Schools and the Black Male “Challenge”*, in *HANDBOOK OF URBAN EDUCATION* 114-16 (H. R. Milner & Kofi Lomotey eds., 2013).

<sup>104</sup> *Id.* at 115.

shift its responsibility and blame communities or single-parent households for the underperformance of Black children.<sup>105</sup>

Structural inequities, pedagogical inefficiencies, and socio-cultural factors do inhibit the academic successes of Black children. Nonetheless, the original sin of literacy proscription must be considered in order to produce sustainable and wide-reaching reforms in education equity. In 2010, authors of a discussion paper with the Institute for the Study of Labor conducted an empirical analysis on the data of racial disparities in education from 1940 to 2000. The researchers concluded that there was a positive correlation between slavery and the current degree of educational inequality.<sup>106</sup> The real question, then, is how the political, economic, and social structures that led to the creation of anti-literacy laws continue to undermine the literacy rates of Black children.

Christopher Span affirms, “every generation of African Americans in the history of this nation has been systematically and intentionally denied the opportunity to learn on an equal basis.”<sup>107</sup>

### III. LEGAL BARRIERS TO LITERACY, BLACK ENGLISH, AND THE CURRENT LITERACY RATES OF BLACK CHILDREN

The legacy of anti-literacy laws together with the development of AAVE have inevitably created learning challenges for Black children today. The anti-literacy laws of the antebellum South not only barred enslaved Black people from learning how to read and write, but also these enactments prevented enslaved people from learning how to speak standard American English.<sup>108</sup> With limited

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<sup>105</sup> Nieto and Bode explain that the fact that students may not speak Standard English or come from single-mother households continues to be used to rationalize disparities in academic performance of students from low socioeconomic status. Nieto & Bode, *supra* note 26, at 258.

<sup>106</sup> Graziella Bertocchi & Arcangelo Dimico, *The Racial Gap in Education and the Legacy of Slavery*, 40 J. COMP. ECON. 581 (2012).

<sup>107</sup> Span, *supra* note 54, at 69.

<sup>108</sup> Vernon Valentine Palmer, *The Customs of Slavery: The War Without Arms*, 48 AM. J. LEGAL HIST. 177, 213–14 (2006); Denise C. Morgan, *What is Left to*

access to formal education, Black people were compelled to develop a dialect of English that was rooted in how English *sounded* to them. Therefore, when the formerly enslaved gained access to educational institutions, they had to confront the phonetic and grammatical differences between AAVE and standard English before they could master reading comprehension.

The seminal Elementary and Secondary Education Act of 1965 (“ESEA”) guarantees the right to equal educational opportunities for all children.<sup>109</sup> Yet, today, Black children still confront this same problem of bridging the gap between AAVE and standard English, which is frequently overlooked by educators and policymakers. Instead, speakers of AAVE are told to speak “Proper English” or they are penalized for honest misunderstandings between the student and the teacher.<sup>110</sup> Ultimately, schools must recognize that many Black children enter school as speakers of AAVE and thus need to be taught how to decode standard English, which is necessary for reading comprehension.<sup>111</sup> Furthermore, schools must seek ways to uphold the mandate that children obtain an equitable education.

#### A. The Origins of African American Vernacular English

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*Argue in Desegregation Law: The Right to Minimally Adequate Education*, 8 HARV. BLACKLETTER J. 99, 102 (1991); Smitherman, *infra* note 143, at 547.

<sup>109</sup> Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 (2018) (amended by Pub. L. No. 115-224 (2015)).

<sup>110</sup> Delpit, *infra* note 154, at 288–291. Delpit found that Black children from working-class families came from homes where their parents used explicit directives when commanding their child to complete a task. Whereas, Delpit observed that middle-class teachers tend to couch verbal directives as questions (e.g. would you like to sit down now?). “Those veiled commands are commands nonetheless . . . if veiled commands are ignored, the child will be labeled a behavioral problem.” *Id.*

<sup>111</sup> See Brandi L. Newkirk-Turner, Ramonda Horton & Ida J. Stockmahn, *Language Acquisition in the African American Child: Prior to Age Four*, in OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE 441 (Sonja Laneheart ed., 2015) (noting that “American children who acquire [AAVE] are no exception to the long-standing evidence that children acquire the language system to which they are exposed from a very early age).

Currently, linguists have two working theories on the origin of AAVE. First, some linguists believe that AAVE developed as an English creole or creole-influenced dialect that developed on American slave plantations. That is, enslaved Africans created a pidgin (a make-shift language) that resembled the English language but conformed to an African grammar, similar to creolized forms of English spoken in Jamaica, other Caribbean islands, and the Gullah islands of coastal South Carolina and Georgia.<sup>112</sup> Earlier creolists suggest that AAVE started as a creole then underwent a decreolization process in the aftermath of the Civil War.<sup>113</sup> Current creolists, like John Rickford, describe AAVE as creole-influenced, meaning that AAVE is rooted in English with some features that derive from creole origins.<sup>114</sup> Rickford draws on sociohistorical conditions and the similarities between AAVE and other English creoles to substantiate the creole origin hypothesis. Rickford observes that conditions in the middle colonies and the south enabled the importation of creole. During the 18<sup>th</sup> Century, the majority of U.S.-bound slaves were imported from Caribbean islands where enslaved individuals were more likely to speak an English creole.<sup>115</sup> Rickford also notes that the absence of the copula and the auxiliary *is* and *are* is similar to other English creoles; this feature cannot be attributed to British English or other English dialects.<sup>116</sup>

In contrast, dialectologists or Anglicists theorize that AAVE derived from earlier English varieties such as Irish and Scottish dialects spoken by indentured servants.<sup>117</sup> The English origin hypothesis argues that AAVE originally derived many of its features from nonstandard varieties of English, but many of those

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<sup>112</sup> John R. Rickford, *Creole Origins Hypothesis*, in OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE 35, 37 (Sonja Laneheart ed., 2015).

<sup>113</sup> Gerard Van Herk, *The English Origins Hypothesis*, in OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE 24 (Sonja Laneheart ed., 2015).

<sup>114</sup> Rickford, *supra* note 112, at 36.

<sup>115</sup> *Id.* at 37–38.

<sup>116</sup> *Id.* at 41–48.

<sup>117</sup> Donald Winford, *The Origins of African American Vernacular English: Beginnings*, in OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE 92–95 (Sonja Laneheart ed., 2015).

features have been obscured as AAVE “has undergone its own internally driven change . . . .”<sup>118</sup> Some features of AAVE that are similar to other historical or regional varieties of English include consonant cluster reduction; g-droppin’; aint; and the existential *it*.<sup>119</sup>

For the purpose of this Note, it is not necessary to determine which theory is most credible. Linguists agree that the features of AAVE “are part of a system with a long history.”<sup>120</sup> What is clear is that AAVE is not derived from the standard English spoken during the colonial and antebellum period.

The ability to learn a language first requires phonological and phonemic awareness.<sup>121</sup> Enslaved Black people were systematically denied the opportunity to learn the phonology and morphology of standard English—the fundamental elements of learning a language. Therefore, enslaved Black people created and developed their distinct linguistic tradition given their distance from formal and informal educational spaces. This linguistic tradition has passed down through generations of African American families.

### B. The Relationship Between AAVE & Literacy Acquisition

When entering school, linguistic barriers underlie the obstacles Black children face when learning how to read and write in standard English. Though AAVE and Standard English share many overlapping features, distinctive features of AAVE produce challenges for Black children since they are evaluated on their ability to read and comprehend standard English. Specifically, academic challenges arise because our schools have not accommodated the needs of AAVE speakers.

