Maryland Law Review

Volume 82 | Issue 3 Article 6

Distinguishing Juvenile Law and Juvenile Education: Undoing the School-to-Prison Pipeline Approved in In Re S.F.

Anna Manogue

NOTE

DISTINGUISHING JUVENILE LAW AND JUVENILE EDUCATION: UNDOING THE SCHOOL-TO-PRISON PIPELINE APPROVED IN *IN RE S.F.*

ANNA MANOGUE*

In *In re S.F.*,[1] the then-Court of Appeals of Maryland[2] held that a juvenile probation condition requiring a child to "attend school regularly without suspension[]" is not impermissibly vague.[3] Although the court correctly applied Maryland law to uphold the condition,[4] the incorporation of school suspensions into juvenile court sanctions exposes Maryland's schoolchildren to compounding forms of arbitrary treatment.[5] By affirming the role of juvenile courts in school-based punishments, the court undercut the purpose of school discipline and approved the school-to-prison pipeline in Maryland.[6] The General Assembly should amend the Juvenile Causes Statute to curtail the use of no-suspension conditions of juvenile probation.[7]

* J.D. Candidate, 2024, University of Maryland Francis King Carey School of Law.

I would like to thank Professors David Gray and Chaz Arnett for generously sharing their time, expertise, and suggestions as I was researching and writing this Note. I am extremely grateful to the staff of the *Maryland Law Review*, particularly Allison Stillinghagan and Kaitlin Barnes, for their enthusiasm for this subject and their meticulous editing. Finally, I want to thank my parents and my brothers for being my role models, providing constant encouragement, and readily discussing and reading this Note.

1. 477 Md. 296, 269 A.3d 324 (2022).

2. On December 14, 2022, Maryland Governor Larry Hogan announced that the majority of votes cast in the 2022 General Election were in favor of a constitutional amendment changing the names of the Court of Appeals of Maryland and the Court of Special Appeals of Maryland to the Supreme Court of Maryland and the Appellate Court of Maryland, respectively. *See* MD. EXEC. DEP'T, GOVERNOR'S PROCLAMATION DECLARING THE RESULT OF THE ELECTION OF NOVEMBER 8, 2022, FOR CONSTITUTIONAL AMENDMENTS (2022), https://mdcourts.gov/sites/default/files/import/reference/pdfs/proclamation20221213.pdf; *see also* MD. CONST. art. IV, § 14.

3. *In re S.F.*, 477 Md. at 306–07, 269 A.3d at 329–30.

4. *See infra* Section IV.A.

5. *See infra* Section IV.B.

6. *See infra* Section IV.C.

7. *See infra* Section IV.D.

I. THE CASE

S.F. was twelve years old when the State filed delinquency charges against him in the juvenile court of Frederick County, Maryland, in 2018.[8] At the time, S.F. attended a public middle school in Frederick County where he received learning accommodations pursuant to his individualized education program ("IEP").[9] Between 2018 and 2019, the State filed two delinquency petitions, charging S.F. first with second-degree assault and later with misdemeanor theft.[10]

In November 2018, the State charged S.F. with second-degree assault after a physical altercation between S.F. and another student, J.C., at his school.[11] During school hours, S.F. and a peer entered a classroom and began punching J.C.[12] On February 12, 2019, S.F. entered an *Alford* plea to the second-degree assault charge.[13] The Maryland Department of Juvenile Services ("DJS") recommended a sentence of indefinite probation based on a Social History Investigation and Recommendation that documented S.F.'s previous misbehavior and suspensions.[14]

The magistrate judge presiding at S.F.'s disposition hearing for the second-degree assault charge imposed probation subject to several special conditions.[15] Importantly, the magistrate judge required S.F. to "attend school regularly without any unexcused absences, suspensions, or tardies."[16] S.F.

8. *In re S.F.*, 477 Md. at 305–07, 269 A.3d at 329–30. The Circuit Court of Maryland for Frederick County, sitting as a juvenile court, heard S.F.'s cases. *Id.* at 305–06, 269 A.3d at 329–30.

9. *Id.* at 307, 315, 269 A.3d at 330, 334–35. The Maryland State Department of Education defines an IEP as the "written description of the special education and related services for a student with a disability." MD. STATE DEP'T OF EDUC., DIV. OF EARLY INTERVENTION/SPECIAL EDUC. SERVS., MARYLAND STATEWIDE INDIVIDUAL EDUCATION PROGRAM (IEP) PROCESS GUIDE 9 (2019).

10. *In re S.F.*, 477 Md. at 307–08, 269 A.3d at 330–31.

11. *Id.* at 307, 269 A.3d at 330.

12. *Id.*

13. *Id.* at 308, 269 A.3d at 330. An *Alford* plea is a plea entered as part of a plea bargain in which the defendant does not admit guilt. *Alford Plea*, BLACK'S LAW DICTIONARY (9th ed. 2009). The *Alford* plea originated in *North Carolina v. Alford*, 400 U.S. 25, 37 (1970), in which the United States Supreme Court held that a criminal defendant may validly "consent to the imposition of a prison sentence" without admitting guilt.

14. *In re S.F.*, 477 Md. at 308–09, 269 A.3d at 331; *In re* S.F., 249 Md. App. 50, 54, 245 A.3d 30, 32 (2021).

15. *In re S.F.*, 477 Md. at 309, 269 A.3d at 331. S.F.'s probation also included standard conditions, such as reporting to a probation officer, appearing in court, and abstaining from drugs and alcohol. *Id.* In Maryland, juvenile courts may impose both standard conditions of probation, which apply in every probation sentence, and special conditions, which impose behavioral requirements specific to the child's case. *See* 8 MD. DEP'T OF LEGIS. SERVS., LEGISLATIVE HANDBOOK SERIES: MARYLAND'S CRIMINAL AND JUVENILE JUSTICE PROCESS 112 (2022), https://dls.maryland.gov/pubs/prod/RecurRpt/Handbook_Volume_8_Criminal_and_Juvenile_Justice_Process.pdf (describing standard and special conditions of probation).

16. *In re S.F.*, 477 Md. at 309, 269 A.3d at 331 (emphasis omitted).

objected that this no-suspension condition was vague because S.F. could not control whether school authorities chose to suspend him.[17] S.F's attorney also argued that S.F., as an African American student with an educational disability, faced a higher probability of suspension in Maryland.[18] The magistrate judge overruled the objection, reasoning that the condition was not vague because suspensions address students' affirmative behaviors and S.F. could litigate any suspension he received at his violation of probation hearing.[19] S.F. filed an exception to the no-suspension condition.[20]

Before the circuit court could hear S.F.'s exception, the State charged S.F. with misdemeanor theft in April 2019.[21] The theft charge stemmed from a December 2018 home burglary in which a homeowner reported that a pair of Nike Air Jordan shoes and a Tommy Hilfiger jacket had been taken from their home.[22] In May 2019, S.F. entered an *Alford* plea for the misdemeanor theft charge, and the juvenile court placed S.F. on probation to be served concurrently with his probation for second-degree assault.[23] Despite S.F.'s objection, the probation again included a no-suspension condition.[24] S.F. filed a second exception to the no-suspension condition and requested that the court consider both exceptions concurrently.[25]

The circuit court denied S.F.'s exceptions and held that the no-suspension condition was not vague.[26] The court determined that procedures in the school and legal system protected S.F. from arbitrary punishment.[27] Specifically, the court explained that most schools provide an explanation for every suspension and allow students to challenge their suspensions.[28] At a violation of probation hearing, the juvenile court would consider the basis for a suspension before finding a violation of probation.[29] S.F. appealed.[30]

The then-Court of Special Appeals affirmed the circuit court's holding that the no-suspension condition was not vague and that sufficient procedural

17. *Id.* at 309–10, 269 A.3d at 331.

18. *Id.* at 315, 269 A.3d at 334–35.

19. *Id.* at 309, 269 A.3d at 331.

20. *Id.* at 309–10, 269 A.3d at 331–32. An exception is a formal objection to a court's decision to overrule an objection. *Exception*, BLACK'S LAW DICTIONARY (11th ed. 2019). A party that files an exception to a juvenile court's recommendations may request a hearing on the exception in circuit court. MD. CODE ANN., CTS. & JUD. PROC. § 3-807(c) (2023).

21. *In re S.F.*, 477 Md. at 308, 269 A.3d at 330.

22. *Id.* at 307, 269 A.3d at 330.

23. *Id.* at 310, 269 A.3d at 332.

24. *Id.*

25. *Id.*

26. *Id.* at 310–11, 269 A.3d at 332.

27. *Id.*

28. *Id.* at 311, 269 A.3d at 332.

29. *Id.*

30. *Id.*

safeguards protected S.F. from arbitrary punishment.[31] The court determined that the condition was not vague because the student code of conduct for Frederick County Public Schools ("FCPS") clearly defined behaviors for which a student could be suspended and the FCPS Calendar Handbook ("FCPS Handbook")[32] sufficiently limited administrators' power to suspend.[33] The court emphasized that S.F. had notice of suspension-worthy behaviors because FCPS publishes the student code of conduct on its public website and in the FCPS Handbook every year.[34] The court cited common conditions of probation—including maintaining employment and reporting to a probation officer—to demonstrate that many valid probation conditions vest authority in third parties.[35]

The court next held that sufficient procedural safeguards protected S.F. from both an arbitrary suspension and an arbitrary violation of probation.[36] The court identified five procedural protections in the FCPS Handbook that shield students from arbitrary suspension.[37] The court then explained that a suspension does not automatically constitute a violation of probation.[38] A juvenile court may only find a probation violation after the State has met its burden to prove that the probationer did not comply with a condition of probation.[39] Even then, the probationer may avoid a probation violation by proving that his noncompliance was not willful and occurred "through no fault of his own."[40]

31. *Id.* at 311–12, 269 A.3d at 332–33.

32. Frederick County Public Schools provides its student handbook to parents, students, and teachers via the annual calendar. FREDERICK CNTY. PUB. SCHS., FREDERICK COUNTY PUBLIC SCHOOLS 2022–2023 CALENDAR HANDBOOK 38–49 (2022), https://campussuite-storage.s3.amazonaws.com/prod/33903/86de7fb0-3a18-11e6-b537-22000bd8490f/2444713/8db4e37c-037a-11ed-a0e0-0a5c34d56f71/file/2022-23_CHB_web.pdf. A student handbook typically contains all regulations and information pertinent to students, including the student code of conduct. *See, e.g.*, *id.* at 2 (providing a table of contents with information about programming, homework and academic policies, school meals, student discipline, and more).

33. *In re* S.F., 249 Md. App. 50, 57, 245 A.3d 30, 34 (2021). The court noted that the student code of conduct defines every behavior that may lead to suspension and describes which authorities may issue a suspension. *Id.*

34. *Id.*

35. *Id.* at 58, 245 A.3d at 35.

36. *Id.* at 60, 245 A.3d at 36.

37. *Id.* These safeguards included: (1) students must receive due process and notice of suspension; (2) administrators must document discipline in the student information system; (3) school staff must use suspension only as a last resort after positive behavioral interventions have failed; (4) the superintendent must approve extended suspensions; and (5) administrators must provide a parental conference for any out-of-school suspension. *Id.*

38. *Id.* at 61, 245 A.3d at 36–37.

39. *Id.* at 61, 245 A.3d at 37.

40. *Id.* (quoting Humphrey v. State, 290 Md. 164, 167–68, 428 A.2d 440, 443 (1981)).

Although S.F. successfully completed his probation and the juvenile court closed his case in May 2020, S.F. petitioned for certiorari in 2021.[41] The then-Court of Appeals granted certiorari to consider whether the juvenile court properly made a discretionary school suspension a violation of a child's probation.[42]

II. LEGAL BACKGROUND

State legislatures created the juvenile court in the early twentieth century as a civil court that sheltered children from punitive criminal sanctions.[43] Juvenile courts in each state thus enjoy considerable discretion to rehabilitate children by intervening in all aspects of a child's life during civil proceedings subject to limited procedural protections.[44] The broad discretion that these statutory juvenile courts wield over children often intersects with public schools' authority to discipline schoolchildren.[45]

Section II.A examines the rehabilitative origins of juvenile courts and subsequent efforts to provide constitutional protections to children in juvenile proceedings.[46] Section II.B explores the rehabilitative and retributive purposes underlying Maryland's juvenile legal system.[47] Section II.C details trial courts' comprehensive authority to impose probation conditions in Maryland.[48] Section II.D describes limits to probation conditions in other states.[49] Section II.E examines the intersection of scholastic and judicial authority by detailing the use of exclusionary discipline in Maryland's public schools.[50]

A. Juvenile Courts Developed as a Rehabilitative Alternative to the Criminal Punishment of Children

The juvenile legal system embodies the Progressive intuition that children have diminished criminal culpability.[51] Progressive advocates at the turn of the twentieth century attributed children's delinquent behaviors to

41. *In re* S.F., 477 Md. 296, 306, 311, 269 A.3d 324, 329, 332 (2022).

42. *Id.* at 306, 269 A.3d at 329–30.

43. *In re* David K., 48 Md. App. 714, 717, 429 A.2d 313, 315 (1981).

44. *See, e.g.*, *id.* at 721, 429 A.2d at 317.

45. *See, e.g.*, *In re S.F.*, 477 Md. at 308, 269 A.3d at 331 (imposing probation conditions that guide in-school behaviors); *In re* D.H., 208 Cal. Rptr. 3d 738, 741 (Ct. App. 2016) (imposing probation conditions that guide school attendance).

46. *See infra* Section II.A.

47. *See infra* Section II.B.

48. *See infra* Section II.C.

49. *See infra* Section II.D.

50. *See infra* Section II.E.

