

**IN THE
COURT OF APPEALS OF MARYLAND**

SEPTEMBER TERM, 2021

NO. 10

IN RE: S. F.

**ON WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS**

PETITIONER'S BRIEF AND RECORD EXTRACT

**PAUL B. DEWOLFE
Public Defender**

**BRIAN M. SACCENTI
Assistant Public Defender
CPF # 0012130250**

**Office of the Public Defender
6 Saint Paul Street, Suite 1400
Baltimore, Maryland 21202-1608
P: (410) 767-8555
F: (410) 333-8801
brian.saccanti@maryland.gov
Counsel for Petitioner**

INDEX

TABLE OF CONTENTS

PETITIONER’S BRIEF

	Page
STATEMENT OF THE CASE	1
QUESTION PRESENTED.....	2
STATEMENT OF FACTS	2
ARGUMENT.....	3
IT IS IMPROPER FOR A JUVENILE COURT TO MAKE A SCHOOL’S DISCRETIONARY DECISION TO SUSPEND A CHILD A VIOLATION OF THE CHILD’S PROBATION.	3
CONCLUSION.....	23
CERTIFICATION OF COMPLIANCE WITH RULES 8-503 AND 8-112 and CERTIFICATE OF SERVICE.....	24
PERTINENT AUTHORITY	1

APPENDIX / RECORD EXTRACT

	Page
Juvenile Court Docket Entries for Case No. C-10-JV-18-000271	E. 1
Juvenile Court Docket Entries for Case No. C-10-JV-19-000094	E. 7

Order of Probation (C-10-JV-18-000271 R. 102)	E. 11
Order of Probation (C-10-JV-19-000094 R. 58)	E. 12
Transcript of 6/5/2019 Exception Hrg. (C-10-JV-18-000271 R. 176-94).....	E. 13
Order Denying Exception (C-10-JV-18-000271 R. 123)	E. 32
Court of Special Appeals' Reported Opinion.....	E. 33

TABLE OF CITATIONS

	Page
<i>Cases</i>	
<i>Chertkov v. State</i> , 335 Md. 161 (1994).....	22
<i>Edmonson v. Leesville Concrete Co.</i> , 500 U.S. 614 (1991)	21
<i>Hudgins v. State</i> , 292 Md. 342 (1982).....	4, 7
<i>Humphrey v. State</i> , 290 Md. 164 (1981)	8
<i>In re D.H.</i> , 208 Cal. Rptr. 3d 738 (2016)	5, 6, 7
<i>In re Gault</i> , 387 U.S. 1 (1967).....	5
<i>McCleskey v. Kemp</i> , 481 U.S. 279 (1987).....	19, 20
<i>Meyer v. State</i> , 445 Md. 648 (2015).....	4
<i>Montgomery County v. McNeece</i> , 311 Md. 194 (1987)	22
<i>Morgan v. Foster</i> , 68 S.E.2d 583 (Ga. 1952)	7
<i>People v. Pirali</i> , 159 Cal. Rptr. 3d 335 (2013).....	5, 6, 7
<i>People v. Turner</i> , 66 Cal. Rptr. 3d 803 (2007).....	5, 6, 7
<i>Smith v. State</i> , 306 Md. 1 (1986)	4

<i>State v. Santiago</i> , 122 A.3d 1 (Conn. 2015).....	20
<i>Thanos v. State</i> , 332 Md. 511 (1993)	22
<i>Watson v. State</i> , 17 Md. App. 263 (1973)	4, 6, 7

Statutes

Md. Code Ann., Educ. Art. § 7-305 (2017 Supp.).....	10, 11, 25
---	------------

Regulations

COMAR 13A.08.01.11 (2018).....	9
Fred. Co. Bd. of Educ., Policy No. 408.2 (amended March 2, 2006)	11
Fred. Co. Bd. of Educ., Policy No. 408.3 (amended March 2, 2006)	10
Fred. Co. Pub. Schools Reg. No. 400-04 (amended Nov. 15, 2017).....	10