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<sup>118</sup> Van Herk, *supra* note 113, at 23.

<sup>119</sup> *Id.* To illustrate, specific becomes pacific; running becomes runnin; isn’t becomes aint. “It be like that sometimes” loosely translates to life happens in standard American English. See URBAN DICTIONARY, <https://www.urbandictionary.com/define.php?term=It%20be%20like%20that%20sometimes>, (last visited Apr. 11, 2020).

<sup>120</sup> Van Herk, *supra* note 113, at 29.

<sup>121</sup> See Elhassan et al., *infra* note 133.

Important features of AAVE impact the ability of Black children to learn how to read and comprehend standard English. First, certain phonetic elements of AAVE contrast with standard English. Reading comprehension begins with teaching phonemes and phonological awareness. For this reason, we teach children to “sound out” words. In AAVE, certain sounds, or phonemes, do not exist and are replaced, and other phonemes are omitted. For example, some features that differentiate AAVE from standard English include replacing the voiceless dental [θ] with [f] (e.g. earth becomes earf);<sup>122</sup> replacing the voiced dental [ð] with [v] or [d] (e.g. breathe becomes breave and them becomes dem); reduction of consonant clusters (e.g. passed and past become pass); and g-droppin’.<sup>123</sup>

Second, certain features of AAVE regarding syntax conflict with the rules of grammar of standard English. AAVE is marked by negative concord; *ain’t* in negation; irregular or bare past tense forms (e.g. jump for jumped); preterite/participle variations; the habitual *be* and *steady* (e.g. he be at work); and remote perfect *been/bin* (e.g. she bin had that car).<sup>124</sup> Additionally, the absence of the copula and auxiliary *is* and *are* do not conform with the grammar of standard English.<sup>125</sup> Such absences can be observed in noun phrases, adjectives, locative phrases, and verb phrases.<sup>126</sup> To illustrate, “she at school” or “he eatin’ breakfast” conform with the features of AAVE.<sup>127</sup>

Because reading starts with language acquisition, when Black children commence their schooling, they may inevitably experience dissonance between the English they speak and the English they read in their classrooms. Moreover, both teachers and students may not recognize the conflict in phonics and syntax

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<sup>122</sup> The author created the examples in this paragraph and the proceeding one to help the reader comprehend the differences between AAVE and standard English.

<sup>123</sup> Van Herk, *supra* note 113, at 29; *see also* Mills & Washington, *infra* note 131, at 572.

<sup>124</sup> Van Herk, *supra* note 113, at 26–27, 29.

<sup>125</sup> Rickford, *supra* note 112, at 41–42.

<sup>126</sup> *Id.* at 42.

<sup>127</sup> *Id.*

between AAVE and standard English. As a result, Black children face many academic challenges in school without any support services that address their linguistic barriers.

### C. Academic Challenges that AAVE Speakers Face

The lack of accommodations and support for AAVE speakers is the driving factor behind the low literacy rates of Black children. Black children encounter linguistic barriers that impact their academic achievement in schools, yet schools and policymakers often overlook this barrier. Speakers of AAVE are primarily, though not exclusively, African American from all socioeconomic backgrounds.<sup>128</sup> Speaking AAVE largely correlates with residence in an AAVE speaking community.<sup>129</sup> Some scholars have estimated that ninety percent of African American children speak AAVE upon school entry.<sup>130</sup> While that number decreases as more students gain substantive exposure to Standard English, children who speak AAVE face a number of challenges as they learn how to read and write in standard English.<sup>131</sup> First, speakers of AAVE encounter difficulties with reading and writing due to particular differences in structural features between AAVE and standard English. Second, the perception of AAVE in schools may lead Black children to feel intellectually deficient. Lastly, the American education system burdens speakers of AAVE while simultaneously denying appropriate support.

First, several structural differences between AAVE and standard English complicate the efforts of Black children learning to read. On a linguistic level, language acquisition is foundational to reading development: “the initial three years of the life span are a critical time period during which the foundation of a language is

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<sup>128</sup> Mills, *infra* note 131, at 567–68.

<sup>129</sup> *Id.* at 567.

<sup>130</sup> Mills & Washington, *infra* note 131, at 568.

<sup>131</sup> Monique T. Mills & Julie A. Washington, *Managing Two Varieties: Code-Switching in the Educational Context*, in OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE 567–68 (Sonja Laneheart ed., 2015).

established.”<sup>132</sup> Reading, then, begins with phonological awareness; additionally, decoding morphemes and reading fluency couple together to encourage reading comprehension.<sup>133</sup> Because of linguistic barriers, Black children often experience difficulties mastering these fundamental elements of reading. For example, the reduction of consonant clusters and word final clusters along with the deletion of [r] alters the syllabi structure of the standard English form of a word, which may impede the ability to master phonological awareness of standard English.<sup>134</sup> The reduction of consonant clusters especially becomes an issue when students have to decipher between past and present tense. Students will see the phrase “the Browns passed by the school” but will read and comprehend “the Browns *pass* by the school,” which contravenes the rules of standard English.<sup>135</sup>

Furthermore, Black children do not realize that they are speaking an English language variety. Instead, they are taught to believe that they are speaking “improper” English, yet they likely don’t know how to speak “proper” English. Therefore, many Black children encounter dissonance between the language they speak and the language they engage with in their classrooms.<sup>136</sup> This dissonance produces academic challenges.<sup>137</sup> Researchers have found an inverse relationship between dialect density and reading achievement in African American children in first through fifth grade.<sup>138</sup> Meaning, greater dependency on AAVE negatively correlates with reading

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<sup>132</sup> Newkirk-Turner, *supra* note 111, at 439.

<sup>133</sup> See Zena Elhassan et al., *The Contribution of Phonological Awareness to Reading Fluency and Its Individual Sub-skills in Readers Aged 9- to 12-years*, 8 FRONTIERS PSYCHOL. 533, 1–2, 5–6 (2017).

<sup>134</sup> Mills & Washington, *supra* note 131, at 572.

<sup>135</sup> See, e.g., Van Herk, *supra* note 113, at 26 (noting the “[b]are past tense verb forms (as in jump for jumped)”).

<sup>136</sup> Van Hofwegen, *infra* note 166, at 469 (citing studies that suggest AAVE-speaking children in the younger grades are “particularly vulnerable in their academic achievement, as their home variety may interfere with their abilities to discern what is being asked of them, irrespective of cognitive ability”).

<sup>137</sup> *Id.*

<sup>138</sup> Mills & Washington, *supra* note 131, at 571.

achievement.<sup>139</sup> The effects of dialect density are significant because the primary years in school significantly shape the academic achievement of children throughout their educational careers.<sup>140</sup> According to developmental psychologist, Erik Erickson, children aged five through twelve enter the psychosocial stage of “industry versus inferiority” where academic outcomes can lead children to feel self-confident or inadequate.<sup>141</sup> In the stage of “industry versus inferiority,” students who do not experience the correlation between effort and academic achievement risk internalizing sentiments of inferiority, failure, and incompetence.<sup>142</sup> Therefore, children who speak AAVE risk internalizing feelings of failure when they extend efforts to learn how to read yet continue to struggle.