51. *In re* Johnson, 254 Md. 517, 522, 255 A.2d 419, 422 (1969).

external factors and believed that the state could rehabilitate children by guiding them away from problematic environments.[52] State legislatures replaced the criminal legal system with informal proceedings for children in which juvenile courts emphasized rehabilitation.[53] Because constitutional due process required in criminal trials did not initially apply to juvenile courts' civil proceedings, judges enjoyed considerable discretion to evaluate and regulate a child's life.[54]

Increasing concern about overbroad judicial discretion shifted the role of the juvenile court in the mid-twentieth century.[55] The Supreme Court limited discretion in juvenile-court proceedings in 1967 when it applied certain due process protections to juvenile delinquency hearings.[56] In *In re Gault*,[57] the Court acknowledged that "[j]uvenile [c]ourt history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."[58] The Court held that Arizona's juvenile legal system had violated fifteen-year-old Gerald Gault's due process rights by denying him the rights to confrontation, notice of his charges, counsel, and notice of his right to appeal his disposition.[59] The Court limited its holding to delinquency hearings and juvenile courts retained authority to impose broad dispositions during sentencing.[60] In this way, *In re Gault* exacerbated the tension between the competing goals of accountability and rehabilitation in the juvenile legal system.[61]

B. Maryland's Juvenile Legal System Prioritizes Rehabilitation by Preserving Juvenile Courts' Sentencing Discretion

Maryland's juvenile legal system reflects evolving views of children's criminal culpability following *In re Gault*.[62] The Juvenile Causes Statute of 1974 evinced the General Assembly's intent to rehabilitate delinquent children by establishing juvenile courts in every county in Maryland.[63] This

52. *Id.*

53. *Id.*

54. *Id.*

55. *See In Re* Gault, 387 U.S. 1, 18, 21 (1967) (limiting juvenile courts' discretion during delinquency proceedings).

56. *Id.* at 36–37.

57. 387 U.S. 1 (1967).

58. *Id.* at 18.

59. *Id.* at 33–34, 41, 57.

60. *Id.* at 13, 27.

61. *See id.* (preserving juvenile courts' informal structure outside of delinquency proceedings to better serve the juvenile legal system's rehabilitative goals).

62. *Compare id.* at 17–18 (noting the rehabilitative goals of the juvenile legal system), *with* MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02 (2023) (noting the juvenile legal system's joint purposes of accountability, rehabilitation, and community safety).

63. CTS. & JUD. PROC. § 3-802 (1974).

legislation adopted a holistic approach to rehabilitation that afforded significant discretion to judges.[64] The juvenile court could impose various dispositions "upon terms the judge deems appropriate" to rehabilitate the child.[65] Later amendments to the Juvenile Causes Statute diminished this emphasis on rehabilitation by establishing accountability, rehabilitation, and community safety as coequal goals of the juvenile court.[66] Juvenile court judges retained discretion to broadly interpret the Statute, however, and every amendment to the Juvenile Causes Statute has preserved the juvenile court's authority to impose probation "upon terms the judge deems appropriate."[67] Even the most recent reforms to the Juvenile Causes Statute in 2022, which limited the juvenile court's authority to confine children, deferred to the juvenile court's discretion to create probation conditions.[68]

Maryland courts have similarly recognized the importance of judicial discretion in a rehabilitative juvenile legal system.[69] In *In re David K.*,[70] the then-Court of Special Appeals emphasized that the juvenile court's revocation of an adolescent's driving privileges met the rehabilitative goals of the Juvenile Causes Statute even if the juvenile court lacked the authority to issue such a revocation.[71] The court noted that the Juvenile Causes Statute, by its own language, "shall be liberally construed to effectuate [its rehabilitative] purposes."[72] The juvenile court had thus appropriately considered David K.'s social history—including his mental health, recreational drinking habits, vandalism charges, and traffic violations—when crafting his disposition.[73] Revocation of David K.'s driving privileges fulfilled the juvenile court's rehabilitative role although it exceeded the juvenile court's authority.[74]

64. *Id.*; *see also In re* David K., 48 Md. App. 714, 718 n.1, 429 A.2d 313, 315 n.1 (1981) (discussing the 1981 amendment to Maryland's Juvenile Causes Statute that added public safety as a factor judges should consider in sentencing).

65. CTS. & JUD. PROC. § 3-8A-19 (2023).

66. *See id.* § 3-8A-02 (establishing the purpose of the Juvenile Causes Statute).

67. *Id.* § 3-8A-19(d)(1)(i); *see also In re* D.M., 228 Md. App. 451, 464, 139 A.3d 1073, 1081 (2016) ("[The juvenile legal system] is a system designed with the goal of treatment and rehabilitation of children, rather than punishment.").

68. CTS. & JUD. PROC. § 3-8A-19(d)(1)(i).

69. *In re D.M.*, 228 Md. App. at 465, 139 A.3d at 1081.

70. 48 Md. App. 714, 429 A.2d 313 (1981).

71. *Id.* at 724–25, 429 A.2d at 319.

72. *Id.* at 721, 429 A.2d at 317 (quoting CTS. & JUD. PROC. § 3-802(b) (2019)).

73. *Id.* at 716–17, 429 A.2d at 315.

74. *Id.* at 721, 429 A.2d at 317.

C. In Maryland, Probation Conditions Must Give Probationers Sufficient Notice of the Expected Standard of Conduct

Although Maryland's juvenile courts enjoy considerable discretion to craft dispositions that will rehabilitate children, all probation conditions must meet constitutional notice requirements.[75] In a series of criminal cases, the Supreme Court of Maryland has held that probation conditions may be void for vagueness if the probationer lacks notice of the expected standard of conduct.[76] The Supreme Court of Maryland has carefully distinguished constitutional, general probation conditions that vest authority in a third party from unconstitutional, vague probation conditions that do not provide sufficient notice to the probationer.[77] If a probationer violates a constitutional term of probation, Maryland courts have discretion to revoke that individual's probation.[78]

Probation conditions in Maryland must be reasonable, rationally related to the offense, and clear and definite enough that both the probationer and the party enforcing probation understand the expected standard of conduct.[79] In *Watson v. State*,[80] the then-Maryland Court of Special Appeals applied this standard to reject a probation condition that required Watson to pay forty percent of his income to his victim's minor children for an indeterminate period of time.[81] The court determined that the condition was impermissibly vague because the judge did not specify net or gross income or the duration of the probation.[82] Watson thus could not reasonably understand the standard of conduct required of him or the duration for which he must fulfill that standard of conduct.[83]

In *Meyer v. State*,[84] the then-Maryland Court of Appeals applied the same standard to uphold a no-driving condition of probation in one of two

75. *See, e.g.*, Watson v. State, 17 Md. App. 263, 274, 301 A.2d 26, 31–32 (1973) (holding a probation condition unconstitutionally vague when the probationer and the enforcing party cannot understand the required standard of conduct).

76. *See, e.g.*, *id.* (holding a probation condition requiring the probationer to give forty percent of his income to the victim's family impermissibly vague); Hudgins v. State, 292 Md. 342, 349, 438 A.2d 928, 931 (1982) (holding a probation condition requiring the defendant to work with local police may be impermissibly vague if police did not provide further instruction).

77. *See, e.g.*, Meyer v. State, 445 Md. 648, 681, 128 A.3d 147, 166 (2015) (upholding probation conditions that prohibited defendants from driving because the conditions were rationally connected to the defendants' offenses).

78. Humphrey v. State, 290 Md. 164, 168, 428 A.2d 440, 443 (1981).

79. *Watson*, 17 Md. App. at 274, 301 A.2d at 31–32.

80. 17 Md. App. 263, 301 A.2d 26 (1973).

81. *Id.* at 275, 301 A.2d at 32.

82. *Id.* at 274, 301 A.2d at 32.

83. *Id.*

84. 445 Md. 648, 128 A.3d 147 (2015).

consolidated cases.[85] The court reiterated its *Watson* holding and distinguished constitutional specificity requirements from a trial court's discretion to craft probation conditions according to a defendant's history.[86] A trial court may impose a probation condition based on a defendant's history if the condition gives the probationer notice of the conduct expected under his probation.[87] Because Meyer had a history of significant traffic violations, the court upheld the no-driving condition as rationally related to his offense and sufficiently specific to give Meyer notice that he could not drive.[88] The court emphasized the trial court's discretion to craft probation conditions specific to each probationer's crime of conviction.[89]

The Supreme Court of Maryland has likewise distinguished general probation conditions from impermissibly vague probation conditions.[90] In *Hudgins v. State*,[91] the then-Court of Appeals remanded a case in which the trial court imposed a condition of probation that required Hudgins to work with local police until officers were satisfied with his assistance.[92] The court explained that a trial court may issue a general probation condition if the court or its designee provides reasonable, specific instructions that guide the probationer's conduct under that condition.[93] The court emphasized that some offenses may require general probation conditions to fit the probationer's unique circumstances.[94] Because the record did not reveal whether the police had offered Hudgins additional guidance, the court remanded the case for further fact-finding.[95]

D. Other States Apply Similar Standards to Probation Conditions and Violations

Courts in other states have adopted similar standards of vagueness as applied to probation conditions.[96] California courts have interpreted vagueness by emphasizing that a probation condition must be specific enough

85. *Id.* at 655–56, 128 A.3d at 151–52.

86. *Id.* at 680–81, 688, 128 A.3d at 166, 171.

87. *Id.* at 687, 128 A.3d at 170 (citing Poe v. State, 341 Md. 523, 532, 671 A.2d 501, 505 (1996)).

88. *Id.* at 656–58, 681, 128 A.3d at 152, 167.

89. *Id.* at 681, 128 A.3d at 167.

90. *See* Hudgins v. State, 292 Md. 342, 349, 438 A.2d 928, 931 (1982) (distinguishing general and impermissibly vague probation conditions).

91. 292 Md. 342, 438 A.2d 928 (1982).

92. *Id.* at 349, 438 A.2d at 931.

93. *Id.* at 348, 438 A.2d at 931.

94. *Id.*

95. *Id.* at 349, 438 A.2d at 931.

96. *See, e.g.*, People v. Turner, 66 Cal. Rptr. 3d 803, 806 (Ct. App. 2007) (determining a probation condition is impermissibly vague if the probationer or the probation officer cannot understand the required standard of conduct).

to give a probationer prior notice of the condition's required conduct.[97] In a series of cases addressing whether probation conditions are impermissibly vague, California's appellate courts connected probation conditions' specificity requirements to due process principles of fair warning.[98]

In *People v. Turner*,[99] a California appellate court deemed impermissibly vague a condition that a probationer convicted of sexual offenses must not possess materials that his probation officer found sexually stimulating or sexually oriented.[100] The court held that a probation condition becomes impermissibly vague when it produces more than one reasonable interpretation.[101] The court held that the probation condition was vague because Turner could not reasonably anticipate a probation officer's subjective determinations about specific materials.[102] The court rephrased the condition so that Turner could not possess materials after his probation officer informed him that such materials were sexually stimulating or sexually oriented.[103] The reworded condition was no longer vague because Turner had notice of which materials violated his probation before he possessed them.[104] The *Turner* court thus held that a probation condition will not be considered vague if the probationer has notice that a specified act violates that condition.[105]

A California appellate court applied a similar standard in *In re D.H.*,[106] in which a child was placed on probation after ejaculating on a bus passenger.[107] As conditions of his probation, D.H. could not access pornography and had to attend school regularly and obey all school rules.[108] The court again held that a probation condition is impermissibly vague if the probationer cannot understand the behavior required under the condition or if the court cannot determine when a violation has occurred.[109] The court rejected the no-pornography condition entirely because the word "pornography" is inherently vague and cannot provide constitutional notice to a probationer.[110] The court held, however, that the regular-attendance

97. *Id.*

98. *See id.* (connecting due process principles of fair warning to vagueness); *In re* Sheena K., 153 P.3d 282, 293 (Cal. 2007) (noting the concept of fair warning undergirds vagueness challenges).

99. 66 Cal. Rptr. 3d 803 (Ct. App. 2007).

100. *Id.* at 806.

101. *Id.* (citing *In re Sheena K.*, 153 P.3d at 293).

102. *Id.* at 807.

103. *Id.*

104. *Id.*

105. *Id.*

106. 208 Cal. Rptr. 3d 738 (Ct. App. 2016).

107. *Id.* at 740.

108. *Id.* at 741.

109. *Id.* at 742.

110. *Id.* at 743.

condition was permissible because the condition that D.H. obey all school rules gave D.H. advance notice of what constituted regular attendance.[111] The court thereby rooted determinations of a probation condition's vagueness in the degree of prior notice the condition provides the probationer.[112]

E. Maryland School Boards Determine Their Discipline Policies According to Federal and State Requirements

As in *In re D.H.*, juvenile courts often impose probation conditions that connect the juvenile legal system to the school disciplinary system.[113] The Maryland General Assembly[114] and the Maryland State Board of Education[115] have recognized the existence of a school-to-prison pipeline by which intersections between the criminal legal system and the school disciplinary system create a path from school to incarceration.[116] This school-to-prison pipeline disproportionately affects African American children and children with disabilities.[117] Federal and state law thus carefully regulate school disciplinary proceedings that implicate students with disabilities and students of color.[118]

111. *Id.* at 744.

112. *Id.*

113. *See, e.g.*, *id.* at 741 (requiring a child to attend school regularly and obey all school rules); *In re* Ann M., 309 Md. 564, 567, 525 A.2d 1054, 1056 (1987) (regulating a child's school attendance).

114. *See* MD. COMM'N ON THE SCHOOL-TO-PRISON PIPELINE & RESTORATIVE PRACS., FINAL REPORT AND COLLABORATIVE ACTION PLAN 10 (2018), https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1003&context=cdrum_fac_pubs (report from commission established by the General Assembly to examine the school-to-prison pipeline in Maryland).