Other Authorities

Emma Kerr, <i>Six Frederick County schools ranked 'high suspending' in statewide study</i> , Frederick News-Post (Nov. 8, 2018).....	12
Hon. Mary Ellen Barbera, Statement on Equal Justice (June 9, 2020)	17
Maryland Advisory Committee to the U.S. Commission on Civil Rights, <i>Disparities in School Discipline in Maryland</i> (Oct. 2019).....	14
Md. Comm’n on the School-to-Prison Pipeline & Restorative Practices, <i>Final Report & Collaborative Action Plan</i> (Dec. 20, 2018).....	14, 15, 16
Md. Jud. Form CC-DC-026 (Rev. 08/2015).....	8
Md. State Dept. of Educ., <i>Suspensions, Expulsions, and Health Related Exclusions</i> (Sept. 2019).....	12

Office of the Superintendent, Frederick Cty. Pub. Schs., 400-08, Discipline (2020)
..... 12

ProPublica, Website, *Miseducation: Is There Racial Inequality at Your School?*
(Oct. 16, 2018)..... 12, 13

Radley Balko, Op-Ed, *There's Overwhelming Evidence That the Criminal Justice
System is Racist. Here's the Proof*, Wash. Post (June 10, 2020)..... 17

Scott E. Sundby, *The Loss of Constitutional Faith: McCleskey v. Kemp and the
Dark Side of Procedure*, 10 Ohio St. J. Crim. L. 5 (2012)..... 20

Tamar R. Birckhead, *The Racialization of Juvenile Justice and the Role of the
Defense Attorney*, 58 B.C. L. Rev. 379 (2017)..... 11, 13

Zanita E. Fenton, *Disabling Racial Repetition*, 31 J.L. & Ineq. 79 (2012)..... 11

**IN THE
COURT OF APPEALS OF MARYLAND**

SEPTEMBER TERM, 2021

NO. 10

IN RE: S. F.

**ON WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS**

PETITIONER'S BRIEF

STATEMENT OF THE CASE

On February 12, 2019, S.F. (DOB June 26, 2006), then twelve years old, entered an *Alford* plea in Circuit Court for Frederick County Juvenile Division Case No. C-10-JV-18-000271 to one count of assault in the second degree against another student in school. (T. 2/12/2019 at 5-12.) At the disposition hearing on April 2, 2019, before Magistrate Julia Ann Minner, S.F.'s counsel objected to the inclusion in the probation order a condition that S.F. not be suspended from school. (T. 4/2/2019 at 4-8.) The magistrate made this a condition of probation. (*Id.* at 11.)

On May 16, 2019, S.F. entered an *Alford* plea in Circuit Court for Frederick County Juvenile Division Case No. C-10-JV-19-000094 to one count of

misdemeanor theft based on the taking of items from a home. (T. 5/16/2019 at 3-10.) Over a defense objection, Magistrate Joanie Raymond ordered as a condition of probation that S.F. not be suspended at school. (*Id.* at 12-13.)

S.F. filed an exception in each case from the probation condition that he not be suspended. (C-10-JV-19-000094 R. 47; C-10-JV-18-000271 R. 103.) At a hearing on June 5, 2019, the Honorable Marielsa Bernard denied the exceptions. (T. 6/15/2019 at 15 / E. 27; C-10-JV-19-000094 R. 61; C-10-JV-18-000271 R. 123-124 / E. 32.)

S.F. appealed. The Court of Special Appeals affirmed in a reported opinion. *See In re S.F.*, CSA-REG-582-2019 (op. issued Jan. 28, 2021; mandate issued March 2, 2021) (E. 33). On May 11, 2021, this Court issued a writ of certiorari to consider the following question:

QUESTION PRESENTED

Is it improper for a juvenile court to make a school's discretionary decision to suspend a child a violation of the child's probation?

STATEMENT OF FACTS

Petitioner incorporates the information presented in the Statement of the Case.

The probation orders in these cases required as a condition of probation that S.F. “[a]ttend school regularly without any unexcused absences, suspensions or tardiness.” (C-10-JV-19-000094 R. 58 / E. 12; C-10-JV-18-000271 R. 102 / E.

11.) S.F. took exception to the condition insofar as it required that he not be suspended, arguing that it was impermissibly vague and failed to provide adequate direction as to what conduct by S.F. would violate it. (T. 6/5/2019 at 4 / E. 16.) The judge overruled the exceptions, opining, “I don’t think that this term of probation or condition of probation is vague in any way.” (T. 6/5/2019 at 15 / E. 27.)

ARGUMENT

IT IS IMPROPER FOR A JUVENILE COURT TO MAKE A SCHOOL’S DISCRETIONARY DECISION TO SUSPEND A CHILD A VIOLATION OF THE CHILD’S PROBATION.