Second, the stigmatization of AAVE and the use of deficit theories have created environments that are hostile to AAVE speakers. In the 1960’s, early psychologists known as “linguistic-cognitive deficit theorists” described Black English as “a non-logical mode of expressive behavior . . . lacking the formal properties necessary for cognitive concepts.”<sup>143</sup> This description of Black English is rooted in “the long history of scientific racism and social pathology whereby African peoples were deemed biologically [underdeveloped] and intellectually inferior to whites.”<sup>144</sup> Deficit theories of AAVE are still present in schools today and shape the relationship between students and school.<sup>145</sup> This is problematic

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<sup>139</sup> *Id.*

<sup>140</sup> Researchers Doris Entwisle and Karl Alexander argue that, “[h]ow well students do in the primary grades matters more for their future success than does their school performance at any other time.” ANITA WOOLFOLK, *EDUCATIONAL PSYCHOLOGY* 89 (12th ed. 2013).

<sup>141</sup> *Id.* at 88.

<sup>142</sup> *Id.* at 88–89.

<sup>143</sup> Geneva Smitherman, *African American Language and Education: History and Controversy in the Twentieth Century*, in *OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE* 548–49 (Sonja Laneheart ed., 2015).

<sup>144</sup> *Id.*

<sup>145</sup> See, e.g., Banks, *supra* note 97, at 243 (noting that “[m]any students of color are alienated in the school in part because they experience cultural conflict and discontinuities that results from cultural differences between their school and community”).

because how schools and teachers perceive a student's language is an important indicator of student success.<sup>146</sup> Sonia Nieto and Patricia Bode argue, "it is school perceptions of students language, culture, and class as inadequate and negative . . . that help explain school failure."<sup>147</sup>

The idea of self-fulfilling prophecy can help explain why perception of student language can lead to academic failure. Ray Rist explored how teachers' low expectation of students from economically and ethnically marginalized backgrounds can lead to a self-fulfilling prophecy of low academic performance.<sup>148</sup> Rist observed a cohort of students from kindergarten to second grade.<sup>149</sup> Initially, their kindergarten teachers differentiated the students into table groups that highly correlated with students' family income.<sup>150</sup> What is more, the teacher made permanent seating arrangements without formally testing the students.<sup>151</sup> Not only did her interaction with students vary based upon the group she worked with, but also Rist witnessed how students seated at the high-status group ridiculed and even belittled their peers sitting at the low-status group.<sup>152</sup> When the children moved to the first grade, the initial label given by the kindergarten teacher followed the children.<sup>153</sup>

The stigmatization of AAVE also impacts the way Black children perceive themselves. Black children internalize that negative perceptions of AAVE based on their interactions with teachers and students. Education researcher, Lisa Delpit, recorded a conversation with a Black student and his Black teacher on the value of reading a children's book written in Black English:

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<sup>146</sup> Nieto & Bode, *supra* note 26, at 263.

<sup>147</sup> *Id.* at 258.

<sup>148</sup> See generally Ray Rist, *Student Social Class and Teacher Expectations: The Self-Fulfilling Prophecy in Ghetto Education*, 70 HARV. EDUC. REV. 257 (HER Classic Reprint 2000) (1970).

<sup>149</sup> *Id.* at 271–76.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 279.

<sup>153</sup> *Id.* at 283–284.

Joey: . . . I think they shouldn't make books like that.

Teacher: Why?

Joey: Because they are not using the right way to talk and in school they take off for that, and li'l chirren grow up talking like that and reading like that so they might think that's right, and all the time they getting bad grade in school, talking like that and writing like that.<sup>154</sup>

The conversation between Joey and his teacher reveals the awareness of speakers of AAVE that usage of their language receives negative consequences in schools. More importantly, Joey's sentiments underscore a negative value judgement of the language that he spoke. Observing children penalized for speaking AAVE likely contributed to Joey's negative association with the dialect.

Lastly, the American public education system is structured to disadvantage Black children in comparison to their counterparts that speak standard English. To begin with, the disparities between Black and White children start before kids enter school. Researchers Betty Hart and Todd Risley conducted a longitudinal study and concluded that a 30-million-word gap exists between three-year-old children from wealthy and poor families.<sup>155</sup> This is significant because vocabulary acquisition later predicts reading skills and school success.<sup>156</sup> Hart and Risley found that the rate of vocabulary of a three-year-old child predicted student test performance on language

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<sup>154</sup> LISA DELPIT, *OTHER PEOPLE'S CHILDREN: CULTURAL CONFLICT IN THE CLASSROOM* 43 (2006).

<sup>155</sup> Betty Hart & Todd R. Risley, *The Early Catastrophe: The 30 Million Word Gap by Age 3*, *AM. EDUCATOR* 4, 6–8 (2003); *But see* Jill Gilkerson et al., *Mapping the Early Language Environment Using All-Day Recordings and Automated Analysis*, 26 *AM. J. SPEECH LANGUAGE PATHOLOGY* 248, 261 (2017) (arguing that a four-million-word gap exists by age four between children from the highest and lowest socioeconomic group).

<sup>156</sup> Hart & Risley, *supra* note 155, at 8; *see also* HOLLY K. CRAIG & JULIE A. WASHINGTON, *MALIK GOES TO SCHOOL: EXAMINING THE LANGUAGE SKILLS OF AFRICAN AMERICAN STUDENTS FROM PRESCHOOL-5TH GRADE* 102 (2006).

skills and vocabulary acquisition in the third grade.<sup>157</sup> What is more, Black children have the added burden of mastering standard English without any direct dialect support programs for AAVE speakers. We know that schools disadvantage AAVE speakers because Black children that successfully master standard English perform better than their peers that don't.<sup>158</sup> Thus, our schools privilege children who start school speaking standard English. As such, Black children from low socio-economic status are particularly vulnerable to struggling in school.<sup>159</sup> These children tend to live in marginalized communities where schools are under-funded and under-resourced.<sup>160</sup> Thus, these children have limited opportunities to authentically engage with the vocabulary and grammar of standard English, which they need in order to excel in school.<sup>161</sup> Reflecting on the findings of his original study thirty years later, Rist noted, "[t]he stratification of the American underclass is now more permanent and pervasive than thirty years ago. Add to this the isolation from the centers of economic growth of those who are both poor and minority and the picture is not a pretty one."<sup>162</sup>

The American public education system has yet to afford Black children an equal opportunity to learn. Instead, schools are structured to penalize Black children because of the language variety that they speak. If the federal government wishes to ensure that all children have the "opportunity to receive a fair, equitable, and high-quality

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<sup>157</sup> *Id.*

<sup>158</sup> Mills & Washington, *supra* note 131, at 566, 576 (finding that children who shift toward speaking standard American English in school settings by the end of third grade are likely to be one or more grade levels ahead of their peers in reading by the end of fourth grade).

<sup>159</sup> *Id.* at 573 (noting that heavy dialect users tend to come from working class or low socioeconomic status).

<sup>160</sup> Foote, *supra* note 89, at 372–73.

<sup>161</sup> See Mills & Washington, *supra* note 131, at 568 (noting that children who do not make the switch from AAVE to Standard English face "well-documented challenges to academic achievement in areas such as reading").

<sup>162</sup> Ray Rist, *Student Social Class and Teacher Expectations: The Self-Fulfilling Prophecy in Ghetto Education*, 70 HARV. EDUC. REV. 257, 263 (HER Classic Reprint 2000) (1970).

education,”<sup>163</sup> then it must tackle the ways schools unfairly burden the educational outcomes of AAVE speakers.