115. *See* MD. STATE BD. OF EDUC., MD. STATE DEP'T OF EDUC., SCHOOL DISCIPLINE AND ACADEMIC SUCCESS: RELATED PARTS OF MARYLAND'S EDUCATION REFORM 7 (July 2012) (recognizing that exclusionary discipline policies may create a pipeline to prison and authorizing the collection of school arrest and referral data in the 2013–2014 school year to determine whether such a pipeline exists in Maryland's public schools). The data gathered as a result of this report precipitated reforms to remove zero tolerance policies from Maryland's school discipline regulations. MD. STATE DEP'T OF EDUC., AN OVERVIEW OF SCHOOL DISCIPLINE POLICY AND REGULATIONS IN MARYLAND 4–5 (2019).

116. *See In re* S.F., 477 Md. 296, 321, 269 A.3d 324, 338 (2022) (discussing the school-to-prison pipeline); MD. COMM'N ON THE SCHOOL-TO-PRISON PIPELINE AND RESTORATIVE PRACS., *supra* note 114, at 10.

117. *In re S.F.*, 477 Md. at 321–22, 269 A.3d at 339; *see also* Margaret Goldman & Nancy Rodriguez, *Juvenile Court in the School-Prison Nexus: Youth Punishment, Schooling, and Structures of Inequality*, 45 J. CRIME & JUST. 270, 273 (2021) (defining the school-to-prison pipeline as "the processes by which students are pushed out of school and towards the legal system" and noting that research emphasizes the role of exclusionary discipline in disproportionately pushing Black students away from schools and toward the legal system).

118. *See* 20 U.S.C. § 1400(c) (describing the purposes of the Individuals with Disabilities Education Act); MD. CODE REGS. 13A.08.01.11 (2018) (regulating discipline in Maryland public schools).

1. Federal Law Requires Schools to Observe Certain Due Process Protections in Exclusionary Discipline Proceedings

The Supreme Court held that schools must observe due process protections in school suspension proceedings in *Goss v. Lopez*.[119] The Court determined that for suspensions of ten days or less, students have a constitutional right to notice of the charges against them, an explanation of the evidence supporting those charges, and some sort of hearing to challenge those charges.[120] Because Lopez and several other Ohio high school students had been suspended without a hearing, the Court deemed the suspensions invalid.[121] The Court emphasized that students do not have rights to counsel or confrontation of witnesses during suspension proceedings because such procedures would impede effective education.[122]

The same year that the Court decided *Goss*, Congress passed the Individuals with Disabilities Education Act ("IDEA"), which requires all schools that receive federal funding to follow additional procedures in the discipline of students with disabilities.[123] Schools must have a hearing with the child's guardians and relevant members of the child's educational team within ten days of a suspension decision to determine whether the behavior that precipitated the exclusionary discipline was due to the child's disability.[124] Under the IDEA, states must also collect and evaluate "data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities."[125] By requiring states to report suspension data by demographic, the IDEA codifies federal oversight of school disciplinary techniques that affect students of color and students with disabilities.[126]

2. Maryland Law Imposes Similar Procedures to Protect Students' Rights During Exclusionary Discipline Proceedings

Maryland regulates exclusionary discipline—suspensions and expulsions—by requiring school districts to observe specific procedures for each.[127] Maryland allows two forms of suspension: in-school suspension, in which a student is removed from the classroom but remains on school

119. 419 U.S. 565 (1975).
120. *Id.* at 581.
121. *Id.* at 584.
122. *Id.* at 583.
123. 20 U.S.C. § 1400(d)(1)(A).
124. *Id.* § 1415(k)(1)(E).
125. *Id.* § 1412(a)(22)(A).
126. *Id.*
127. MD. CODE REGS. 13A.08.01.11 (2018).

premises, and out-of-school suspension, in which a student is barred from school grounds.[128] Out-of-school suspensions may be short-term (three days or fewer), long-term (between four and ten days), or extended (between eleven and forty-five days).[129] A school principal may suspend any student under her jurisdiction for cause for up to ten days but must obtain approval from the superintendent to issue an extended out-of-school suspension.[130] A child subject to a short-term suspension has the right to receive an explanation for the suspension, a meeting between school administrators and the child's family, and a list of community resources provided by the local board of education.[131] Under Maryland law, a child does not have the right to appeal a short-term suspension, but local regulations often allow children to appeal short-term suspensions within their districts.[132]

The Maryland State Department of Education monitors local discipline rates by collecting data on the use of exclusionary discipline in each school district in Maryland.[133] These data reveal that African American students and students with disabilities are approximately three times more likely to experience exclusionary discipline than other students.[134] In Frederick County in the 2018–2019 school year, for example, 1,624 students received at least one suspension.[135] Of those students suspended, 437, or approximately 27%, were African American, even though African Americans students represented only 12.5% of all FCPS students.[136]

128. *Id.* 13A.08.01.11B(10).

129. *Id.* 13A.08.01.11B(10), (11).

130. *Id.*

131. MD. CODE ANN., EDUC. § 7-305(a)(1)–(3) (2023).

132. *Id.*; Suspension and Expulsion, Reg. No. 400-04, at 5 (Frederick Cnty. Pub. Schs. Jan. 4, 2023), https://apps.fcps.org/legal/documents/400-04.

133. *See, e.g.*, MD. STATE DEP'T OF EDUC., DIV. OF ASSESSMENT, ACCOUNTABILITY, & INFO. TECH., SUSPENSIONS, EXPULSIONS, AND HEALTH RELATED EXCLUSIONS MARYLAND PUBLIC SCHOOLS (2018–2019), at 2 tbl.2 (2019), https://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20182019Student/2019SuspensionsExpulsionsHRExc.pdf (aggregating data on exclusionary discipline in each school district by county).

134. *See* MD. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., DISPARITIES IN SCHOOL DISCIPLINE IN MARYLAND 12 (2019), https://www.usccr.gov/files/pubs/2020/01-14-MD-SAC-School-Discipline-Report.pdf (noting that since 2014, African American students and students with disabilities have remained approximately 3 times more likely to be suspended than their white and non-disabled peers).

135. MD. STATE DEP'T OF EDUC., DIV. OF ASSESSMENT, ACCOUNTABILITY, & INFO. TECH., *supra* note 133, at 2 tbl.2.

136. MD. STATE DEP'T OF EDUC., MARYLAND PUBLIC SCHOOL ENROLLMENT BY RACE/ETHNICITY AND GENDER AND NUMBER OF SCHOOLS SEPTEMBER 30, 2017, at 1 tbl.1 (2021), https://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20172018Student/2018EnrollbyRace.pdf; MD. STATE DEP'T OF EDUC., DIV. OF ASSESSMENT, ACCOUNTABILITY, & INFO. TECH., *supra* note 133, at 5 tbl.3. Maryland did not provide data regarding the number of students with disabilities suspended from Frederick County Public Schools during the 2018–2019 school

African American students and students with disabilities are more likely to be suspended than any other subgroups in Maryland schools.[137] Regardless of race, students with disabilities are three times more likely to be suspended than their peers in Maryland's public schools.[138] Exclusionary discipline data from middle and high schools between the 2009–2010 and 2017–2018 school years show that seventy-six percent of behavioral infractions involving students with disabilities resulted in an out-of-school suspension compared to just sixty-eight percent of behavioral infractions involving students without disabilities.[139] The classroom removal rate for African American students with disabilities in the 2017–2018 school year was approximately thirteen percent, while the removal rate for African American students without disabilities was approximately seven percent.[140] Maryland's school suspension data between 2009 and 2018 revealed that African American students and students with disabilities face statistically significant, increased likelihoods of suspension compared to their white and abled peers.[141]

III. THE COURT'S REASONING

In a 6-1 decision, the then-Maryland Court of Appeals held that a no-suspension condition of probation is not impermissibly vague and existing procedures protect children from arbitrary punishment under such conditions.[142] Writing for the majority, Judge Hotten first explained that the court would exercise its discretion to reach the merits of the case despite the case's mootness.[143] The court reasoned that the no-suspension condition implicated matters of public importance—the school-to-prison pipeline, the Maryland Judiciary's effort to eliminate discrimination in the administration of justice, and the relationship between citizens and the government—because it connected to disproportionately high suspension rates among students of color and students with disabilities in Maryland.[144] The court further noted that the issue was likely to recur and evade review because

year. *See id.* at 46 tbl.15 (failing to disaggregate by county the data regarding suspensions of students with disabilities).

137. JOHANNA LACOE & MIKIA MANLEY, DISPROPORTIONALITY IN SCHOOL DISCIPLINE: AN ASSESSMENT IN MARYLAND THROUGH 2018, at 1 (2019).

138. MD. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., *supra* note 134, at 12.

139. LACOE & MANLEY, *supra* note 137, at 6.

140. *Id.* The removal rate for students of other races was 2.6 percent. *Id.* at 3.

141. *Id.* at 6.

142. *In re* S.F., 477 Md. 296, 332, 334, 269 A.3d 324, 344, 346 (2022).

143. *Id.* at 318, 269 A.3d at 336. The case was moot because S.F. completed his probation without suspension before he petitioned for certiorari. *Id.* at 306, 269 A.3d at 329.

144. *Id.* at 321–23, 269 A.3d at 337–39.

juvenile probations often end before a case can reach the state's highest court.[145]

The court next held that the juvenile court had not abused its discretion by imposing the no-suspension condition.[146] Citing the plain language of the Maryland Code, the court determined that the juvenile legal system balances public safety, accountability, and character development to serve a child's best interests.[147] A juvenile court may impose probation "upon terms the court deems appropriate" to fulfill these goals as long as the term is constitutional, specific, and reasonably connected to the offense.[148] A probation condition is only vague, the court explained, when the probationer lacks specific guidance such that he cannot understand the required standard of conduct.[149] Here, the court reasoned, the no-suspension condition provided sufficient guidance to allow S.F. to understand how to comply with his probation.[150] The court hinged its reasoning on its determination that the FCPS student code of conduct gave S.F. advance notice of the specific conduct that could result in a suspension.[151]

The court rejected S.F.'s assertion that the no-suspension condition was vague because it vested in school authorities the discretion to determine a violation of probation.[152] Citing *Meyer v. State*, the court emphasized that general probation conditions are not inherently vague.[153] The court echoed the then-Court of Special Appeals' reasoning that many permissible probation conditions allow a third party to monitor a probationer's behavior.[154] The court then likened the no-suspension condition to the requirement that the defendant work with police in *Hudgins v. State*, noting that both conditions were general but not vague.[155] The no-suspension condition's generality, the court reasoned, afforded FCPS authorities appropriate discretion to identify behaviors worthy of suspension, while the

145. *Id.* at 321, 269 A.3d at 338.

146. *Id.* at 323, 269 A.3d at 339.

147. *Id.* at 324, 269 A.3d at 340.

148. *Id.* at 325, 269 A.3d at 340 (citing MD. CODE, CTS. & JUD. PROC. § 3-8A-19(d)(1)) (allowing the juvenile court to "place a child on probation . . . upon terms the court deems appropriate'" (alteration in original) (quoting *In re* W.Y., 228 Md. App. 596, 611, 142 A.3d 602, 611 (2016))).

149. *Id.* at 326, 269 A.3d at 341.

150. *Id.* at 329, 269 A.3d at 342.

151. *Id.* at 343. The court emphasized that the student code of conduct provided detailed descriptions of behaviors and their corresponding consequences. *Id.*

152. *Id.*

153. *Id.* at 326, 269 A.3d at 343.

154. *Id.* at 342. The court compared the no-suspension condition to another general probation condition that required S.F. to obey all house rules. *Id.*

155. *Id.* at 328–29, 269 A.3d at 342–43.

student code of conduct provided S.F. sufficient notice of such behaviors.[156] The court held that the advance notice in the student code of conduct distinguished S.F.'s case from cases in which undifferentiated third-party discretion rendered a probation condition vague.[157]

Like the then-Court of Special Appeals, the court repudiated S.F.'s contention that the no-suspension condition exposed him to arbitrary punishment.[158] The court first distinguished a probation condition's vagueness from a court's factual finding of a probation violation.[159] The court held that regardless of a condition's wording, a juvenile court cannot find a child in violation of probation due to factors beyond that child's control.[160] The court identified two levels of procedural protections that insulate S.F. and other children from arbitrary punishment in juvenile court.[161] First, a probation officer has some discretion regarding whether to report a child's alleged probation violation.[162] Second, once the probation officer reports a violation, the State bears the burden to prove by a preponderance of the evidence that the violation occurred.[163] If the State meets its burden, the juvenile court will find a probation violation and only then may it revoke the child's probation.[164]

The court applied these procedures to S.F.'s case to demonstrate that they protected S.F. from arbitrary punishment.[165] The court explained that the State would first need to present proof of S.F.'s alleged misbehavior, including a school administrator's justification for the suspension.[166] The FCPS Handbook supported this procedural safeguard by requiring administrators to record such information when they issue a suspension.[167] If S.F. could prove that the suspension resulted from an occurrence beyond his control, then the juvenile court would not find a probation violation.[168] The court carefully distinguished a school administrator's decision to suspend a

156. *Id.* at 329–30, 269 A.3d at 343–44.

157. *Id.*

158. *Id.*

159. *Id.* at 330, 269 A.3d at 344.

160. *Id.* at 331–32, 269 A.3d at 344.

161. *Id.* at 331–32, 269 A.3d at 344–45.

162. *Id.* at 332, 269 A.3d at 345.