The requirement that S.F. attend school “without suspension” was not a permissible condition of probation because it failed to adequately apprise him (or the authorities responsible for enforcing the conditions) of what actions he must take or refrain from to avoid a violation. A condition that a juvenile not be suspended by his school is fundamentally different from other conditions of probation in important ways. The condition is violated as a direct result of a discretionary action (the suspension) done by another person (specifically, a school principal or other school personnel) to the juvenile, while virtually all other conditions of probation are violated directly by the actions of the juvenile. The State might respond by pointing out that a suspension is normally a reaction to conduct by the child, and arguing that a “no suspensions” provision implicitly puts the juvenile on notice not to engage in that conduct. The problem is that there is

nothing in the probation order or elsewhere to tell the child what conduct will get him suspended. As discussed below, standards for suspension are vague and, for in-school and short-term suspensions, the decision to suspend is left entirely to the essentially unfettered discretion of the school authorities. Worse, for short-term and in-school suspensions especially, the process is so lacking in procedural safeguards that courts cannot have confidence in the validity or reliability of the decision that suspension is warranted in appropriate. Finally, the unfettered discretion of schools to impose short-term and in-school suspensions for a wide range of unspecified conduct has resulted in intolerable disparities in how this form of discipline is used, with racial and ethnic minorities and students with disabilities getting the worst of it.¹

“To be enforceable a condition of probation must not be vague, indefinite or uncertain.” *Smith v. State*, 306 Md. 1, 7 (1986). Conditions of probation “must be clear, definite and capable of being properly comprehended and understood not only by the individual upon whom they are imposed but by those responsible for their enforcement.” *Watson v. State*, 17 Md. App. 263, 274 (1973). “A general condition of probation is permissible only ‘so long as it is contemplated that the court or its designee (usually the probation authority) will provide the probationer with reasonable, specific direction within the ambit of the initially expressed

¹ An appellate court ordinarily reviews a trial courts imposition of a condition of probation for an abuse of discretion. *See Meyer v. State*, 445 Md. 648, 663 (2015).

general condition, and such guidance is in fact given.” *Smith*, 306 Md. at 7 (quoting *Hudgins v. State*, 292 Md. 342, 348 (1982)). These principles are rooted in notions of fundamental fairness that apply with equal force in juvenile delinquency proceedings. *See, generally, In re Gault*, 387 U.S. 1 (1967).

California’s intermediate appellate court has recognized that conditions of probation can be vague in two ways: (1) because the language used is inherently vague; or (2) because the condition leaves it to a third party to determine the scope of the prohibition. *See In re D.H.*, 208 Cal. Rptr. 3d 738, 728-29 (2016). This distinction is helpful in assessing the problems with the no-suspension condition.

The court addressed the second category in *People v. Pirali*, 159 Cal. Rptr. 3d 335 (2013), and *People v. Turner*, 66 Cal. Rptr. 3d 803 (2007), which involved challenges to, respectively, a prohibition on pornographic or sexually explicit material “as defined by the probation officer,” *Pirali*, 159 Cal. Rptr. 3d at 344, and a prohibition on sexually stimulating/oriented material “deemed inappropriate by the probation officer,” *Turner*, 66 Cal. Rptr. 3d at 807. These were “held to be vague because they left the determination of which materials were prohibited to the probation officer’s sole discretion and therefore did not provide advance notice of what behavior was required.” *D.H.*, 208 Cal. Rptr. 3d at 743. The appellate court in those cases fixed the problem by modifying the conditions “to cover only those materials that the probationer was informed in advance were in the prohibited category of being sexually explicit.” *Id.*

The court addressed the first category in *D.H.* In that case, a challenged condition of probation forbade the respondent from accessing pornography. The court held that the condition was vague because the term “pornography” was inherently vague:

[T]he no-pornography condition is vague because the term “pornography” itself is unclear. As a result, it cannot be made sufficiently precise by modifying it to prohibit accessing materials that the probationer knows are pornographic because the term itself is subjective and subject to different interpretations. Likewise, a condition prohibiting probationers from doing anything “bad” could not be made sufficiently precise by modifying it to prohibit them from doing anything that they know is bad. Like the term pornography, the term bad is inherently vague.