#### IV. BI-DIALECTAL PROGRAMS AS LEGAL REMEDY AND REDRESS FOR AAVE-SPEAKING CHILDREN

The legal landscape has not equipped American schools to address the linguistic barrier that that majority of Black children encounter when they first enter schools.<sup>164</sup> Instead, schools unfairly burden Black children to learn standard English without any support services that target the difference between standard English and AAVE.<sup>165</sup> While many Black children make the transition to standard English, many more do not.<sup>166</sup> In particular, Black children that live in communities isolated from mainstream society are more vulnerable to struggling academically in school.<sup>167</sup> The current tools and resources available in schools cannot resolve the underlying issues that leave many Black children “graduating” from high school functionally illiterate.<sup>168</sup> Federal and state laws and policies must

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<sup>163</sup> 20 U.S.C. § 6301.

<sup>164</sup> Title III of the Every Student Succeeds Act does not account for students who speak non-standard English dialects. *See* 114 Pub. L. No. 95, § 3102. This fact is alarming given that anywhere up to 90% of Black children speak AAVE upon school entry. *See* Mills & Washington, *supra* note 131, at 568.

<sup>165</sup> Rather, many teachers expect the usage of standard English in their classrooms and even hold “negative language ideologies” about language varieties like AAVE. Mills & Washington, *supra* note 131, at 576.

<sup>166</sup> Janneke Van Hofwegen, *The Development of African American English Through Childhood and Adolescence*, in OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE 456–62 (Sonja Laneheart ed., 2015) (observing a decrease in the use of AAVE in early schooling followed by an increase in the use of AAVE by students in early adolescence).

<sup>167</sup> CHANNA M. COOK-HARVEY ET AL., LEVERAGING EDUCATIONAL OPPORTUNITY THROUGH THE EVERY STUDENT SUCCEEDS ACT 20, (LEARNING POLICY INSTITUTE 2016) (noting that “[r]acially segregated, high-poverty schools have a strong negative association with students’ academic achievement”).

<sup>168</sup> *See generally* Lauren Camera, *African-American Students Lagging Far Behind*, U.S. NEWS (Dec. 11, 2015, 5:15 PM), <https://www.usnews.com/news/articles/2015/12/11/african-american-students-lagging-far-behind>; *see*

adapt to meet the linguistic challenges that many Black children face. All children deserve access to an equitable education. Though education is not a fundamental right recognized by the U.S. Constitution,<sup>169</sup> the Supreme Court has found that education is a priority of incredible importance for state authorities.<sup>170</sup> Furthermore, framers of the Civil War Amendments recognized the necessity of providing educational opportunities for the formerly enslaved population.<sup>171</sup> The framers connected education with the national agenda of granting Black people the rights of full citizenship in the Union. Congressman Ignatius Donnelly, a radical republican, asserted, “if it is, then, true that we must make the freedmen fully free, and if the right of suffrage is necessary to this freedom, then it is equally necessary that education should accompany freedom.”<sup>172</sup> At the same time, white supremacists who were committed to maintaining a racial caste system understood that the lack of educational opportunities could and should be used to disenfranchise the Black population from true political participation.<sup>173</sup>

Today, the legal landscape is not doing enough to ensure that Black children obtain an equitable education and thereby fully enjoy their constitutional rights and privileges. Bi-dialectal programs for AAVE speakers offer an opportunity to support Black children who struggle the most with reading. A federal mandate funding a bi-dialectal program ought to serve not only as a remedy for academic

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also *National Assessment of Adult Literacy*, NATIONAL CENTER FOR EDUCATION STATISTICS, [https://nces.ed.gov/naal/kf\\_demographics.ASP#2](https://nces.ed.gov/naal/kf_demographics.ASP#2), (last visited Feb. 18, 2019) (finding that 30 million adults are reading on a below basic level).

<sup>169</sup> See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37 (1973) (finding that education is not a fundamental right or liberty).

<sup>170</sup> See *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (noting that “education is perhaps the most important function of state and local governments”).

<sup>171</sup> Mark A. Garber, *The Second Freedmen’s Bureau Bill’s Constitution*, 94 TEX. L. REV. 1361, 1387 (2016).

<sup>172</sup> *Id.*

<sup>173</sup> Williams, *supra* note 65, at 449 (noting that “[i]n response to growing concerns about Black political empowerment, lawmakers pursued and received voter approval for a constitutional convention in 1901, the primary purpose of which was the disfranchisement of African Americans”).

challenges, but also as a redress for the systemic, intentional, and generational injury of denying Black children access to a quality education.<sup>174</sup>

#### A. Current Legal Options are Inadequate

The current state of federal education statutes and common law are ill-equipped to address the linguistic challenges that Black children experience when learning how to read.

ESEA guarantees that all children have equal educational opportunities.<sup>175</sup> The Every Student Succeeds Act of 2015 (“ESSA”) affirms this mandate to provide an equitable<sup>176</sup> education for all children.<sup>177</sup> The stated purpose of ESSA is to “ensure that every child achieves.”<sup>178</sup> Title I and Title III of ESSA are most relevant to addressing the unacceptable literacy rates of Black children. Nonetheless, ESSA does not create policy reforms or funding opportunities that recognize the challenges that Black children experience as learners of standard English.

First, Title I seeks to improve the academic achievement of the disadvantaged.<sup>179</sup> ESSA gives states and districts the flexibility to control accountability systems.<sup>180</sup> Title I still establishes expectations that states design standards and assessments that develop and

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<sup>174</sup> See Span, *supra* note 54, at 69 (asserting that “every generation of African Americans in the history of this nation has been systematically and intentionally denied the opportunity to learn on an equal basis”).

<sup>175</sup> 20 U.S.C. § 6301 (2015).

<sup>176</sup> COOK-HARVEY, *supra* note 167, at 1 (noting that “[a]n equitable system does not treat all students in a standardized way, but differentiates instruction, services, and resources to respond effectively to the diverse needs of students”).

<sup>177</sup> Every Student Succeeds Act, 114 Pub. L. No. 95 (2015) (reauthorizing 20 U.S.C. § 6301). ESSA is the federal education law that currently controls all public schools.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* § 1001.

<sup>180</sup> 20 U.S.C. § 6311 (2018).

evaluate higher-order thinking skills.<sup>181</sup> While ESSA does not articulate specific policy reforms, many states have turned to standards-based curriculum with regards to English Language Arts. In 2009, state leaders launched an initiative to create uniform standards across core subject matters.<sup>182</sup> Forty-one states and the District of Columbia have adopted common core standards.<sup>183</sup> The emphasis on standards-based learning may increase the intellectual rigor of class instruction, but English language arts standards (e.g. theme, characterization, etc.) do not directly target issues with reading comprehension, particularly in secondary English classes.<sup>184</sup> Language arts and reading instruction are separate subject matters.<sup>185</sup>

In terms of funding, ESSA eliminates the School Improvement Grant program.<sup>186</sup> Title I, however, requires states to reserve 7% of its Title I funding to serve the school improvement and support initiatives of high-need schools.<sup>187</sup> Targeting the linguistic barriers that most Black children initially experience will require more funding than state reserves for school improvement measures.<sup>188</sup> Providing bi-dialectal

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<sup>181</sup> Cook-Harvey, *supra* note 167, at 2. ESSA does not define “higher-order thinking skills”; instead, it leaves states to define and develop their own standards. Title I requires states to provide assurances that “the State has adopted challenging academic content standards and aligned academic achievement standards.” 20 U.S.C. § 6311.