163. *Id.* at 333, 269 A.3d at 345; *see also* MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-18(d), (e) (2023) (specifying that, unless an adult is charged, allegations in adjudicatory hearings must be proven by a preponderance of the evidence).

164. *In re S.F.*, 477 Md. at 333, 269 A.3d at 345. For an explanation of the consequences of revocation of probation, see *infra* notes 301–304 and accompanying text.

165. *In re S.F.*, 477 Md. at 333–34, 269 A.3d at 345–46.

166. *Id.* at 333, 269 A.3d at 345.

167. *Id.* at 333–34, 269 A.3d at 345–46.

168. *Id.* at 334, 269 A.3d at 346.

student from a juvenile court's decision to find a probation violation.[169] This distinction, the court emphasized, meant that disproportionately high suspension rates among African American students and students with disabilities do not bear on the vagueness of a no-suspension condition.[170]

Writing in dissent, Judge Watts rejected the majority's assertion that the no-suspension condition gave S.F. advance notice of the standard of conduct required of him.[171] The disproportionately high suspension rates among African American students and students with disabilities, Judge Watts argued, differentiated no-suspension conditions from other probation conditions that vest authority in third parties.[172] Due to the discretionary nature of suspensions, one child may be suspended for a behavior for which another child evades suspension.[173] Under the no-suspension condition, Judge Watts explained, dozens of behavioral infractions could result in suspensions that become per se probation violations because students cannot appeal suspensions of less than ten days.[174] The majority would then require a child to prove that the suspension was arbitrary to avoid a probation violation.[175] Judge Watts argued that this approach introduces an impossibly high standard that will turn violation of probation hearings into "mini-trials concerning the behavior and motivation of school officials."[176] Judge Watts asserted that the juvenile court could better ensure that children on probation attend school and comply with school rules by requiring children to immediately report suspensions to their probation officers.[177] Judge Watts thus would have reversed the lower court's decision.[178]

IV. ANALYSIS

In *In re S.F.*, the then-Maryland Court of Appeals held that a no-suspension condition of juvenile probation is not impermissibly vague because student codes of conduct provide advance notice of suspension-worthy behaviors.[179] Although legally correct,[180] this decision defies the empirical reality of Maryland's public schools.[181] Grossly disproportionate

169. *Id.*
170. *Id.*
171. *Id.* at 336, 269 A.3d at 347 (Watts, J., dissenting).
172. *Id.* at 340–42, 269 A.3d at 349–51.
173. *Id.* at 342, 269 A.3d at 351.
174. *Id.* at 339, 342, 269 A.3d at 348, 352.
175. *Id.* at 344, 269 A.3d at 352.
176. *Id.*
177. *Id.* at 336, 269 A.3d at 347.
178. *Id.*
179. *Id.* at 328–30, 269 A.3d at 343–44 (majority opinion).
180. *See infra* Section IV.A.
181. *See infra* Section IV.B.

suspension rates among African American students and students with disabilities in Maryland's schools blunt the practical utility of any technical notice provided in student codes of conduct.[182] The court's decision thus undercuts the purpose of school discipline and imports arbitrary school discipline directly into juvenile courts.[183] By upholding no-suspension conditions of juvenile probation, the Court of Appeals approved the school-to-prison pipeline in Maryland.[184] In response, the General Assembly should amend the Juvenile Causes Statute to permit no-suspension probation conditions only when the juvenile court (1) lists the underlying behaviors for which a suspension could trigger a violation of probation, and (2) limits those behaviors to only those crimes of violence related to the offense or offenses for which the child is receiving probation.[185]

Section IV.A analyzes how the then-Court of Appeals correctly upheld the no-suspension condition under current Maryland law.[186] Section IV.B asserts that the court's analysis belies the current state of school discipline in Maryland.[187] Section IV.C details the considerable injustice that no-suspension conditions of probation produce for children.[188] Section IV.D argues that the Maryland General Assembly can remedy these harms by amending the Juvenile Causes Statute to limit the use of no-suspension conditions.[189]

A. The Court Correctly Upheld the No-Suspension Condition Under Current Law

The court correctly determined that no-suspension conditions of probation are not impermissibly vague because student codes of conduct give children advance notice of suspension-worthy behaviors.[190] The court properly reviewed the juvenile court's imposition of the no-suspension condition for abuse of discretion.[191] A juvenile court abuses its discretion when it acts arbitrarily or in a manner "beyond the letter or reason of the law."[192] As the court recognized, juvenile courts have discretion to craft

182. *See infra* Section IV.B.
183. *See infra* Section IV.C.
184. *See infra* Section IV.C.
185. *See infra* Section IV.D.
186. *See infra* Section IV.A.
187. *See infra* Section IV.B.
188. *See infra* Section IV.C.
189. *See infra* Section IV.D.
190. *In re* S.F., 477 Md. 296, 334, 269 A.3d 324, 346 (2021).
191. *Id.* at 314, 269 A.3d at 334 (citing Cooley v. State, 385 Md. 165, 175, 867 A.2d 1065, 1071 (2005)).
192. *Id.* (quoting *Cooley*, 385 Md. at 175, 867 A.2d at 1071).

probation conditions subject to only two limitations.[193] First, the Juvenile Causes Statute requires juvenile probation conditions to serve the Act's purposes of rehabilitation, accountability, and community safety.[194] Second, the United States Constitution requires that probation conditions are not impermissibly vague.[195] The court correctly applied these standards to hold that the juvenile court did not abuse its discretion by imposing the no-suspension condition.[196]

The court correctly recognized that student codes of conduct provide technical notice of the behaviors that may lead to suspension.[197] The FCPS student code of conduct provided a detailed list of behavioral infractions and their corresponding disciplinary consequences.[198] Every school district in Maryland provides similar codes of conduct that inform students in advance of prohibited behaviors.[199] Although school personnel determine whether a behavior merits a disciplinary response in a given scholastic context, the student code of conduct lists every behavior that may lead to suspension.[200] Students can technically evade suspension by avoiding the suspension-worthy behaviors in the student code of conduct. A no-suspension probation condition thus cannot be vague because students need only look to the student code of conduct to understand the behaviors proscribed by their probation.[201]

Similarly, the FCPS Handbook provides several procedural safeguards that should protect S.F. and similarly situated students from arbitrary suspension.[202] The FCPS Handbook first deems suspensions escalated punishments that administrators should use only after unsuccessfully

193. *Id.* at 325, 269 A.3d at 340.

194. *Id.* at 326, 269 A.3d at 341; *see also* MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02(a)(1) (2023) (listing the purposes of the juvenile court).

195. *See In re* Gault, 387 U.S. 1, 13 (1967) (holding constitutional principles of due process apply in juvenile proceedings); *In re S.F.*, 477 Md. at 326, 269 A.3d at 341. Constitutional probation conditions also cannot be arbitrary or capricious and must be rationally related to the offense. *Id.* S.F. only challenged the vagueness of the no-suspension condition. *Id.*

196. *In re S.F.*, 477 Md. at 334, 269 A.3d at 346.

197. *Id.* at 330–31, 269 A.3d at 344.

198. *Id.* at 329, 269 A.3d at 343.

199. *Id.* at 317–18, 269 A.3d at 336; *see also* MD. CODE REGS. 13A.08.01.10 (requiring local boards of education to provide students with a document outlining their rights and responsibilities); MD. CODE REGS. 13A.08.01.11A (requiring local boards of education to provide students with a document that "[d]escribe[s] the conduct that may lead to in-school and out-of-school suspension or expulsion").

200. *In re S.F.*, 477 Md. at 329, 269 A.3d at 343; *see, e.g.*, HOWARD CNTY. PUB. SCHS., STUDENT AND PARENT HANDBOOK, STUDENT CODE OF CONDUCT, https://www.hcpss.org/f/aboutus/student-handbook/student-code-of-conduct.pdf; BALT. CITY PUB. SCHS., 2022–23 STUDENT CODE OF CONDUCT, https://www.baltimorecityschools.org/sites/default/files/2022-08/Code%20of%20Conduct%202022_WEBFINAL.pdf.

201. *In re S.F.*, 477 Md. at 330, 269 A.3d at 344.

202. *Id.* at 333–34, 269 A.3d at 345–46.

implementing lesser interventions.[203] The court emphasized that the FCPS Handbook requires schools to record in the student information system the behavior that precipitated a suspension and an administrator's justification for the suspension.[204] The school must then send a copy of this information to the suspended student's guardians, who may choose to challenge the suspension.[205] The juvenile court also requires the state to prove that the suspension occurred and was reasonable before finding a probation violation.[206]

The court is legally correct, therefore, to hold that the no-suspension condition was not vague because S.F. had advance notice of the behaviors that could cause suspension and received procedural protections designed to prevent arbitrary suspensions.[207] This holding relies on student codes of conduct, however, which do not reflect the practical reality of school suspension in Maryland.[208] The court consequently understated S.F.'s very real concern that, given the arbitrary and discriminatory exclusionary discipline practices in Maryland's public schools, African American students and students with disabilities do not have notice of the behaviors that will actually result in suspension.[209]

B. The Then-Court of Appeals Understated the Disproportionate Use of Exclusionary Discipline and Overstated the Protections in Student Codes of Conduct

The court's conclusion that schools utilize student codes of conduct to define and apply behavioral expectations in a manner sufficient to notify students of the expected standard of conduct contradicts the reality of exclusionary discipline in Maryland's public schools.[210] Maryland schools

203. Student Discipline, Reg. No. 400-08, at 6 (Frederick Cnty. Pub. Schs. Mar. 16, 2022), https://apps.fcps.org/legal/documents/400-08. Per FCPS regulations, for example, school staff should first utilize tier one interventions such as peer mediation and classroom-based responses before imposing exclusionary discipline. *See id.* at 1, 5 (listing tier one interventions and requiring positive behavioral interventions before imposition of suspension).

204. *In re S.F.*, 477 Md. at 315–16, 269 A.3d at 335.

205. *Id.* at 333–34, 269 A.3d at 346; Reg. No. 400-08, at 6; Suspension and Expulsion, Reg. No. 400-04, at 5 (Frederick Cnty. Pub. Schs. Jan. 4, 2023), https://apps.fcps.org/legal/documents/400-04.

206. *In re S.F.*, 477 Md. at 333, 269 A.3d at 345.

207. *Id.* at 334, 269 A.3d at 346.

208. *See id.* at 331, 269 A.3d at 344 (relying on the student code of conduct to uphold no-suspension probation conditions).

209. *See id.* at 340, 269 A.3d at 349–50 (Watts, J., dissenting) (noting that students often receive different disciplinary interventions for identical behaviors).

210. *Id.* at 331, 269 A.3d at 344 (majority opinion); *see also* LACOE & MANLEY, *supra* note 137, at 1 (noting that even when involved in identical behavioral infractions, African American students are more likely than their peers to receive a suspension).

suspend African American students and students with disabilities at obscenely disproportionate rates.[211] Student codes of conduct provide little guidance regarding when a student may experience a suspension because school personnel tend to administer suspensions differently based on the race and ability of the student involved.[212] The court's reliance on student codes of conduct to uphold no-suspension conditions not only legitimizes this disproportionate use of suspensions, but also imports such disproportionate treatment into juvenile-court proceedings, thereby exposing children to compounding forms of arbitrary treatment.[213]

1. Disproportionate Suspension Rates in Maryland Public Schools Diminish the Utility of the Notice Contained in Student Codes of Conduct

The Maryland State Department of Education has become so concerned about persistently disproportionate suspension rates that it has prioritized revisions of the very school discipline policies upon which the *In re S.F.* court relied.[214] Disproportionately high suspension rates reduce students' notice of suspension-worthy behaviors in two ways.[215] First, schools' liberal use of suspension and frequent violation of constitutionally required suspension procedures dilute the notice contained in student codes of conduct.[216] Second, administrators' disproportionate use of suspension against African American students and students with disabilities reduces students' ability to gain meaningful notice of suspension from student codes of conduct.[217]

a. Maryland Schools Use Suspension Broadly with Limited Adherence to Procedures

School administrators in Maryland employ suspension to respond to a wide array of behavioral infractions.[218] Pursuant to most student codes of

211. *See* LACOE & MANLEY, *supra* note 137, at 3 (finding that African American students and students with disabilities were more than two times as likely as their peers to be removed from Maryland classrooms between 2009 and 2018).

212. Sean Nicholson-Crotty et al., *Exploring the Impact of School Discipline on Racial Disproportion in the Juvenile Justice System*, 90 SOC. SCI. Q. 1003, 1016 (2009).

213. *See, e.g.*, *In re S.F.*, 477 Md. at 335, 269 A.3d at 346 (Watts, J., dissenting) (asserting that the majority in *In re S.F.* acknowledges the possibility that children may experience arbitrary suspensions).

214. *See generally*, MD. COMM'N ON THE SCHOOL-TO-PRISON PIPELINE & RESTORATIVE PRACS., *supra* note 114, at 24 (discussing exclusionary school discipline in Maryland).

215. *See infra* Section IV.B.1.

216. *See infra* Section IV.B.1.a.

217. *See infra* Section IV.B.1.b.