Id. at 744. It distinguished *Pirali*, *Turner*, and similar cases because in those cases “the vagueness arises not because the category *itself* is unclear, but instead because it is unclear whether particular people, areas, or items fall within the category.” *Id.* at 743 (emphasis in original).

Although not speaking in terms of these two kinds of vagueness, Maryland’s appellate courts have discussed vague probation conditions in language that seemingly recognizes that both types are problems. In *Watson*, the trial court “announced as a condition of probation that appellant should pay forty percent of his earnings to or on behalf of the minor children of the victim and further provided that ‘the period of probation shall be indeterminate and subject to the further order of the Court.’” 17 Md. App. at 272. The Court of Special Appeals

found this condition improper, in part because what it required was vague. The court explained in pertinent part, “What constitutes earnings is not defined; whether they are gross or net, how they are come by, who is to determine what constitutes earnings, over what period of time they are to be paid, and infinite other problems are left unresolved.” *Id.* at 274. In *Hudgins*, this Court recognized “that a probation requirement may be so amorphous that it is not reasonable to say that the defendant's complained of action was regulated by the standard of conduct imposed by the sentencing judge, thus rendering the penalty inherently incapable of enforcement.” 292 Md. at 348. As an example, the Court cited a Georgia case in which “a condition that the probationer ‘maintain a correct life’ was determined to be ‘too vague, indefinite, and uncertain to be given any construction or application.’” *Id.* (quoting *Morgan v. Foster*, 68 S.E.2d 583, 584 (Ga. 1952)).

In the present case, the no-suspension requirement was vague because whether S.F. was in violation of his probation depended on whether a third party (the school) made the discretionary decision to suspend him. As a result, “it is not reasonable to say that *the [respondent's]* complained of action was regulated by the standard of conduct imposed *by the sentencing judge.*” *Hudgins*, 292 Md. at 348 (emphasis added). Like the conditions in *Pirali* and *Turner*, which were “held to be vague because they left the determination of which materials were prohibited to the probation officer's sole discretion and therefore did not provide advance notice of what behavior was required,” *D.H.*, 208 Cal. Rptr. 3d at 743, the no-

suspension provision left the determinations of whether the child broke a rule and whether to suspend the child as a result solely to the discretion of the school authorities. Worse than the condition in *Watkins*, the no-suspension condition utterly surrendered to the school the court's responsibility to determine whether the child engaged in certain behavior and whether that behavior violated probation. To find a child in violation of probation, the juvenile court need only find that the school opted to suspend him. Under the no-suspension condition, it is the school's behavior, not the child's, that determines whether the child's probation was violated.

In this sense, requiring a child not to be suspended is a bizarre condition of probation. Other standard conditions of adult and juvenile probation normally are directed at the *probationer's* actions or failure to take certain actions,² because it is the probationer's conduct that probation seeks to regulate. This is reflected in the well-established principle that if the probationer did not act willfully, they may not be found in violation of probation. *See Humphrey v. State*, 290 Md. 164, 167-68 (1981). Suspending a child from school, by contrast, is a discretionary action by someone else against the child, normally without the child's consent. Whether the child acted willfully is rendered immaterial because the condition is violated by the action of the school authorities.

² *See* Md. Jud. Form CC-DC-026 (Rev. 08/2015) (Probation / Supervision Order), <https://www.courts.state.md.us/sites/default/files/import/courtforms/joint/ccdc026.pdf>.

The Court of Special Appeals responded to this concern by asserting:

[T]his condition is no less suspect [sic] because the decision to impose a suspension lies with the discretion of a third party. Many conditions of probation involve obligations to third parties, such as law enforcement or employers, who determine compliance and report to a probation officer, who in turn (as here) has the discretion to decide whether to escalate a failure to comply into a potential violation of probation. *See Hudgins v. State*, 292 Md. [342,] 344 [(1982)] (law enforcement asked to report back to the court to inform it of the extent of the probationer's cooperation with police); *Russell v. State*, 221 Md. App. 518, 523-24 (2015) (during a polygraph test if the probationer admits to a crime, the polygrapher discontinues the test and notifies the probation agent); *Wiseman v. State*, 72 Md. App. 605, 608 (1987) (probation agent in contact with the probationer's employer to verify that she was gainfully employed).