<sup>182</sup> COMMON CORE STATE STANDARD INITIATIVE: DEVELOPMENT PROCESS, <http://www.corestandards.org/about-the-standards/development-process/> (last visited Mar. 4, 2019).

<sup>183</sup> *Id.*

<sup>184</sup> Reading focuses on grammar, composition, and the ability to comprehend complex text. Whereas, English Language Art encapsulates reading skills and also includes writing. Secondary language arts “require students to analyze, interpret and dissect written material in order to compare, contrast and discuss elements, like theme, characters and plot.” *Teaching English and Language Arts*, <https://teach.com/careers/become-a-teacher/what-can-i-teach/ela/> (last visited Apr. 11, 2020).

<sup>185</sup> *Id.*

<sup>186</sup> Cook-Harvey, *supra* note 167, at 18.

<sup>187</sup> *Id.*

<sup>188</sup> Kelley, *supra* note 57, at 138. Thus far, Title I funding for schools serving low-income children has been insufficient to offset disparities due to the complicated Title I funding formula.

programs for AAVE speakers will require funding carved out for this specific purpose.<sup>189</sup> The pervasive nature of the reading challenges that Black children confront require specifically allocated remedies as repair for the legacy of anti-literacy laws.<sup>190</sup>

Second, Title III of ESSA is particularly relevant because it addresses language instruction for English learners and immigrant students.<sup>191</sup> Thus, Title III should provide language instruction that could support AAVE speakers, as learners of standard English. The stated purpose of Title III is to “to help ensure that English learners, including immigrant children and youth, attain English proficiency and develop high levels of academic achievement in English” and to prepare English learners to enter “all-English” instructional settings.<sup>192</sup> Therefore, Title III targets children who do not speak the English *language*; it does not account for children who speak non-standard *dialects* of English.<sup>193</sup>

Title III provides guidelines for states on creating language instruction programs. A non-regulatory guideline from the U.S. Department of Education states that reading and language arts

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<sup>189</sup> Eloise Pasachoff, *Two Cheers for Evidence: Law, Research, and Values in Education Policymaking and Beyond*, 117 COLUM. L. REV. 1933, 1941–42 (2017). Title I of ESSA imposes limited requirements for those schools that must develop school improvement plans due to the low achievement of students from disadvantaged subgroups (e.g. economically disadvantaged, racial/ethnic minorities, English language learners). Title I provides schools under this circumstance with broad discretion: schools work with community stakeholders to develop an evidence-based intervention. Therefore, specific funding allocated for bi-dialectal education programs is needed to ensure that such programs are implemented and standardized.

<sup>190</sup> See, e.g., Williams, *supra* note 65, at 466- (evaluating the state of Virginia’s Brown Fund Act through the principles of reparations theory. Williams concludes, under reparations theory, the Brown Fund Act did not fully repair the harm caused by schools closing down rather than integrate in accordance with the Supreme Court’s decision in *Brown*. Williams argues that “the State’s actions [closing schools] intentionally bore more heavily on Black children. Thus, a race-conscious remedy is not only permissible, but also essential”).

<sup>191</sup> 114 Pub. L. No. 95, § 3102 (2015).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

standards are not the same as English language proficiency standards.<sup>194</sup> Black children who speak AAVE speak the English language; however, they struggle with linguistic barriers when attempting to master reading and language arts standards for standard American English.<sup>195</sup> Furthermore, states may use Title III funding for technical assistance to implement effective Language Instruction Educational Programs.<sup>196</sup> Title III allocates funding to states based on the population of students: 80% of funds are determined by the state population of English learners and 20% of funding is determined by the state population of immigrant children.<sup>197</sup> Therefore, Title III does not explicitly or implicitly factor the linguistic needs of AAVE speakers. Instead, Title III erroneously assumes that non-standard varieties of English do not impact academic achievement, or that AAVE is not a legitimate dialect. As a result, Title III cannot currently provide remedies needed to improve the literacy rates of Black children.

Finally, judicial remedies have limited capacity to advance wide-ranging and effective remediation. The decision of the U.S. District Court of the Eastern District of Michigan in *King v. Ann Arbor* exemplifies the inability of the judiciary to create effective legal remedies that account for the educational challenges that Black children encounter as AAVE speakers. In *King v. Ann Arbor*, also known as the “Black English” trial, the court found that the Ann Arbor School District Board violated §1703(f) of the Equal

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<sup>194</sup> U.S. DEP’T OF EDUC., NON-REGULATORY GUIDANCE: ENGLISH LEARNERS AND TITLE III OF THE ELEMENTARY AND SECONDARY EDUCATION (ESEA), AS AMENDED BY THE EVERY STUDENT SUCCEEDS ACT (ESSA) (Sept. 23, 2016), at 17.

<sup>195</sup> See Mills, *supra* note 131, at 568 (noting that children who do not make the switch from AAVE to standard English “face well-documented challenges to academic achievement in areas such as reading”).

<sup>196</sup> *Id.* at 18.

<sup>197</sup> *Title III—Language Instruction for English Learners and Immigrant Students*, NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS, <https://www.nassp.org/policy-advocacy-center/resources/essa-toolkit/essa-fact-sheets/title-iii-language-instruction-for-english-learners-and-immigrant-students/> (last visited Mar. 4, 2019).

Educational Opportunity Act of 1974 (“EEOA”) because the school board failed to “take appropriate action” to teach plaintiff children how to read standard English.<sup>198</sup> Plaintiffs were eleven Black children who attended or had attended Martin Luther King Jr. Elementary and had all experienced reading difficulties.<sup>199</sup> Judge Joiner asserted, “[a] child who does not learn to read is impeded in equal participation in the educational programs.”<sup>200</sup> Joiner found it was the teachers’ *perception* of the children who spoke “Black English” that could impede plaintiffs from equally participating in reading instruction.<sup>201</sup> Joiner concluded, “[t]he instruction in standard English of children who use ‘Black English’ at home by insensitive teachers who treat the children’s language system as inferior can cause a barrier to learning to read and use standard English.”<sup>202</sup> As a result, the court mandated that the Ann Arbor School District Board submit a plan including steps to help teachers at MLK Elementary identify children who spoke “Black English” and to use that knowledge to help students learn how to read standard English.<sup>203</sup> The district developed a teacher-training project that compensated teachers for participating in twenty hours of instruction on the research of AAVE.<sup>204</sup> The court found the district’s plan met the test of reasonableness and rationality.<sup>205</sup>

Several factors in Joiner’s decision should caution advocates from relying on judicial intervention as a means to instill

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<sup>198</sup> Smitherman, *supra* note 143, at 555–56 (noting that the “‘Black English Case’ was about the struggles of single African American mothers for quality education for their children”).

<sup>199</sup> *King v. Ann Arbor*, 473 F. Supp. 1371, 1373–74 (1979).

<sup>200</sup> *Id.* at 1377.

<sup>201</sup> *Id.* (finding that “[t]he research evidence supports the theory that the learning of reading can be hurt by teachers who reject students because of the ‘mistakes’ or ‘errors’ made in oral speech by ‘Black English’ speaking children who are learning standard English. This comes about because ‘Black English’ is commonly thought of as an inferior method of speech and those who use this system may be thought of as ‘dumb’ or ‘inferior’”).

<sup>202</sup> *Id.* at 1378.

<sup>203</sup> *Id.* at 1383.

<sup>204</sup> Smitherman, *supra* note 143, at 557.