218. MD. STATE DEP'T OF EDUC., MARYLAND PUBLIC SCHOOL SUSPENSIONS BY SCHOOL AND MAJOR OFFENSE CATEGORY IN-SCHOOL AND OUT-OF-SCHOOL SUSPENSIONS AND EXPULSIONS 2018–2019, at 1 (2019) [hereinafter MD. STATE DEP'T OF EDUC., MARYLAND PUBLIC SCHOOL

conduct, students may be punished for normal adolescent behaviors—such as taking another child's backpack or talking excessively in class—that disrupt the learning environment of those around them.[219] Per the FCPS code of conduct, S.F. faced more than seventy behavioral restrictions, thirty of which could lead to an out-of-school suspension.[220] In the 2018–2019 school year in which S.F. was suspended, Maryland schools reported 67,708 suspensions.[221] Of the 79,306 total uses of exclusionary discipline—both suspensions and expulsions—that year, 30,125 were imposed in response to disrespect or disruption.[222] Suspensions for nonviolent offenses constituted forty-six percent of all uses of exclusionary discipline, while suspensions for violent offenses accounted for forty-eight percent of all uses of exclusionary discipline.[223]

Despite the frequency with which Maryland schools employ exclusionary discipline, procedures often fail to adequately protect students' rights.[224] Although schools must provide students with a hearing to review evidence of the behavior that led to a suspension within ten days of every suspension, schools frequently violate these procedures.[225] The Maryland State Board of Education recently revealed that some schools in Prince George's County either failed to meet the ten-day timeline to provide a conference with an administrator—one school provided a suspension conference fifty-four days after the suspension occurred—or failed to provide suspension conferences entirely.[226] The Board of Education blamed these lapses in procedure on a "careless disregard for the rules applicable to the

SUSPENSIONS 2018–2019], https://marylandpublicschools.org/about/Documents/DCAA/SSP/20182019Student/2019SuspensionsbySchoolCOMBINED.pdf. This trend mirrors the nationwide trend toward broadening the role of suspension in school discipline. *See* David Simson, *Exclusion, Punishment, Racism and Our Schools: A Critical Race Theory Perspective on School Discipline*, 61 UCLA L. REV. 506, 515 (2014).

219. MD. COAL. TO REFORM SCH. DISCIPLINE, HOUSE JUDICIARY COMMITTEE HOUSE BILL 1187: JUVENILE LAW—JUVENILE JUSTICE REFORM 1 (2021).

220. Student Discipline, Reg. No. 400-08, at 6–12 (Frederick Cnty. Pub. Schs. Mar. 16, 2022), https://apps.fcps.org/legal/documents/400-08. Prohibited or restricted behaviors that could lead to an out-of-school suspension included "continued willful disobedience," "sexual activity," "disruptive behavior," and "verbal abuse," among others. *Id.* at 6–11.

221. MD. STATE DEP'T OF EDUC., MARYLAND PUBLIC SCHOOL SUSPENSIONS 2018–2019, *supra* note 218, at 1.

222. *Id.*

223. *See id.* (recording 30,125 suspensions for disrespect or disruption, 1,004 suspensions for attendance, 5,347 suspensions for dangerous substances, 1,579 suspensions for weapons, 36,479 suspensions for attacks, threats, or fighting, 489 suspensions for arson, fire, or explosives, and a total of 79,306 suspensions and expulsions).

224. MD. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., *supra* note 134, at 9.

225. *Id.*; MD. CODE REGS. § 13A.08.01.11(C). Students subject to suspensions of more than ten days must also receive a conference with a district-level administrator. *Id.*

226. MD. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., *supra* note 134, at 9.

disciplinary process."[227] After *In re S.F.*, students deemed delinquent bear the harsh legal consequences of schools' disregard for these constitutionally required procedures.[228]

In contrast to the clear procedures the court cited in *In re S.F.*, the data regarding school suspensions in Maryland reveal that students are suspended for myriad behaviors without proper notice.[229] Frequent procedural violations like those in Prince George's County deny students the opportunity to understand their suspension and bely the *In re S.F.* court's assertion that procedures in the school system provide students notice for each suspension.[230] Procedural violations may also allow administrators to use suspension as an immediate consequence in violation of student codes of conducts' provisions that suspensions should only be used as escalated interventions.[231] Such suspensions without notice validate S.F.'s fear of arbitrary suspension and demonstrate that current procedures do not adequately warn students of suspension-worthy behaviors.[232]

b. High Suspension Rates Among African American Students Stem from Disciplinary Bias

The astonishingly disproportionate rates of suspension for African American students in Maryland suggest that many administrators' disciplinary decisions are at least partly guided by a student's race.[233] As of 2017, African American students across Maryland public schools were 3.8 times more likely than their white peers to experience a suspension.[234] The court acknowledged this jarring statistic in *In re S.F.* but underemphasized

227. *Id.* (quoting M.S. v. Prince George's Cnty. Bd. of Educ., Md. State Bd. of Educ. Opinion No. 18-09, at 6 (Mar. 20, 2018), http://marylandpublicschools.org/stateboard/Documents/legalopinions/032018/M.S.Opin.No.18-09.pdf).

228. *See In re* S.F., 477 Md. 296, 335, 269 A.3d 324, 346 (2022) (allowing no-suspension conditions).

229. *See* MD. STATE DEP'T OF EDUC., MARYLAND PUBLIC SCHOOL SUSPENSIONS 2018–2019, *supra* note 218, at 1 (collecting data on suspensions statewide).

230. MD. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., *supra* note 134, at 9.

231. Student Discipline, Reg. No. 400-08, at 6 (Frederick Cnty. Pub. Schs. Mar. 16, 2022), https://apps.fcps.org/legal/documents/400-08.

232. *See In re S.F.*, 477 Md. at 308, 269 A.3d at 331 (noting S.F.'s argument that he faced a higher risk of suspension as an African American student with an educational disability).

233. MD. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., *supra* note 134, at 9.

234. MD. COMM'N ON THE SCHOOL-TO-PRISON PIPELINE & RESTORATIVE PRACS., *supra* note 114, at 22. This disparity varies depending on the type of suspension; for example, African American students are two times more likely to experience out-of-school suspensions than white students. GAIL L. SUNDERMAN & ROBERT CRONINGER, MD. EQUITY PROJ., HIGH SUSPENDING SCHOOLS IN MARYLAND: WHERE ARE THEY LOCATED AND WHO ATTENDS THEM? 2 (2018).

how exclusionary discipline disparities diminish students' ability to identify suspension-worthy behaviors.[235]

Higher suspension rates among African American students do not reflect higher rates of misbehavior by African American students.[236] Rather, disparate suspension rates reflect administrators' tendency to treat African American students differently when making disciplinary decisions.[237] Even when students commit identical behavioral infractions, administrators are more likely to suspend African American students than white students.[238] In the 2017–2018 school year, seventy-three percent of infractions involving African American students resulted in out-of-school suspensions, compared to just sixty-three percent of infractions involving white students.[239] This gap reflects the compounding effect of harsher treatment throughout the school disciplinary process.[240] Staff are more likely to monitor, refer, and suspend African American students.[241] Similarly, African American students are more likely to receive longer periods of suspension.[242] During the 2017–2018 school year, African American children in Maryland spent an average of 3.7 days out of school per suspension, which is thirty percent longer than white children, who spent an average of 2.9 days out of school per suspension.[243]

If suspension rates are not tied to a student's misbehavior, then that student cannot anticipate when he will receive a suspension.[244] As Judge Watts astutely noted in her dissent, disparate suspension rates mean that African American students see their peers engage in identical behaviors without receiving suspensions, which complicates their ability to accurately anticipate an administrator's response to a given behavior.[245] This creates vagueness because administrators provide inconsistent consequences to the same behavior.[246] The court's determination that students receive adequate

235. *In re S.F.*, 477 Md. at 321–22, 269 A.3d at 338–39 (2022).

236. Russell J. Skiba et al., *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y. L. SCH. L. REV. 1071, 1088 (2010).

237. Nicholson-Crotty et al., *supra* note 212, at 1006.

238. *Id.* at 1015.

239. MD. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., *supra* note 134, at 6.

240. *See* Tammy Hughes et al., *School Pathways to the Juvenile Justice System*, 7 BEHAV. & BRAIN SCI. 72, 73–74 (2020) (noting implicit bias affects teachers' decisions to refer students for further discipline).

241. *See id.* at 73 (2020) (discussing a study in which teachers who heard a series of vignettes describing students' misbehavior perceived African American boys as more hostile than white boys in the vignettes).

242. LACOE & MANLEY, *supra* note 137, at 6.

243. *Id.*

244. *See* Hughes et al., *supra* note 240, at 73.

245. *In re* S.F., 477 Md. 296, 337–38, 269 A.3d 324, 347 (2022) (Watts, J., dissenting).

246. *See* LACOE & MANLEY, *supra* note 137, at 1 (describing inconsistent disciplinary responses).

notice of suspension-worthy behaviors contradicts the empirical truth that African American students and students with disabilities are suspended more often than their peers, even though they engage in suspension-worthy behaviors with the same frequency.[247]

2. Student Codes of Conduct Cannot Adequately Prevent Arbitrary Suspensions

By relying on student codes of conduct, the court misapprehended the interaction between administrators, student codes of conduct, and exclusionary discipline.[248] In practice, student codes of conduct provide very limited notice of suspension for two reasons. First, many school disciplinary decisions depend heavily on situational context.[249] Second, student codes of conduct preserve administrators' considerable discretion to suspend for cause.[250] Student codes of conduct thus provide a bare-bones list of suspension-worthy behaviors while leaving to students the daunting task of anticipating when an administrator will actually issue a suspension.[251]

a. Student Codes of Conduct Cannot Account for Situational Context

Student codes of conduct fail to provide students with useful notice of suspension-worthy behaviors in part because of the mismatch between the codes' straightforward language and the inherent ambiguity of the interactions that precede school discipline.[252] This failure is particularly acute for subjective offenses, which constitute the primary reason for suspension and create the vast majority of racial disparities in school disciplinary decisions.[253] A subjective offense—most typically "disrupti[on]," "defiance," or "disrespect"—requires a school authority to interpret a child's

247. *In re S.F.*, 477 Md. at 329, 269 A.3d at 343 (majority opinion); Skiba et al., *supra* note 236, at 1088.

248. *In re S.F.*, 477 Md. at 331, 269 A.3d at 344.

249. Hughes et al., *supra* note 240, at 73.

250. *See, e.g.*, MD. CODE REGS. § 13A.08.01.11C(3) (2018) (allowing principals to suspend any student under their jurisdiction for cause for up to ten days).

251. *See, e.g.*, FREDERICK CNTY. PUB. SCHS., *supra* note 32, at 44 (directing students to FCPS Discipline Regulation 400-08 for guidance regarding discipline policies); Student Discipline, Reg. No. 400-08, at 6–13 (Frederick Cnty. Pub. Schs. Mar. 16, 2022), https://apps.fcps.org/legal/documents/400-08. (listing prohibited behaviors and identifying disciplinary tiers applicable to each behavior).

252. Hughes et al., *supra* note 240, at 73.

253. *Id.* at 73; Goldman & Rodriguez, *supra* note 117, at 273; Donald H. Stone & Linda S. Stone, *Dangerous & Disruptive or Simply Cutting Class; When Should Schools Kick Kids to the Curb?: An Empirical Study of School Suspension and Due Process Rights*, 13 J.L. & FAM. STUD. 1, 12 (2011).

behavior to find a behavioral infraction.[254] An objective offense, conversely, is a violation of a school rule that requires no interpretation.[255] A student who exhibits disrespect to a teacher, for example, only commits a behavioral infraction if that teacher deems the student's action disrespectful.[256] But a student who throws a chair at another student commits a behavioral infraction regardless of how the teacher interprets the interaction because throwing chairs violates the student code of conduct's proscription of assault.[257] Because subjective offenses depend on the context around a behavior, the student code of conduct can only place general parameters on the use of suspension in such incidents.[258]

In S.F.'s school district, for example, the FCPS code of conduct provides that verbal abuse, defined as "[d]isrespectful and/or inappropriate language directed toward another person" can lead to tier one, tier two, or tier three behavioral interventions.[259] This range of interventions encompasses responses from a verbal correction by a teacher (tier one), to a loss of privileges or in-school suspension (tier two), to an out-of-school suspension or expulsion (tier three).[260] Verbal abuse constitutes a subjective offense because it relies on a teacher's subjective determination that a student's language is disrespectful or inappropriate for the setting.[261] The FCPS code of conduct notably does not define "disrespect" or "disrespectful language."[262] The FCPS code of conduct thus provides limited notice to S.F. and similarly situated students because the offense depends on the authority figure's definition of disrespect.[263]

The subjectivity inherent in the permissibility of a subjective offense becomes particularly problematic in the context of juvenile probation because a probation condition is impermissibly vague if the probationer

254. Hughes et al., *supra* note 240, at 73. Every behavior in school is subject to adult interpretation, but subjective offenses rely largely, if not entirely, on that subjective interpretation. *Id.*

255. *Id.*

256. *See id.* (providing examples of subjective offenses).

257. *See id.* (defining subjective and objective offenses).

258. *Id.*

259. Student Discipline, Reg. No. 400-08, at 6 (Frederick Cnty. Pub. Schs. Mar. 16, 2022), https://apps.fcps.org/legal/documents/400-08.

260. *Id.* at 5–6.

261. *See id.* at 6 (defining verbal abuse as "[d]isrespectful and/or inappropriate language directed toward another person"); Hughes et al., *supra* note 240, at 73 (describing "disruptive behavior, disrespect, and defiance" as subjective behaviors). Because a teacher must determine that the student's language is disrespectful or inappropriate, verbal abuse as defined in the FCPS code of conduct constitutes a subjective offense.