(Slip op. at 6 / E. 40.) Respectfully, this response misses the point. There is nothing wrong with a scenario where a third party informs the court (usually through the probation agent) of the probationer's conduct and then the court considers that evidence in deciding whether the probationer's conduct violated one or more conditions of probation. That is not what we have here. When a school notifies the court or the probation officer that it has suspended the probationer, it is the school's act of suspending the student – not any behavior by the student – that, under the language of the challenged condition, violates the probation.

The Court of Special Appeals took the position that a suspension is normally a reaction to conduct by the child, and that a “no suspensions” provision puts the child on notice not to engage in that conduct. To understand why this is

incorrect, it is important to understand how suspensions work. COMAR defines “suspension” broadly as “the application of extended suspension, in-school suspension, short-term suspension, or long-term suspension.” COMAR 13A.08.01.11.B(10) (2018). An “in-school suspension” is “the removal within the school building of a student from the student's current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school principal.” COMAR 13A.08.01.11.B(4). A “short-term suspension” “means the removal of a student from school for up to but not more than 3 school days for disciplinary reasons by the principal.” COMAR 13A.08.01.11.B(9). A “long-term suspension” is “the removal of a student from school for a time period between 4 and 10 school days for disciplinary reasons by the principal.” COMAR 13A.08.01.11.B(5). Finally, an “extended suspension” is “the exclusion of a student from a student's regular program for a time period between 11 and 45 school days.” COMAR 13A.08.01.11.B(3).

Suspensions for ten days or less (*i.e.*, in-school, short-term, and long-term suspensions) can be imposed for a wide variety of reasons, in the unchecked discretion of the principal and with virtually no procedural protections. Subject to very limited exceptions, Maryland law provides that “in accordance with the rules and regulations of the county board, each principal of a public school may suspend *for cause*, for not more than 10 school days, any student in the school who is under the direction of the principal.” Md. Code Ann., Educ. Art. § 7-305(a)(1) (2017

Supp.) (emphasis added). In Frederick County, “[i]n order to address and modify inappropriate student behavior, in-school suspension may be used as a corrective disciplinary tool *at the discretion of the school administration.*” Fred. Co. Bd. of Educ., Policy No. 408.3 (amended March 2, 2006) (emphasis added).³ *See also, generally*, Fred. Co. Pub. Schools Reg. No. 400-04 (amended Nov. 15, 2017).⁴

The process that state law requires for a suspension of 10 days or less is negligible, consisting only a right for the student or their parent or guardian to have a conference with the principal and other appropriate personnel during the suspension,⁵ and a requirement that the student or their parent or guardian be given a community resources list. *See id.* § 7-305(a)(2) & (3). No appeal is provided. The relevant Frederick County Board of Education policy provides in pertinent part that “[p]rior to suspension, a student shall receive oral or written notice of the charges and, if the student denies the charges, he/she shall have the right to an explanation of the evidence supporting the charges and an opportunity to present

³ <https://apps.fcps.org/legal/doc.php?number=408>

⁴ <https://apps.fcps.org/legal/doc.php?number=400-04>

⁵ In practice, the opportunity to be heard may be of little help. Because of their youth, children are often unable to advocate effectively for themselves. Their parents may be unable to assist them, either because they cannot miss work or because they themselves have difficulty advocating effectively. *See* Tamar R. Birckhead, *The Racialization of Juvenile Justice and the Role of the Defense Attorney*, 58 B.C. L. Rev. 379, 415 & n.201 (2017) (quoting Zanita E. Fenton, *Disabling Racial Repetition*, 31 J.L. & Ineq. 79, 79, 98 (2012), for proposition that “Black children, especially boys, are disciplined, suspended, and expelled [from school] when it is least likely that their parents will challenge the outcome; this most often is the case when their parents are in poverty”).

his side of the story.” Fred. Co. Bd. of Educ., Policy No. 408.2 (amended March 2, 2006). *See also, generally*, Fred. Co. Pub. Schools Reg. No. 400-04 (amended Nov. 15, 2017).

The result of this broad, unregulated discretion and the lack of procedural protections is that a suspension tells us virtually nothing about the child’s conduct.