<sup>205</sup> *King*, 473 F. Supp at 1390.

equitable reforms in schools. Though a seminal case, Judge Joiner's decision does not provide remedies for Black children today. To begin with, Joiner's decision is limited in its jurisdictional reach. The intervention mandated by the court only applied to the eleven children, and the teacher training only applied to instructors at MLK Elementary.<sup>206</sup> Additionally, the effectiveness of the teacher training project cannot be evaluated because only five children remained at MLK Elementary when the court-mandated remedy was implemented during the 1978–1980 school years.<sup>207</sup> Even if the teacher-training project had been implemented, it likely would have been ineffective because the professional development project simply conveyed research on “Black English.”<sup>208</sup> Lastly, Judge Joiner's decision was flawed because it erroneously assumed that the plaintiff children knew how to speak standard English and simply spoke “Black English” at home or in informal environments.<sup>209</sup> In reality, it is very likely that children did not speak standard English.<sup>210</sup> Thus, Joiner failed to acknowledge and account for the linguistic challenges at the root of the children's reading struggles. His decision, incorrectly, focused only on the teacher perception of their student's language.<sup>211</sup> The structure of American schools not only devalues but also penalizes children who speak AAVE.

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<sup>206</sup> *King*, 473 F. Supp at 1385.

<sup>207</sup> Smitherman, *supra* note 143, at 556.

<sup>208</sup> *Id.* at 557.

<sup>209</sup> *King*, 473 F. Supp. at 1376. To illustrate, Judge Joiner reasoned: “‘Black English’ is a dialect of a segment of the Black population and is used by them only a part of the time,” and that Black people “may be quite capable of speaking eloquently in standard English and although they do speak standard English when talking to community outsiders.”

<sup>210</sup> *See* Newkirk, *supra* note 111, at 441 (finding that children acquire the language system to which they are exposed prior to age four. Meaning, it is likely that plaintiff children only knew the language system of AAVE because it was the language they spoke in their households and community).

<sup>211</sup> According to the New Oxford American Dictionary, language is the “method of human communication;” whereas linguistics is the “scientific study of morphology, syntax, phonetics, and semantics.” NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2015). AAVE is an English language variety. Therefore, when analyzing the linguistic challenges AAVE speakers, we reference the

Nonetheless, *King v. Ann Arbor* is an important judicial decision because it sets a “socio-linguistic precedent” by recognizing that “Black English” falls within the parameters of the statutory language of § 1703(f) of the EEOA.<sup>212</sup> Consequently, bi-dialectal programs are the best solution to rectifying the lack of equal educational opportunities for children who speak AAVE.

While the EEOA has not yet been applied to compel the creation of bi-dialectal programs, it is the most promising option. The EEOA grew out of a 1974 lawsuit by students of Chinese ancestry, who did not speak English.<sup>213</sup> The plaintiffs claimed that the San Francisco school system failed to provide English language instruction for approximately 1,800 students.<sup>214</sup> In *Lau v. Nichols*, the Supreme Court ruled that San Francisco violated § 601 of the Civil Rights Act of 1964 by denying Chinese-speaking students a “meaningful opportunity to participate in the education program.”<sup>215</sup> The Equal Educational Opportunities Act of 1974 (“EEOA”) codified the Supreme Courts holding in *Lau*.<sup>216</sup> The EEOA provides, “[n]o state shall deny equal educational opportunities to an individual on account of his or her race, color, sex or national origin.”<sup>217</sup> By its terms, the statute can be understood to require federal and state policymakers to address the linguistic challenges that lead AAVE speakers, who are primarily Black, to struggle in school. Specifically, it could require education policymakers to

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challenges Black children confront when reading and writing in Standard English. Title III of ESSA does not account for students who speak non-standard dialects of English. It does provide a framework for developing bi-dialectal programs.

<sup>212</sup> Smitherman, *supra* note 143, at 557–58.

<sup>213</sup> Roger J. Gonzalez, An Equal Educational Opportunity for Language Minority Students: A Legal Analysis of Language Education After *Lau* 64–66 (Nov. 05, 2002) (unpublished Ph.D. dissertation, on file with the University of Nevada Las Vegas).

<sup>214</sup> *Lau v. Nichols*, 414 U.S. 563, 564 (1974).

<sup>215</sup> *Id.* at 568.

<sup>216</sup> 4 EDUCATION LAW § 10D.01 Bilingual Education and Limited English Proficiency: Educational Opportunities and Discrimination (2018).

<sup>217</sup> *Id.*

develop programs that explicitly aid Black children in learning how to read, write, and speak standard English.

### B. Bi-Dialectal Program for Speakers of AAVE<sup>218</sup>

Effective bi-dialectal programs should teach Black children that their form of communication is part of a language system created by enslaved people. Such a program should both articulate the practical reasons for learning standard English and transition students into reading and writing in standard English. Clinical psychologist Gary Simpkins developed the *Bridge* reading series, which relied on the associative bridge technique.<sup>219</sup> Simpkins specifically tailored the reading series for adolescents who spoke AAVE and were several grades behind in reading level.<sup>220</sup> Simpkins grounded the reading series in the African American rhetorical tradition—he wrote some of the stories while others were taken from the Black Folk Tradition.<sup>221</sup> The curriculum began with stories written in AAVE, then advanced to stories written in standard English. Simpkins conducted a natural field test in five locations.<sup>222</sup> The pilot study contained 417 students in an experimental group and 123 students in a control group, who were taught a standard reading curriculum.<sup>223</sup> Students taught using the *Bridge* method had an average reading gain of 6.2 months over four months.<sup>224</sup> Students in

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<sup>218</sup> This Note analyzes the history of anti-literacy laws and its impact on the development of AAVE. This Note attempts to find solution to address the low literacy rates of Black children in American public schools. Therefore, this Note will not evaluate bi-dialectal programs for other non-standard varieties of the English language, such as Appalachian English, Southern White English. Argument for bi-dialectal programs could be made for those varieties.

<sup>219</sup> Smitherman, *supra* note 143, at 554.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> Sharroky Hollie et al., *Balancing Pedagogy with Theory: The Infusion of African American Language Research into Everyday Pre-K-12 Teaching Practices*, in OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE 584 (Sonja Laneheart ed., 2015).

<sup>224</sup> *Id.*

the control group showed an average reading gain of 1.6 months.<sup>225</sup> The results of this field study not only demonstrate the effectiveness of the *Bridge* program, but also the ineffectiveness of traditional reading curriculum that instructs AAVE speaking children only in standard English. Unfortunately, the publisher delayed and later cancelled the publication of the promising *Bridge* series due to opposition from Black school administrators and other members of the Black elite class.

The success of the Kamehameha Early Education Program (“KEEP”) in Hawaii is another example of a successful bi-dialectal program.<sup>226</sup> Psychologist Charlene Sato’s advocacy led to federal funding supporting KEEP.<sup>227</sup> KEEP proved to be a “highly successful bi-dialectal program” for native Hawaiian children who spoke Hawaiian Pidgin English.<sup>228</sup>

### C. Concerns About Implementation

While bi-dialectal programs offer resources to directly address the linguistic challenges of AAVE speakers in school, legitimate concerns exist regarding such programs being used to

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<sup>225</sup> *Id.*

<sup>226</sup> *Id.* Researchers have also found that dialect readers in countries like Sweden and Norway have proven more successful as a pedagogical approach to teach dialect speakers the standard variety in comparison to teaching dialect speakers only in the standard variety.