262. Reg. No. 400-08, at 3–5.

263. *See id.* at 1 (stating that "school principals/designees have discretion in imposing discipline based upon the facts of the investigation and the needs of the students").

cannot anticipate whether a behavior violates his probation.[264] As applied to subjective offenses, student codes of conduct require students to interpret the context to determine: (1) when an authority figure may perceive their conduct as impermissible; (2) when that authority figure will escalate the infraction to an administrator; and (3) when an administrator will use her discretion to issue a suspension.[265] African American students and students with disabilities must anticipate each of these outcomes *and* contend with inconsistent uses of suspension.[266] African American students' disproportionately high rates of suspension for subjective offenses in particular suggests that student codes of conduct do not adequately notify students of authority figures' subjective expectations.[267] S.F. and similarly situated students face the significant possibility of suspension and an associated probation violation for a subjective offense that they did not have notice an authority figure would deem suspension-worthy.[268]

b. Despite Limitations in Student Codes of Conduct, Administrators Retain Authority to Suspend Any Student for Cause

School principals' disciplinary discretion further divorces student codes of conduct from the reality of exclusionary discipline.[269] Despite the careful definitions of behavioral infractions, tiers of discipline, and administrators' authority in student codes of conduct, local and state regulations protect an administrator's right to issue suspensions for cause.[270] As the court noted in *In re S.F.*, such discretion enables school administrators to appropriately apply school rules in different contexts.[271] Across schools and administrators, however, the implementation of uniform district suspension policies becomes highly inconsistent.[272]

264. People v. Turner, 66 Cal. Rptr. 3d 803, 806–07 (Ct. App. 2007) (holding an inherently subjective standard of behavior makes a probation condition impermissibly vague).

265. *See* Reg. No. 400-08, at 5–6 (leaving to administrators the choice of tier one, tier two, or tier three interventions in response to "disrespect").

266. *See* LACOE & MANLEY, *supra* note 137, at 1 (noting that in Maryland, "[e]ven when they were involved in the same types of infractions, Black students and students with disabilities were significantly more likely to receive out-of-school suspensions than other subgroups").

267. Hughes et al., *supra* note 240, at 73; Goldman & Rodriguez, *supra* note 117, at 273; Simson, *supra* note 218, at 524; Skiba et al., *supra* note 236, at 1088.

268. *See* Stone & Stone, *supra* note 253, at 12 (revealing a large portion of suspensions in Maryland address nonviolent or subjective offenses).

269. *See, e.g.*, MD. CODE REGS. 13A.08.01.11(C)(3)(a) (2018) (preserving administrators' right to suspend students for cause).

270. *Id.*; Suspension and Expulsion, Reg. No. 400-04, at 3 (Frederick Cnty. Pub. Schs. Jan. 4, 2023), https://apps.fcps.org/legal/documents/400-04.; MD. CODE ANN., EDUC. § 7-305(a)(1) (2023).

271. *In re* S.F., 477 Md. 296, 329, 269 A.3d 324, 343 (2022).

272. Skiba et al., *supra* note 236, at 1075.

The disciplinary philosophy of a school's principal is the single greatest predictor of a school's suspension rate.[273] Studies suggest that "school characteristics and non-behavioral student characteristics," such as race, also hold significant predictive value for the likelihood of suspension.[274] Notably, student behaviors and attitudes—on which student codes of conduct base suspension—have little bearing on the likelihood of suspension at a specific school.[275] In fact, students can best reduce their chances of receiving a suspension not by adjusting their own behavior but by transferring to a school with a lower suspension rate.[276]

A student code of conduct provides students with a list of behaviors for which they may be suspended, but it does not provide students with notice of their principal's disciplinary philosophy or interpretation of different subjective offenses.[277] Nor can a student code of conduct help students anticipate how school authorities' implicit biases may affect disciplinary decisions.[278] Subjective offenses invite implicit bias to guide administrators' disciplinary decisions by hinging on authority figures' interpretations of context-dependent behavioral expectations.[279] Administrators' discretion thus sharply diminishes any notice contained in a student code of conduct's list of suspension-worthy behaviors.[280]

The *In re S.F.* court correctly recognized the legal safeguards in place to protect students from arbitrary punishment in juvenile court but minimized the empirical reality that school-based procedures do not adequately protect students from biased discipline that may trigger a violation of probation under a no-suspension condition.[281] By failing to recognize the reality of school discipline, the court incorporated into juvenile probation proceedings the biases that students of color and students with disabilities endure in school

273. *Id.*

274. *Id.* at 1076 (citing Shi-Chang Wu et al., *Student Suspension: A Critical Reappraisal*, 14 URB. REV. 245, 255–56 (1982)).

275. *Id.* at 1075.

276. *Id.* at 1076.

277. *See, e.g.*, Student Discipline, Reg. No. 400-08, at 6–13 (Frederick Cnty. Pub. Schs. Mar. 16, 2022), https://apps.fcps.org/legal/documents/400-08 (listing behaviors and their disciplinary responses).

278. *See id.* at 5–6 (grouping behaviors by tier of intervention without reference to the principal's disciplinary philosophy).

279. Hughes et al., *supra* note 240, at 73. National school discipline data reveal the greatest disparities in disciplinary treatment occur at the classroom level, where teachers are significantly more likely to refer students of color to the office than to refer white students to the office. *Id.*

280. *See, e.g.*, Reg. No. 400-08, at 6–13 (allowing any tier of discipline in response to disruptive behaviors).

281. *In re* S.F., 477 Md. 296, 334, 269 A.3d 324, 346 (2022).

disciplinary proceedings.[282] This incorporation feeds the school-to-prison pipeline.[283]

C. Juvenile Legal Intervention in Suspensions Undercuts the Purpose of School Discipline and Incorporates Arbitrary Discipline into the Juvenile Legal System

Direct interaction between the juvenile legal system and public school discipline exposes African American children and children with disabilities to compounding forms of arbitrary treatment.[284] Juvenile legal involvement in school discipline pressurizes school authorities' disciplinary decisions.[285] The connection between school suspension and violations of juvenile probation incorporates discrimination in school suspensions into juvenile legal proceedings that already exhibit disproportionate minority contact.[286] Contrary to the court's conclusion in *In re S.F.*,[287] juvenile courts likely cannot protect students of color and students with disabilities under probation from the dual consequences of an arbitrary suspension.[288] Instead, children face heightened risk of further contact with the juvenile legal system.[289]

1. The Legal Consequences of a Probation Violation Contradict the Goals of School Discipline

The juvenile legal system and public schools impose disciplinary measures on children for different reasons.[290] As Maryland's Juvenile Causes Statute explains, the juvenile legal system seeks to rehabilitate children, to hold children accountable for their actions, and to promote community safety.[291] Schools impose discipline to help individual children develop their self-discipline and to maintain a positive learning environment for all

282. *See, e.g.*, MD. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., *supra* note 134, at 1 (noting exclusionary discipline positively correlates with increased rates of juvenile crime).

283. *See In re S.F.*, 477 Md. at 319 n.11, 269 A.3d at 337 n.11 (defining the school-to-prison pipeline).

284. *See* Goldman & Rodriguez, *supra* note 117, at 270–71 (discussing the nexus between exclusionary discipline and the juvenile legal system).

285. *See infra* Section IV.C.1.

286. *See infra* Section IV.C.2. The federal government uses "disproportionate minority contact" to refer to the persistent overrepresentation of children of color in the juvenile legal system. Shaun M. Gann, *Examining the Relationship Between Race and Juvenile Court Decision-Making: A Counterfactual Approach*, 17 YOUTH VIOLENCE & JUV. JUST. 269, 269–70 (2019).

287. 477 Md. at 334, 269 A.3d at 346.

288. *See infra* Section IV.C.2.

289. *See infra* Section IV.C.2.

290. *Compare* MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02(a)(1) (2023) (defining the purposes of the juvenile legal system), *with* GEORGE BEAR, NAT'L ASS'N SCH. PSYCHS., DISCIPLINE: EFFECTIVE SCHOOL PRACTICES 1 (2010) (describing the goals of school discipline).

291. CTS. & JUD. PROC. § 3-8A-02(a)(1).

children.[292] Although the underlying purposes of school discipline and juvenile legal interventions converge at the point of helping children develop self-discipline, they sharply diverge in their treatment of children collectively.[293] School disciplinary decisions often involve authority figures' determinations about how a student's behavior affects the learning environment of nearby students.[294] Juvenile legal interventions, however, emphasize the specific needs of an individual child.[295] By introducing potential legal sanctions into school suspension, no-suspension conditions of probation disrupt schools' traditional disciplinary goals.[296]

Administrators impose suspensions to produce a more productive learning environment by removing disruptive behaviors while teaching the suspended child that her actions are not appropriate.[297] Ideally, the suspended child safely learns to stop engaging in the behavior that precipitated her suspension and, in the process, develops self-discipline.[298] A suspended student misses beneficial social activities related to school, but schools cannot withhold academic work or punish students for absences due to suspension.[299] Yet, administrators' frequent use of suspension demonstrates a pattern of overly harsh discipline that disrupts children's schooling.[300]

Juvenile legal consequences for suspensions expose children to the possibility of prolonged periods of probation and confinement that further disrupt their education.[301] Depending on the type of probation violation, the juvenile court may either confine the child or extend the child's probation to

292. BEAR, *supra* note 290, at 1.

293. *See, e.g.*, CTS. & JUD. PROC. § 3-8A-02(a)(1) (requiring juvenile legal interventions to promote rehabilitation, accountability, and safety); BEAR, *supra* note 290, at 1 (emphasizing the dual purpose of school discipline to promote self-discipline and protect students' learning environment).

294. *See, e.g.*, Student Discipline, Reg. No. 400-08, at 11 (Frederick Cnty. Pub. Schs. Mar. 16, 2022), https://apps.fcps.org/legal/documents/400-08 (defining disruptive behavior as "[a]ctions which interfere with the effective operations of the school").

295. *See, e.g.*, MD. OFF. OF THE PUB. DEF., PROBATION 1 (2020) (recommending that probation conditions focus on the needs of the specific child before the court).

296. *See* EMILY MORGAN ET AL., COUNCIL OF STATE GOV'TS JUST. CTR., THE SCHOOL DISCIPLINE CONSENSUS REPORT: STRATEGIES FROM THE FIELD TO KEEP STUDENTS ENGAGED IN SCHOOL AND OUT OF THE JUVENILE JUSTICE SYSTEM 252 (2014) (finding many school resource officers admit they would change their disciplinary responses for children on probation).

297. BEAR, *supra* note 290, at 1.

298. *See id.* (describing the goals of school discipline).

299. MD. CODE REGS. 13A.08.01.11(F), (G). Despite the goals of exclusionary discipline, experts criticize suspension for depriving children of instructional time and disparately affecting children of color. *See, e.g.*, DANIEL J. LOSEN & AMIR WHITAKER, AM. C.L. UNION, 11 MILLION DAYS LOST: RACE, DISCIPLINE, AND SAFETY AT U.S. PUBLIC SCHOOLS, PART I, at 2–3 (2018).

300. *See* MD. STATE DEP'T OF EDUC., MARYLAND PUBLIC SCHOOL SUSPENSIONS 2018–2019, *supra* note 218, at 1 (recording 67,708 suspensions in Maryland schools during the 2018–2019 academic year).

301. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-19(d)(1) (2023).

as much as double her length of time under juvenile-court supervision.[302] Confinement directly disrupts a student's education by removing her from her familiar school environment and placing her in a juvenile facility with significantly worse educational opportunities.[303] Detention centers and public schools also frequently fail to transfer students' credits, which requires students to retake courses and often delays their graduation.[304]

Prolonged probation similarly disrupts the goals of school discipline.[305] Extended probation negatively affects children's mental health and may increase the likelihood that they will fail to comply with a probation condition.[306] Adolescents' developmental stage makes them particularly vulnerable to developing a negative self-image after failing to comply with a probation condition, and the experience of success and positive

302. *Id.* § 3-8A-19.6(f). After the 2022 amendment to Maryland's Juvenile Causes Statute, the juvenile court may no longer detain a child for a technical violation of probation, which includes any violation that would not be a criminal offense if committed by an adult. *Id.* § 3-8A-19.6(a)(1)–(4). A suspension could result in a technical violation or a nontechnical violation, depending on the suspended child's behavior. *See* Student Discipline, Reg. No. 400-08, at 6–13 (Frederick Cnty. Pub. Schs. Mar. 16, 2022), https://apps.fcps.org/legal/documents/400-08 (listing suspension-worthy behaviors). In 2021, nearly seventeen percent of juvenile detentions arose from technical violations of probation. MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: SECTION II: INTAKE AND COMMUNITY SUPERVISION 28 (2021).

303. *See generally* OFF. JUV. JUST. & DELINQ. PREVENTION, EDUCATION FOR YOUTH UNDER FORMAL SUPERVISION OF THE JUVENILE JUSTICE SYSTEM 7 (2019) (noting that "[s]tudies have found that education within facilities may not meet the same standards as education in the community" and discussing shortcomings in the education of incarcerated youth). In December 2021, for example, limited resources and the COVID-19 pandemic deprived detained students of in-person classes even as the Maryland State Department of Education encouraged in-person learning. MD. JUV. JUST. MONITORING UNIT, FOURTH QUARTER REPORT AND 2021 ANNUAL REVIEW 4, 26, 51 (2022); Press Release, Md. State Dep't of Educ., State Partners with School Systems to Provide Resources, Tools to Support Safe Continued In-Person, Full-time Instruction (Dec. 20, 2021), https://www.marylandmatters.org/wp-content/uploads/2021/12/Statement-MSDE-Continues-to-Prioritize-Inperson-Instruction-Press-Release-12.20.21.pdf.

304. MD. COAL. TO REFORM SCH. DISCIPLINE, *supra* note 219, at 2.

305. *See* JOSH WEBER, JUST. CTR., COUNCIL OF STATE GOV'TS, RETHINKING THE ROLE OF THE JUVENILE JUSTICE SYSTEM: IMPROVING YOUTH'S SCHOOL ATTENDANCE AND EDUCATIONAL OUTCOMES 8–9, 13–15 (2020), https://csgjusticecenter.org/wp-content/uploads/2020/09/CSG_RethinkingtheRoleoftheJuvenileJusticeSystem_15SEPT20.pdf (explaining that a study of children on juvenile probation in South Carolina found decreased attendance and feelings of stigma and low self-esteem when probation officers visited young probationers in their school).