In Frederick County Public Schools, for example:

- More than a third of in-school suspensions in the 2018-2019 school year were for the vague and highly subjective offense category of “Disrespect/Disruption” (223 suspensions). *See* Md. State Dept. of Educ., *Suspensions, Expulsions, and Health Related Exclusions*, p.25, tbl. 8b (Sept. 2019).⁶
- There were 485 suspensions (in-school or out-of-school) or expulsions for “Disrespect” and four (4) for “Dress Code” issues. *See id.* p. 28, tbl. 9.
- Twenty-one (21) suspensions or expulsions were for “Inappropriate Use of Personal Electronics.” *See id.* p. 29, tbl. 9.
- Black students are 3.8 times as likely to be suspended as White students. *See* ProPublica, Website, *Miseducation: Is There Racial Inequality at Your School?* (Oct. 16, 2018).⁷
- Six schools (20% of the county’s middle or high schools) were ranked as “high suspending” by a University of Maryland Study, meaning that one or more groups were suspended at rates of 25% or higher. The impacted groups included black students, English learners and students with disabilities. *See* Emma Kerr, *Six Frederick County schools*

⁶<http://marylandpublicschools.org/about/Documents/DCAA/SSP/20182019Student/2019SuspensionsExpulsionsHRExc.pdf>

⁷<https://projects.propublica.org/miseducation/district/2400330>

ranked 'high suspending' in statewide study, Frederick News-Post (Nov. 8, 2018).

The Court of Special Appeals pointed to a Frederick County Public Schools policy on discipline as sufficiently defining the conduct for which suspensions could be imposed to put a child on notice as to what behavior to avoid. (Slip op. at 5 / E. 39 (citing Office of the Superintendent, Frederick Cty. Pub. Schs., 400-08, Discipline (2020) [hereinafter FCPS Reg.], <https://apps.fcps.org/legal/doc.php?number=400-08> [https://perma.cc/9P9Q-74KC])). This document, however, permits suspensions for, *inter alia*, such vague conduct as “[d]isrespectful and/or inappropriate language directed toward another person,” “[a]ctions which interfere with the effective operations of the school,” and using cell phones in a way that “[d]isrupt[s] the learning environment or approved school activity.” (*Id.* at pp. 5-6, 11-12.) If “[d]isrespectful and/or inappropriate language directed toward another person” or disruptive use of a cell phone is enough to suspend a child, then very few middle schoolers are safe.

Some are safer than others, however.

[R]esearch confirms that students of color of all household income levels experience a disproportionate amount of discipline at school. Black students, for instance, are more likely to be referred to the school administration for misbehavior than white students, and the reported behaviors for Black students are more likely to require subjective evaluations (defiance, excessive noise, or disrespectfulness), whereas white students are more typically referred for observable, objective behaviors (smoking, vandalism, leaving campus without permission). When the misbehavior of Black students is a manifestation of an emotional disability, they

are more likely than white students to be punished and pushed out of the traditional school setting than to receive counseling or other types of assistance.

Birckhead, *supra*, at pp. 423-24 (footnotes omitted). The result is that Black students are suspended at much higher rates than their white peers, *see id.* n.247; ProPublica, *supra*. Students with disabilities are also suspended at significantly higher rates. The national statistics for both groups are grim:

Black students in kindergarten through 12th grade nationwide were 3.8 times as likely to receive one or more out-of-school suspensions as White students. Students with disabilities were also twice as likely to be suspended as other students. Although Black boys were more likely than any other group to get suspended, Black girls were six times more likely than White girls to receive suspensions, often for perceived “attitude” or disrespect. And the racial disparities in discipline begin in preschool, with Black preschoolers 3.6 times more likely to be suspended.

Maryland Commission on the School-to-Prison Pipeline and Restorative Practices (MCSPP), *Final Report & Collaborative Action Plan*, at pp. 22-23 (Dec. 20, 2018)⁸ (internal citations omitted). Maryland’s statistics similarly reflected that Black students and students with disabilities were suspended at greater rates:

Black students and students with disabilities (SWD) were disproportionately suspended. Black students represented 35% of student enrollment in Maryland but 60% of students suspended out of school. Students with disabilities represented 13% of enrollment but 25% of [out-of-school suspensions (OSS)] on average. In contrast, other racial/ethnic groups, with the exception of ‘other,’ are underrepresented given their share of enrollment.

⁸<https://www.law.umaryland.edu/media/SOL/pdfs/Programs/ADR/STPP%20%20RP%20Commission%20Final%20Report.pdf>

For example, White students represent 41% of enrollment but 24% of OSS.