<sup>227</sup> John Baugh, *Beyond Bidialectalism*, in OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE 663 (Sonja Laneheart ed., 2015).

<sup>228</sup> *Id.* See also Roland G. Tharp, *The Effective Instruction of Comprehension: Results and Description of the Kamehameha Early Education Program*, 17 Reading Research Quarterly 503 (1982) (Researchers evaluated the effectiveness of the KEEP program by conducting three experiments and finding: “(1) a successive-cohorts analysis demonstrated the KEEP program superior to a phonics-based program; (2) an experimental vs. control design demonstrated superiority of the KEEP-laboratory school program over matched public school controls; and (3) when installed in public school classrooms, the KEEP program was superior to control classrooms under conditions of random student assignment”).

perpetuate notions of white supremacy. Disregarding concerns about the cultural integrity of AAVE can lead Black children to experience language oppression and assimilation. There is a tension that comes with labelling Black children learners of standard English, which could erode the legitimacy of AAVE as an English language variety.

First, a question that arises is whether bi-dialectal programs operate as an additional academic burden for Black children. Such a program inevitably requires additional academic effort from Black children. Concerns about language assimilation that arose out of the bilingual education movement equally apply in implementing bi-dialectal programs as a pedagogical approach.<sup>229</sup> The emphasis on language acquisition can function as a tool for language assimilation and therefore produce an oppressive learning environment for Black children. In her autoethnographic article, Lisa Westbrook records her oppressive experience navigating the politics of language expression when she attended secondary school in rural Michigan in the mid 1970s.<sup>230</sup> Westbrook felt a deep sense of isolation from her White teachers and peers who often taunted and teased her for speaking “Poor English.”<sup>231</sup> Worn down by the social isolation, Westbrook made the transition to standard American English: “I became very careful with every syllable that escaped my mouth.”<sup>232</sup> As a result, assimilating to standard American English burdened Westbrook by pressuring her to become hyper aware of the way she spoke. Furthermore, learning standard American English as a means to escape social isolation in turn isolated Westbrook from African Americans who equated her manner of communication as “acting” white.<sup>233</sup> Consequently, implementing bi-dialectal programs will

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<sup>229</sup> For example, No Child Left Behind (NCLB) repealed the Bilingual Education Act of 1968. NCLB shifted the focus from *bilingual* education to solely English language acquisition. The later indicates a disregard for the native language of English language learners. 4 EDUCATION LAW § 10D.01.

<sup>230</sup> Lisa Westbrook, *Skooz Be Hat'in: My Story Navigating and Negotiating Standard American English*, 3 PEDAGOGY THEATRE OPPRESSED J. 1 (2018).

<sup>231</sup> *Id.* at 8.

<sup>232</sup> *Id.* at 15.

<sup>233</sup> *Id.*

require funding to first train educators and school administrators on the history and the rules of grammar of AAVE. Bi-dialectal programs should also acknowledge the cultural significance of AAVE. Such program should not lead to intentional or inadvertent language erasure.

Second, federal, state, and local governments may be hesitant to implement and fund bi-dialectal programs because of the opposition that could arise with recognizing AAVE as an English language variety.<sup>234</sup> Most recently, the Oakland “Ebonics” controversy sparked backlash from Black leadership. In 1996, the Oakland Unified School District issued a resolution recognizing “Ebonics” as a “rule-governed language system” that required the Oakland superintendent to implement the instruction of African American children in AAVE in order to facilitate the mastery of English language skills.<sup>235</sup> Oakland’s resolution received support from various linguistic and educational organizations.<sup>236</sup> The resolution also drew ire from middle-class Blacks.<sup>237</sup> Maya Angelou stated that any “idea that African American[s] speak something other than English is very threatening. It could say to our young people that they don’t have to learn to speak properly.”<sup>238</sup> Furthermore, the Secretary of Education at the time, Richard Riley, opined that the Bilingual Education Act (“BEA”) would provide no funding for “Black English” speakers<sup>239</sup> Riley believed that funding from the BEA should only support non-native speakers of English.<sup>240</sup>

Clearly, conversation about AAVE hit a sensitive nerve within the African American community in particular. Similar to the

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<sup>234</sup> Baugh, *supra* note 227, at 667–68.

<sup>235</sup> Smitherman, *supra* note 143, at 558–59.

<sup>236</sup> *Id.* at 559. Those organizations included Teaching English to Speakers of Other Languages (TESOL); American Association for Applied Linguistics (AAAL); Conference on College Composition and Communication (CCCC); Center for Applied Linguistics (CAL); California Association for Bilingual Education (CABE); and the Linguistic Society of America (LSA).

<sup>237</sup> Baugh, *supra* note 227, at 666. It is likely that some of the opposition arose from the description of “Ebonics” as “not genetically related to English.”

<sup>238</sup> Smitherman, *supra* note 143, at 558.

<sup>239</sup> Baugh, *supra* note 227, at 666.

<sup>240</sup> *Id.*

response of the *Bridge* reading series, many from the Black elite perceive AAVE as an illegitimate urban slang, much in the same way that negro spirituals were looked down upon by the newly freed African American community because of their history in the slave experience.<sup>241</sup> In both the case of AAVE and negro spirituals, black respectability politics<sup>242</sup> attempt to suppress the legacy of enslaved people in order to assimilate into euro-American culture.<sup>243</sup> Research on educating speakers of non-standard dialects makes apparent that the traditional approach of teaching AAVE speakers solely in standard American English will continue to fail Black children. If the goal of federal and state education law is to ensure that every student has the opportunity to achieve,<sup>244</sup> then respectability politics must be put aside to provide evidence-based pedagogical approaches that target the critical distinctions between AAVE and standard American English.<sup>245</sup> The ability to speak standard English, or “code-switch,” is “necessary for

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<sup>241</sup> In 1871, the Fisk Jubilee singers went on tours and sang negro spirituals to raise money for Fisk University. Their efforts sparked a renewed admiration and preservation of negro spirituals. Fisk Jubilee Singers, <http://fiskjubileesingers.org/about-the-singers/our-history/> (last visited Mar. 4, 2019). See generally THE BOOK OF AMERICAN NEGRO SPIRITUALS 11–50 (James W. Weldon & J. Rosamond Johns eds., 1925) (a collection preserving negro spirituals in written form (in AAVE) with piano accompaniments).

<sup>242</sup> Black respectability politics refers to a standard of behavior imposed on Black people that conforms with the norms of the White, middle-class. Enforced by the elite members of the Black community, respectability politics admonishes behavior that could potentially prove the “truth” of negative stereotypes about Black people. Thus, practicing respectability involves “using standard English rather than African-American Vernacular English in racially-mixed audience.” Upward mobility is the objective of conforming to respectability politics. Mikaela Pitcan, Alice Marwick & Danah Boyd, *Performing a Vanilla Self: Respectability Politics, Social Class, and the Digital World*, 23 J. COMPUTER-MEDIATED COMM’N 163–166 (2018).

<sup>243</sup> Smitherman, *supra* note 143, at 552 (noting that opposition to language education programs by the African American middle class and elite leadership exposes “a master narrative of class conflict in the Black community”).

<sup>244</sup> 114 Pub. L. No. 95. (2015).