306. *See id.* (discussing mental health consequences of juvenile probation); Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1051 (2013) (noting harsh consequences for probation violations pressurize probation compliance); Naomi E.S. Goldstein et al., *"You're on the Right Track!" Using Graduated Response Systems to Address Immaturity of Judgment and Enhance Youths' Capacities to Successfully Complete Probation*, 88 TEMP. L. REV. 803, 804 (2016) (noting that about half of juvenile probationers fail to comply with a probation condition at some point during probation).

reinforcement is critical to their self-efficacy.[307] Children often express anxiety and shame related to the stigma of juvenile legal involvement, and extensive probation and perceived failures exacerbate those negative emotions.[308] Such emotional turmoil impedes a child's executive functioning, reducing her critical thinking and further increasing her likelihood of engaging in the antisocial conduct associated with illegal activity.[309] Rather than serving the school disciplinary goals of allowing a child to safely learn from her experiences and reflect on her actions, juvenile legal involvement in suspensions achieves quite the opposite.[310]

2. No-Suspension Probation Conditions Transfer Problems in School Discipline to Juvenile Courts

Although the then-Court of Appeals asserts that juvenile courts would address arbitrary suspensions by declining to find a violation of probation, courts may struggle to identify arbitrary suspensions.[311] Juvenile courts may be tempted to improperly defer to principals' suspension judgments because "school administrators . . . are in a better position than the juvenile court to specify what conduct is required at different points during the school day."[312] Juvenile courts also may not recognize arbitrary discipline of African American students and students with disabilities because those populations are overrepresented among children in contact with the juvenile legal system.[313]

The incorporation of school disciplinary decisions into violation of probation proceedings exacerbates existing disparities in the juvenile legal system.[314] Maryland measures disproportionate minority contact in its

307. *See* Allyson L. Dir et al., *The Point of Diminishing Returns in Juvenile Probation: Probation Requirements and Risk of Technical Violations Among First-Time Probation-Involved Youth*, 27 PSYCH., PUB. POL'Y, & L. 283, 289 (2021) (citing Eveline A. Crone & Ronald E. Dahl, *Understanding Adolescence as a Period of Social-Affective Engagement and Goal Flexibility*, 13 NATURE REVIEWS NEUROSCIENCE 636 (2012)) (noting that "experiencing mastery and developing self-efficacy is paramount for youth positive development," and punishing children for noncompliance with probation deprives them of the opportunity to improve their self-efficacy).

308. *See* Chaz Arnett, *Virtual Shackles: Electronic Surveillance and the Adultification of Juvenile Courts*, 108 J. CRIM. L. & CRIMINOLOGY 399, 409 (2018) (discussing shame among children under electronic surveillance).

309. Colleen M. Berryessa, *Potential Impact of Research on Adolescent Development on Juvenile Judge Decision-making*, 69 JUV. & FAM. CT. J. 19, 28 (2018) (noting prosocial experiences decrease a child's likelihood of engaging in the antisocial behavior that causes crime).

310. *See supra* Section IV.C.1.

311. *In re* S.F., 477 Md. 296, 333, 269 A.3d 324, 345 (2022).

312. *Id.* at 329, 269 A.3d at 343.

313. GOVERNOR'S OFF. OF CRIME CONTROL & PREVENTION, MARYLAND'S ANNUAL DISPROPORTIONATE MINORITY CONTACT PLAN FY 2019, at 11 (2019).

314. *See* Goldman & Rodriguez *supra* note 117, at 270–71 (discussing the existing nexus between exclusionary school discipline and the juvenile legal system).

juvenile legal system using a relative rate index, which compares the volume of activity for African American youth with the volume of activity for white youth at each "stage of contact."[315] Since 2017, Maryland's overall relative rate index has consistently remained between 1.93 and 1.95, meaning that African American children are approximately two times more likely than white children to interact with the juvenile legal system in Maryland.[316] The worst disparity exists at the detention stage, where African American children are fourteen times more likely to receive a DJS placement than white children.[317] Children with disabilities are similarly overrepresented among children in contact with the legal system; approximately sixty-five percent of justice-involved youth have disabilities.[318] Once exposed to the juvenile legal system, children with disabilities are more likely to be incarcerated, and may face harsh conditions such as solitary confinement in response to disability-related behaviors.[319] Disproportionately high contact rates between African American children and the juvenile legal system cannot be explained by higher incidents of delinquent behavior among these children.[320]

Although the school system and the juvenile legal system provide procedural safeguards designed to prevent arbitrary treatment, empirical evidence in both systems demonstrates the failures of those procedures.[321] After *In re S.F.*, children will face the effects of the arbitrary suspensions represented in disproportionate suspension rates twice over: first in schools and again in juvenile probation proceedings.[322] This compounding injustice threatens the legitimacy of Maryland's schools and juvenile courts.[323] Most

315. DOUGLAS YOUNG ET AL., UNIV. OF MD. INST. FOR GOVERNMENTAL SERV. & RSCH., DISPROPORTIONATE MINORITY CONTACT IN THE MARYLAND JUVENILE JUSTICE SYSTEM 7, 21 (2011); OFF. OF JUV. JUST. & DELINQ. PREVENTION, DISPROPORTIONATE MINORITY CONTACT (DMC) 6 (2014). In 2019, the federal government revised its disproportionate minority contact research to emphasize the five points of contact deemed most critical for reducing disproportionate minority contact: (1) arrest; (2) diversion; (3) pre-trial detention; (4) disposition commitments; and (5) adult transfer. *Disproportionate Minority Contact*, OFF. OF JUV. JUST. & DELINQ. PREVENTION (Aug. 30, 2019), https://ojjdp.ojp.gov/programs/disproportionate-minority-contact. Previously, the federal government and researchers recognized nine points of contact. *Id.*

316. GOVERNOR'S OFF. OF CRIME CONTROL & PREVENTION, *supra* note 313, at 12.

317. DEP'T OF LEGIS. SERVS., MD. GEN. ASSEMBLY, RACIAL EQUITY IMPACT NOTE 2022 SESSION SB0691, at 6 (2022) (recording relative rate indices by stage).

318. NAT'L CTR. ON CRIM. JUST. & DISABILITY, THE ARC, JUSTICE-INVOLVED YOUTH WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES: A CALL TO ACTION FOR THE JUVENILE JUSTICE COMMUNITY 10 (2015).

319. *Id.* at 11.

320. Nicholson-Crotty et al., *supra* note 212, at 1005.

321. *See In re* S.F., 477 Md. 296, 334, 269 A.3d 324, 346 (2022) (identifying procedural safeguards in both systems).

322. *See supra* Sections IV.B–C.

323. For a discussion of adolescents' perceptions of the juvenile court's legitimacy, see NAT'L RSCH. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 204 (Richard J.

importantly, it denies hundreds of children placed on probation in Maryland each year the safe learning experiences that are critical to healthy psychosocial development.[324]

D. The General Assembly Must Resolve this Injustice by Amending the Juvenile Causes Statute to Limit the Intersection of Juvenile Legal Interventions and School Discipline

As the Court of Appeals recognized in *In re S.F.*, Maryland law currently allows juvenile courts to issue no-suspension conditions of probation despite the dire results for children.[325] The General Assembly should amend the Juvenile Causes Statute to curtail juvenile courts' authority to impose no-suspension conditions of probation by: (1) requiring juvenile courts to specify the suspension-worthy behaviors that could trigger a probation violation; and (2) allowing juvenile courts to specify only those behaviors that (a) would constitute crimes of violence if committed by an adult, and (b) relate to the delinquent behavior that prompted the probation.[326] This amendment would eradicate the vagueness inherent in no-suspension probation conditions under the existing reality of school suspension in Maryland.[327] Similarly, this amendment would better serve juvenile courts' rehabilitative purpose by emphasizing the child's behavior rather than the judgment of third parties.[328] Finally, this amendment would weaken the school-to-prison pipeline and improve judicial economy by reducing the behaviors that may bring a child before the juvenile court.[329]

1. The General Assembly Should Amend the Juvenile Causes Statute

The General Assembly could rectify the flagrant injustice of no-suspension probation conditions by amending the Juvenile Causes Statute to restrict juvenile courts' authority to connect probation to school suspensions.[330] Under the current language of Section 3-8A-19, a juvenile court may place a child on probation "upon terms the court deems

Bonnie et al., eds., 2013) (discussing the effect of allowing young people to participate in decisions about their probations).

324. *See* Dir et al., *supra* note 307, at 289 (discussing the importance of developing self-efficacy during the adolescent stage of development). Maryland's juvenile courts placed 720 children on probation in 2021. MD. DEP'T OF JUV. SERVS., *supra* note 302, at 29.

325. *In re S.F.*, 477 Md. at 334, 269 A.3d at 346.

326. See *infra* Section IV.D.1.

327. See *infra* Section IV.D.2.

328. See *infra* Section IV.D.3.

329. See *infra* Section IV.D.4.

330. *See* MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-19(d)(1) (2023) (creating juvenile court authority in Maryland).

appropriate."[331] The proposed amendment would add a subsection stating that the juvenile court may place the child on probation upon terms the court deems appropriate subject to the following restriction:

> A court that issues a no-suspension condition of probation must: (1) specify the suspension-worthy behaviors that may lead to a violation of probation; and (2) limit the specified behaviors to only those crimes of violence, as defined by Section 14-101 of the Criminal Law Article, that relate to the delinquent offense or offenses that prompted the probation.[332]

Maryland's Juvenile Justice Reform Council, which developed the reforms that eventually became the Juvenile Justice Reform Act passed in 2022,[333] already received recommendations to impose legislative restraints on juvenile probation.[334] The Maryland Office of the Public Defender recommended shorter periods of probation that provide "supervision and services tied directly to [the child's] delinquent offenses and not to a general 'need for services.'"[335] The Office of the Public Defender further recommended that the Juvenile Causes Statute should require individualized probation conditions that "address a child's specific risk or need" based on information presented to the court.[336] The recommendations specifically included the assertion that children should not be incarcerated for school attendance or school-related discipline.[337] The Juvenile Justice Reform Act adopted the recommendations for shorter periods of probation and limitations on when probation violations may lead to detention, but did not limit juvenile courts' discretion to craft probation conditions.[338]

Amending the Juvenile Causes Statute to limit juvenile courts' discretion to impose no-suspension conditions of probation furthers the existing reforms and serves the best practices of juvenile probation.[339] This proposed amendment would produce individualized probation conditions

331. *Id.*

332. The Maryland criminal code defines crimes of violence to include: abduction, arson in the first degree, kidnapping, manslaughter except involuntary manslaughter, mayhem, maiming, murder, rape, robbery, carjacking, armed carjacking, sexual offense in the first degree or second degree, use of a firearm in commission of a felony or other crime of violence, child abuse in the first degree, sexual abuse of a minor, home invasion, assault in the first degree, assault with intent to murder, assault with intent to rob, assault with intent to rape, assault with intent to commit a sexual offense in the first or second degree, among others. MD. CODE ANN., CRIM. L. § 14-101(a) (2023).

333. 2022 Md. Laws 42; 2022 Md. Laws 41.

334. 2019 Md. Laws 252.

335. MD. OFF. OF THE PUB. DEF., *supra* note 295, at 4.

336. *Id.* at 5.

337. *Id.* at 6.

338. 2022 Md. Laws 42.

339. For a discussion of recommended probation practices, see generally THE ANNIE E. CASEY FOUND., TRANSFORMING JUVENILE PROBATION: A VISION FOR GETTING IT RIGHT (2018).

that address the needs of each child.[340] Under this reform, S.F. would have received a no-suspension condition that reflected that he was adjudicated delinquent for second-degree assault and misdemeanor theft.[341] The juvenile court could have required that S.F. must "attend school regularly without suspensions" for assault or robbery.[342] This approach would immediately provide S.F. with advance notice of the specific prohibited behaviors that could lead to a probation violation and would diminish the possibility that S.F. could receive a violation of probation for behaviors unrelated to his delinquency proceedings.[343] Similarly, it would limit the juvenile legal system's interaction with school discipline to only the serious behaviors directly related to S.F.'s delinquency proceedings, rather than enabling the juvenile court to monitor the forty-two behaviors for which the FCPS code of conduct allowed suspension.[344]

Although schools may not always define suspension in legal language, specific no-suspension conditions under the proposed amendment would allow a child's counsel, judge, or probation officer to work with the child to identify behaviors in the student code of conduct that may prompt further legal intervention.[345] Such review would eradicate the vagueness inherent in current school disciplinary practices and allow children a better understanding of their probation conditions.[346] It would also match evidence-based recommendations to reform juvenile probation to limit the number of probation conditions and work with youth to create individualized case plans with agreed-upon probation conditions.[347]

2. Limiting No-Suspension Conditions Promotes the Juvenile Legal System's Goals of Accountability and Rehabilitation

Both the federal and state judiciaries have long recognized the rehabilitative purpose of juvenile courts, and children's rehabilitation is best

340. For a discussion of how individualized probation conditions serve children's developmental stage, see *id.* at 34.

341. *In re* S.F., 477 Md. 296, 305–06, 269 A.3d 324, 329 (2022).

342. *Id.* at 306, 269 A.3d at 329. Assault and robbery constitute crimes of violence related to S.F.'s original offenses of second-degree assault and misdemeanor theft. MD. CODE ANN., CRIM. L. § 14-101(a) (2023).

343. For a sample of behaviors that could lead to suspension in S.F.'s school district, *see* Student Discipline, Reg. No. 400-08, at 6–13 (Frederick Cnty. Pub. Schs. Mar. 16, 2022), https://apps.fcps.org/legal/documents/400-08.