Id. at 24; *see also* Maryland Advisory Committee to the U.S. Commission on Civil Rights, *Disparities in School Discipline in Maryland*, pp. 10-11 (Oct. 2019), <https://www.usccr.gov/pubs/2020/01-14-MD-SAC-School-Discipline-Report.pdf> (explaining that “[d]ata collected by the [Maryland State Department of Education] shows that the disproportionate use of exclusionary discipline remains significant and is greater today than it was a decade ago” and that “African American students and students with disabilities have consistently accounted for a significantly higher percentage of exclusionary discipline incidents than the percentage of the student population they represent” (footnotes omitted)).

The Maryland Commission on the School-to-Prison Pipeline and Restorative Practices described the dynamics at work. *See* MCSPP, *supra*, at pp. 29-30.⁹ It begins with *differential selection*, where “teachers [are] more likely to refer certain students to the office for disciplinary action despite relatively similar kinds of behavior,” something that can result from “insufficient classroom management skills of the referring teacher, instruction that is not engaging for certain types of learners, implicit bias or explicit prejudice, stereotypes, and

⁹ The Commission was “an interdisciplinary group of educators, representatives from the Maryland State Department of Education (MSDE) and Department of Juvenile Services, stakeholders, and experts” established by the Maryland General Assembly “to study current disciplinary practices in Maryland public schools and recommend best practices with respect to restorative approaches to school discipline that foster school climates most conducive to learning.” *Id.* at 10.

cultural mismatch between teachers and the students in the classroom.” *Id.* Next, “[t]here is . . . evidence that *differential processing* in the administration of consequences contributes to disparities in outcomes, with Black students, for example, receiving more severe consequences for the same or similar infractions than White students.” *Id.* at 30.

Underlying this different treatment are biases that may be implicit or unconscious.

The disparities in discipline for certain groups of students do not necessarily mean that educators are *explicitly* prejudiced against particular students. Studies have shown that educators may *unconsciously* expect more disruption from Black students, even when they exhibit conduct similar to other students in the room.

...

Unconscious stereotypes can also lead to disciplinary disparities. As early as 1975, a report by the Children’s Defense Fund found “pervasive intolerance” among school officials for children who were “different” from the norm, especially minority students and students with disabilities. In a related context, studies also have found that police officers perceive Black boys as young as 10 to be older and more responsible, than they really are. While White boys of similar young ages may benefit from the assumption of childhood innocence and not receive harsh consequences for their behavior, Black boys will be perceived as more responsible for their behavior.

Id. (emphasis in original; internal citations omitted).

Importantly, the Commission clearly and forcefully rejected the attempt by some to blame the victims of these discriminatory practices for the disparity in suspensions:

A common (and incorrect) explanation for disparities is that there are true differences in behavior between different groups of students that are not attributable to discriminatory practices by schools. Research examining this premise has failed to find racial differences in student behavior. For example, a study that examined discipline disparities by race and family income found that Black and poor students were disciplined more often and more harshly than their peers. In other words, discipline disparities result from *inconsistent adult responses* to various behaviors, not to different conduct by the students themselves.

Id. at 29 (emphasis in original; internal citations omitted). In other words, Black children and children with disabilities are significantly more likely to be suspended than white children and children without disabilities for the same behavior.

This is the very definition of systemic racism and ableism. See Radley Balko, Op-Ed, *There's Overwhelming Evidence That the Criminal Justice System is Racist. Here's the Proof*, Wash. Post (June 10, 2020), <https://perma.cc/8YLM-KWSY> (describing “systemic racism” as “systems and institutions that produce racially disparate outcomes, regardless of the intentions of the people who work within them”). It is the very thing that the Chief Justice of this Court has called on the Judiciary to excise from its practices and procedures when, in the wake of the George Floyd murder, she wrote:

[W]e, together, as members of the system of justice, must re-examine how we administer justice. We must determine, along with the other branches of government, how to ensure that the protections and rights under law are afforded equally to all of us. We must assure that our courts do not suffer bias, conscious or unconscious. We must examine, together, the reasons for

disproportionate impact upon people of color, and address those reasons.

Hon. Mary Ellen Barbera, Statement on Equal Justice (June 9, 2020).