<sup>245</sup> Smitherman, *supra* note 143, at 552–53.

academic achievement because of the predominant use of a single code in the written and spoken contexts of schooling.”<sup>246</sup>

## V. CONCLUSION

Much scholarship has been devoted to understanding the literacy rates of African American children from a structural and institutional level. Education scholarship is typically devoted to exploring how a lack of *access* to educational opportunities impairs the academic achievement of African American children.<sup>247</sup> Focusing only on access to educational opportunities opens the door for a dangerous insinuation—African American children are inherently intellectually inferior, given their free access to educational institutions today. This Note seeks to expand the conversation on what equity ought to look like in the movement for education reform. The scholarship on education reform must first contend with the history of anti-literacy laws and how the ramifications of this history impact the literacy rates of Black children today. Efforts to reform school funding and the pedagogy that students engage with are also essential. Black children need a comprehensive pedagogical approach to overcome the linguistic and academic challenges they encounter in school. The inability to read or even speak standard American English leads to negative implications for Black children.

The trial of George Zimmerman for the murder of Trayvon Martin is an illustrative example. Rachel Jeantel was the prosecution’s key witness during the 2013 trial of George Zimmerman for the

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<sup>246</sup> Mills & Washington, *supra* note 131, at 566–76 (defining code-switching as “the systematic, alternative use of two or more linguistic codes”).

<sup>247</sup> See Duncan-Andrade & Morell, *supra* note 88, at 7 (arguing for a double investment approach to reforming urban education: her: preparation to confront the conditions of social and economic inequity in their [urban youth] daily lives and access to the academic literacies (computational and linguistic) that make college attendance a realistic option”); Kelley, *supra* note 57, at 137–38 (citing a 2013-2014 finding from the United States Department of Education’s Office for Civil Rights that “state and local governments’ reliance on property tax revenue for school funding...systemically results in the allocation of less monies to high-poverty schools that have a higher proportion of students of color”).

murder of 17-year-old Trayvon Martin.<sup>248</sup> Jeantel, 18 at the time, was on the phone with Martin just before Zimmerman made his fatal shots.<sup>249</sup> Thus, Jeantel could attest to Martin's state of mind as he interacted with Zimmerman. However, social commentators vilified Jeantel's character and discredited her testimony because she spoke AAVE.<sup>250</sup> Florida State Attorney Bernie de la Rionda exemplified difficulties understanding critical aspects of Jeantel's testimony:<sup>251</sup>

Dee Dee: He say he lost him . . . breathin' har', you know. And I like, he goin' . . . so he say he lost him. And then a couple . . . and then he say he right by his ass . . . he ru', he go' keep ru' 'til hi' dad house.  
BDLR: OK, let me make sure I understand that he's saying that he's "right by his ass" . . . meaning the guy is right by Trayvon?  
Dee Dee: No, he say he lost the guy . . .  
BDLR: OK.

Stigmatizing AAVE as urban slang, commentators called Jeantel "stupid," "dumb," and "hood" because of the way she

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<sup>248</sup> George Zimmerman was charged with second-degree murder for Trayvon Martin; he was eventually acquitted. *See, e.g.*, John R. Rickford & Sharese King, *Language and Linguistics on Trial: Hearing Rachel Jeantel (and Other Vernacular Speakers) in the Courtroom and Beyond*, 92 LINGUISTIC SOC'Y AM. 948 (2016).

<sup>249</sup> *See, e.g.*, Jelani Cobb, *Rachel Jeantel on Trial*, THE NEW YORKER, <https://www.newyorker.com/news/news-desk/rachel-jeantel-on-trial> (June 27, 2013).

<sup>250</sup> Rickford, *supra* note 248, at 950–51.

<sup>251</sup> In this transcript, "Dee Dee" refers to Jeantel. Johnrickford.com, Jeantel Transcript, <http://johnrickford.com/Writings/AAVE-in-the-News/Jeantel-Transcript> (last visited Apr. 11, 2020).

spoke.<sup>252</sup> Even worse, none of the jurors mentioned Jeantel's critical testimony during jury deliberation.<sup>253</sup>

Jeantel was a native speaker of AAVE<sup>254</sup> and had not learned the ability to "code-switch."<sup>255</sup> More accurately, she had not been taught how to code-switch. Jeantel's inability to speak standard English illustrates an alarming reality that Black children from marginalized communities can spend thirteen years of schooling without learning standard English. Furthermore, the failure to teach Jeantel how to speak standard English, and therefore address her linguistic barriers, inevitably contributed to low academic outcomes. At the time of the trial Jeantel was reading on a fourth-grade level, implicating the failure of the American school system to effectively educate Black children.<sup>256</sup> Jeantel was a rising senior at Miami Norland Senior High School. In the 2010–2011 academic school year, when Jeantel would have been in tenth grade, only 13% of tenth grade students at Miami Norland Senior High School scored satisfactory or above on the state's reading assessment.<sup>257</sup>

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<sup>252</sup> See, e.g., Rickford, *supra* note 248, at 957; Alexander Abad-Santos, *My Star Witness is Black: Rachel Jeantel's Testimony Makes Trayvon a Show Trial*, THE ATLANTIC (June 27, 2013), <https://www.theatlantic.com/national/archive/2013/06/rachel-jeantel-testimony-trayvon-martin-trial/313792/>.

<sup>253</sup> In a TV interview, one of the six jurors stated, "[Jeantel's] testimony played no role whatsoever in their decision." Rickford, *supra* note 248, at 950.

<sup>254</sup> *Id.* at 957, 970 (After analyzing sixteen hours of her testimony, Rickford concluded that Jeantel's speech "is neither 'inarticulate' nor 'incoherent', but a systematic exemplification of the grammar of AAVE, with some resemblances

to, if not influences from, CCE [Caribbean creole] varieties").

<sup>255</sup> Mills & Washington, *supra* note 131, at 566–76.

<sup>256</sup> Krissah Thompson & Lonnae O'Neal Parker, *For Trayvon Martin's Friend Rachel Jeantel, a 'Village' of Mentors Trying to Keep Her on Track*, WASH. POST (June 4, 2014), [https://www.washingtonpost.com/lifestyle/style/for-rachel-jeantel-trayvon-martins-friend-the-journey-continues/2014/06/04/0135d5a2-ec11-11e3-93d2-edd4be1f5d9e\\_story.html?noredirect=on&utm\\_term=.ccb71da09223](https://www.washingtonpost.com/lifestyle/style/for-rachel-jeantel-trayvon-martins-friend-the-journey-continues/2014/06/04/0135d5a2-ec11-11e3-93d2-edd4be1f5d9e_story.html?noredirect=on&utm_term=.ccb71da09223).

<sup>257</sup> Miami Norland's scores for that year fell well below the district and state average (39% of students within the district and 40% of students in the state received a score of satisfactory or above). Florida Department of Education, Miami Norland Senior High School Public Accountability Report,

If language is the house of being,<sup>258</sup> then Black speakers of AAVE will inherently struggle to exist in a setting that presupposes acquisition of standard English. More importantly, the hostility and vitriol that Rachel Jeantel experienced as she testified on behalf of her deceased friend sheds light on how speakers of AAVE are penalized in judicial and educational settings.

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[http://doeweb-prd.doe.state.fl.us/eds/nclbspar/year1112/nclb1112.cfm?dist\\_schl=13\\_7381](http://doeweb-prd.doe.state.fl.us/eds/nclbspar/year1112/nclb1112.cfm?dist_schl=13_7381) (last visited Jan. 11, 2019).

<sup>258</sup> Martin Heidegger, *Letter on Humanism*, 217 BASIC WRITINGS (David F. Krell ed. 1978).