344. *Id.*

345. Some school districts, including S.F.'s school district, use legal language in their student codes of conduct. *See, e.g.*, *id.* at 6 (prohibiting assault, sexual assault, and battery).

346. Many young people struggle to understand their probation conditions. NAT'L JUV. DEF. CTR., PROMOTING POSITIVE DEVELOPMENT: THE CRITICAL NEED TO REFORM YOUTH PROBATION ORDERS 1 (2016).

347. THE ANNIE E. CASEY FOUND., *supra* note 339, at 34.

served when they feel that the system treats them fairly.[348] A probation condition that emphasizes the decision of an external actor, such as a school administrator, diminishes the likelihood that the child involved feels accountable for that action.[349] The child, in turn, becomes more likely to feel that an associated probation violation is an unfair result.[350] Youth who perceive unfairness in their sentence are more likely to reject the sentence entirely, which decreases the likelihood that they will actually feel accountable for their actions even if they successfully complete their probation.[351] Many young people on probation—and particularly African American young men—report that they believe the juvenile legal system is "fundamentally unfair."[352] By requiring the juvenile court to limit its intervention to suspensions related to the child's delinquent act, the proposed amendment could reduce this perceived unfairness and thereby better serve the Maryland juvenile legal system's expressed goal of holding children accountable for their actions.[353]

Under the proposed amendment, the court would also better tailor probation conditions to the individual child, which would further the rehabilitative goals of the juvenile legal system.[354] Studies have demonstrated that probation clashes with the adolescent stage of development because teenagers struggle to balance multiple behavioral restrictions at once.[355] To counteract this struggle, experts recommend that courts collaborate with children to create a shorter list of probation conditions.[356] Reform efforts in criminal probation similarly recommend zero-based probation condition-setting in which judges and probation officers craft individualized probation conditions for each criminal defendant.[357] The proposed amendment would

348. *See In re* Gault, 387 U.S. 1, 26 (1967) (explaining a child who feels the legal system treats him fairly is more likely to exhibit rehabilitation).

349. *See In re* S.F., 477 Md. 296, 317, 269 A.3d 324, 335–36 (2022) (discussing S.F.'s concern that emphasizing the actions of a third party makes the no-suspension probation condition vague).

350. Josh Gupta-Kagan, *Beyond "Children Are Different": The Revolution in Juvenile Intake and Sentencing*, 96 WASH. L. REV. 425, 477 (2021).

351. *See id.* (explaining adolescents' developmental stage makes them extremely sensitive to fairness and children rehabilitate better when they believe their sentences are fair).

352. Michelle S. Phelps, *Ending Mass Probation: Sentencing, Supervision, and Revocation*, 28 FUTURE OF CHILD. 125, 132 (2018).

353. *See* Josh Gupta-Kagan, *supra* note 350, at 477 (explaining offense-based sentencing increases adolescents' perceptions of fairness in the juvenile legal system); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02 (2023) (expressing the juvenile legal system's joint goals of accountability, rehabilitation, and community safety).

354. *See, e.g.*, MD. OFF. OF THE PUB. DEF., *supra* note 295, at 5 (recommending probation conditions focus on the needs of the specific child before the court).

355. THE ANNIE E. CASEY FOUND., *supra* note 339, at 34.

356. *Id.*

357. *See generally* Ronald P. Corbett, *Probation and Mass Incarceration: The Ironies of Correctional Practice*, 28 FED. SENT'G REP. 278 (2016) (recommending individualized sentences).

allow courts to incorporate these recommendations by tailoring the in-school behaviors that may lead to a probation violation to each individual child.[358]

Individual tailoring would not only benefit children by reducing the likelihood that a child is unaware a behavior is governed by his probation, [359] but also would require minimal deviation from the juvenile court's current practice of issuing broad no-suspension conditions. Juvenile courts would simply specify the sort of suspension that would fall under a given child's probation based on the child's delinquency adjudication.[360] School administrators would retain the same discretion to suspend and respond to student behaviors per the student handbook.[361] Similarly, juvenile courts would remain within their sphere of expertise: delinquent behaviors.[362] Probation conditions under the proposed amendment would better match children's developmental stage of adolescence, reflect evidence-backed reform efforts, and possess greater legitimacy because they emphasize the actions of the child.[363]

This increase in perceived legitimacy and fairness would better serve the juvenile court's rehabilitative purpose.[364] Children would no longer risk further juvenile legal involvement due to school-based misbehaviors unrelated to their delinquency proceedings.[365] Instead, children would understand the specific behaviors that they must avoid in school to comply with their probation.[366] Similarly, children on probation would no longer face the horrifying possibility that an arbitrary suspension for a subjective offense

358. For a discussion of the importance of individually tailored probation conditions for children, see MADELINE M. CARTER & HON. RICHARD J. SANKOVITZ, NAT'L INST. OF CORR. CTR. FOR EFFECTIVE PUB. POL'Y, DOSAGE PROBATION: RETHINKING THE STRUCTURE OF PROBATION SENTENCES 3 (2014).

359. *See* Mark A. R. Kleiman, *Substituting Effective Community Supervision for Incarceration*, 99 MINN. L. REV. 1621, 1623–24 (2015) (explaining probation officers are often overworked and unable to review individual conditions with probationers to ensure their understanding); ROBERT G. SCHWARTZ, YOUTH ON PROBATION: BRINGING A 20TH CENTURY SERVICE INTO A DEVELOPMENTALLY FRIENDLY 21ST CENTURY WORLD 4 (2017) (noting most juvenile probationers nationally are subject to the same standard conditions of probation).

360. For juvenile court jurisdiction in Maryland, see MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03(a) (2023).

361. *See, e.g.*, MD. CODE REGS. 13A.08.01.11C.(3) (2018) (allowing principals to suspend any student under their jurisdiction for cause).

362. *See In re* S.F., 477 Md. 296, 329, 269 A.3d 324, 343 (2022) (acknowledging school administrators' expertise in issuing school discipline).

363. Gupta-Kagan, *supra* note 350, at 477.

364. *See* CTS. & JUD. PROC. § 3-8A-02(a)(1)(iii) (establishing rehabilitation as one purpose of Maryland's juvenile courts).

365. MD. COAL. TO REFORM SCH. DISCIPLINE, *supra* note 219, at 1.

366. For a discussion of children's limited understanding of juvenile probation conditions, see NAT'L JUV. DEF. CTR., *supra* note 340, at 1.

could increase the duration of their contact with the juvenile legal system.[367] The juvenile court would likewise avoid an outcome in which a child who receives an arbitrary suspension and concomitant probation violation rejects the legitimacy of both the educational system and the legal system.[368]

3. The Proposed Amendment Reduces the Likelihood of Probation Violations Due to School Suspensions

The amendment will also improve judicial efficiency.[369] Both the majority and the dissent in *In re S.F.* recognized that children who face a violation of probation hearing after a suspension can allege that the suspension was arbitrary and thus cannot lead to a violation of probation.[370] Under the existing no-suspension conditions, juvenile courts may face protracted violation of probation hearings due to any number of suspensions unrelated to the child's original delinquent offense.[371] A child facing a suspension, moreover, may face the difficult task of determining whether it is best to appeal their suspension through the administrative process or to attempt to plead the arbitrariness of the suspension at a violation of probation hearing.[372]

Under the proposed amendment, a child would only appear before the juvenile court for a violation of probation if her suspension directly related to her original delinquent offense. The disciplinary consequences issued by a school administrator for more typical adolescent misbehaviors would be appropriately irrelevant to the juvenile court.[373] Juvenile courts have an interest in avoiding protracted violation of probation hearings, as approximately thirty percent of cases in which a child is adjudicated delinquent in Maryland result in a disposition of probation.[374] The vast

367. *See* Brief of The National Center for Youth Law, Public Justice Center et al. as Amici Curiae in Support of Petitioner at 6, 13, *In re* S.F., 249 Md. App. 50, 245 A.3d 30 (2021) (No. 10) (arguing that S.F. is more likely to experience an unfair suspension because he is an African American student).

368. *See* Gupta-Kagan, *supra* note 350, at 477 (emphasizing adolescents' sensitivity to fairness).

369. *See* Goldstein et al., *supra* note 306, at 804 (emphasizing probation's outsized role in juvenile proceedings).

370. *In re* S.F., 477 Md. 296, 334, 269 A.3d 324, 346 (2022); *id.* at 343–44, 269 A.3d at 352 (Watts, J., dissenting).

371. *Id.* at 343–44, 269 A.3d at 352 (Watts, J., dissenting).

372. *Id.*

373. *See* INST. OF JUD. ADMIN., AM. BAR ASS'N, JUVENILE JUSTICE STANDARDS ANNOTATED: A BALANCED APPROACH 111 (Robert E. Shepherd, Jr., ed. 1996) (arguing juvenile probation conditions should not interfere with children's schooling).

374. *See* MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE FISCAL YEAR 2019, at 12 (2019), https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2019.pdf (reporting 29.4% of cases ended in probation) [hereinafter 2019 DATA RESOURCE GUIDE]; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE FISCAL YEAR 2022, at 18 (2022),

majority of these children successfully complete their probations without incident, but juvenile courts in Maryland still unsuccessfully terminated children's probation in 111 cases in 2019.[375] The proposed amendment would allow juvenile courts to conserve their resources by reducing the likelihood that juvenile courts will face hearings in which they must determine the merit of a school suspension that constitutes a possible probation violation.[376]

4. Listing Behaviors Serves DJS's Intent to Reduce Disproportionate Minority Contact

Finally, the proposed amendment better serves Maryland's mission to reduce disproportionate minority contact by limiting the behaviors that can bring a child into further contact with the juvenile legal system.[377] A broad no-suspension condition effects the full force of the legal system behind every behavior for which a child can possibly be suspended.[378] Each child serving probation with a no-suspension condition thus faces dozens of behaviors that could lead to a violation of his probation.[379] The amendment would prevent this combination of the failings of both the school system and the juvenile legal system by distinguishing the juvenile legal system's reach into school behavior.[380]

The proposed amendment would also curtail the school-to-prison pipeline where *In re S.F.* implicitly approved it.[381] By requiring juvenile courts to identify the suspension-worthy behaviors that could trigger a probation violation, the amendment forces the legal system to recognize the

https://djs.maryland.gov/Documents/DRG/Intro-and-Overview.pdf (reporting 30% of cases ended in probation).

375. *See* JUV. JUST. REFORM COUNCIL, PROBATION EXPERIENCES OF MARYLAND YOUTH 11 (2020), http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/PowerPointJJRC_Probation_Analyses_Final.pdf (noting in fiscal year 2019, Maryland reported 111 cases in which juvenile courts unsuccessfully terminated a child's probation after a violation of probation). In fiscal year 2019, courts imposed 1,904 formal sentences of juvenile probation. 2019 DATA RESOURCE GUIDE, *supra* note 374, at 12.

376. *See In re S.F.*, 477 Md. at 344, 269 A.3d at 352 (2022) (Watts, J., dissenting) (referring to violation of probation hearings as "mini-trials" under the standard suggested by the majority).

377. *See* YOUNG ET AL., *supra* note 315, at 1 (describing the Maryland government's intent to reduce disproportionate minority contact).

378. *In re S.F.*, 477 Md. at 334, 269 A.3d at 346.

379. *Id.*

380. *See* Goldman & Rodriguez, *supra* note 117, at 279 (noting that the nexus between schools and the juvenile legal system reflects historical racial ideologies and structural inequality).

381. *In re S.F.*, 477 Md. at 334, 269 A.3d at 346 ("Whether a suspension was arbitrarily or capriciously imposed against a student based on race, disability, or other factors, [does] not bear on the vagueness of the no-suspension condition of probation in this case . . . .").

distinction between school discipline and juvenile legal intervention.[382] Children subject to no-suspension conditions will better understand the difference between legal consequences and school-based behavioral interventions.[383] Moreover, Maryland law will no longer link and approve disparities in both systems at the point of school suspension.[384]

This amendment still permits a connection between juvenile-court oversight and school discipline.[385] The juvenile legal system should consider additional measures to eradicate the school-to-prison pipeline, such as reducing the use of probation altogether.[386] This amendment does, however, limit the juvenile court's oversight to behaviors for which the child came into contact with the juvenile legal system. It thus reduces the risk that the vagueness inherent in school discipline decisions will permeate violation of probation hearings. This amendment thus marks an appropriate step toward reducing the interaction between the juvenile legal system and public education in Maryland.

CONCLUSION

In re S.F. accurately applies law based on an inaccurate vision of both the Maryland public school system and the juvenile legal system.[387] Schoolchildren, and particularly African American children and children with disabilities, now bear the consequences of the General Assembly's inaccurate perceptions of both systems.[388] The General Assembly should amend the Juvenile Causes Statute to eliminate the risk that inherently vague school disciplinary proceedings inappropriately increase a child's contact with the juvenile legal system.[389]

382. For a discussion of the existing school-prison nexus, see Goldman & Rodriguez, *supra* note 117, at 273.

383. *See id.* (discussing the problems inherent in the school-to-prison pipeline).

384. MD. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., *supra* note 134, at 12.

385. See MD. COMM'N ON THE SCHOOL-TO-PRISON PIPELINE AND RESTORATIVE PRACS., *supra* note 114, for a full report of the school-to-prison pipeline in Maryland.

386. The ACLU also recommends limiting funding for school resource officers in districts with understaffed schools to diminish the role of the juvenile legal system in schools. LOSEN & WHITAKER, *supra* note 299, at 12.

387. *See supra* Part IV.

388. *See supra* Section IV.C.

389. *See supra* Section IV.D.