In response to concerns that “that suspensions are imposed too frequently in general, imposed for broadly categorized misbehavior that is difficult to document, and imposed disproportionately against Black students,” the Court of Special Appeals responded that “these factors still don’t render the condition itself vague” and that “[t]he possibility that a suspension could be imposed too quickly or arbitrarily would, when it happens, represent a failure of execution and an opportunity for the probation officer to decide whether to pursue a violation and the trial court to decide whether to find one.” (Slip op. at 7-8 / E. 41-42.)

It is no answer to say, as the Court of Special Appeals suggests, that a child can litigate whether the suspension was appropriate at the violation of probation hearing. This overlooks the language of the condition, which requires that the child “[a]ttend school regularly without any . . . suspensions[.]” (E. 11-12.) A suspension violates this condition, regardless of what it was for, whether it was appropriate, whether it was based on unreliable hearsay, whether the child had an explanation or justification for any behavior. In the place of a judicial hearing in which the court must decide whether evidence shows that the child engaged in behavior that violated standards set forth in the probation order, it substitutes the school authorities’ discretionary decision to suspend the child. Under such a

condition of probation, all that the juvenile court needs to do in assessing whether a violation occurred is to determine whether the school, in fact, suspended the child; the child's behavior is beside the point.

This problem was described by S.F.'s counsel at the exceptions hearing, in response to the court's question whether it wouldn't be more appropriate to raise these concerns at a violation of probation hearing:

Done that, Your Honor, and have been told – well, we've had even hearings where there were no explanation as to why the child was suspended, and it was – the response was it was a condition of probation. And so we've run into that problem, and another problem we've run into is when the child is on community detention.

And he gets violated for community detention and he can spend the weekend in detention on maybe something very minor and many times, because of the discretion by the school officials, many times it's just an allegation and sometimes the child is truly innocent, because he doesn't really have a hearing or it's an allegation.

And it's something meant to be dealt with in the school administrative function. So if a child gets suspended, they don't really need a standard or burden of proof, because they're not considering his liberty really at that point for a school suspension.

(T. 6/5/19 at 5 / E. 17.) The language of the no-suspension provision does not notify the court, the child, or counsel that the propriety of the suspension must, should, or can be litigated before a violation of probation may be found.

Moreover, even if the language of the no-suspension provision contained an exception for suspensions "imposed too quickly or arbitrarily" – which it does not

– this does not address the core of the problem. Suspensions can be imposed so easily, for such a broad range of behavior, with so little process, that as a practical matter it will often be impossible for a child to contest whether it was proper, simply because there are so few meaningful constraints on suspensions of ten days or less. And even where statistics clearly show that Black children, children with disabilities, or other minority groups are suspended at disproportionately high rates, it is virtually impossible for a child to show that bias played a role in their individual case.

We’ve been down this road before. Confronted with research showing an appalling racial disparity in the imposition of the death sentence in Georgia based on the victim’s race and, to a lesser extent, the defendant’s race, a narrow 5-4 majority of the Supreme Court in *McCleskey v. Kemp*, 481 U.S. 279 (1987), held that such evidence was insufficient to invalidate a death sentence under the Eighth Amendment or the Equal Protection Clause. *See id.* at 308. To demonstrate a constitutional violation, the majority required the defendant to prove that purposeful discrimination played a role in his particular sentencing decision. *See id.* at 312-13. Judges and commentators have described making this showing as “a Herculean task,” “incredibly difficult—bordering on impossible,” and “virtually impossible unless the prosecutor is prepared to admit bias.” *See State v. Santiago*, 122 A.3d 1, 97 (Conn. 2015) (Norcott & McDonald, JJ., concurring) (citations

omitted). As a result, the decision has been “roundly criticized.” *Id.* (citation omitted). As one law professor observed:

After the opinion's release, legal and lay commentators quickly compared *McCleskey* to infamous decisions like *Dred Scott*, *Korematsu*, and *Plessy*. And a quarter of a century later, *McCleskey* has become firmly entrenched as a resident in the exclusive but not so desirable neighborhood of Notorious Cases, joined by a few new arrivals like *Bowers v. Hardwick*. Especially in the criminal law area, a legal scholar can invoke *McCleskey* confident that the reader will understand that the case is being used as shorthand for ‘cases in which the Supreme Court failed the Constitution's most basic values.’

Scott E. Sundby, *The Loss of Constitutional Faith: McCleskey v. Kemp and the Dark Side of Procedure*, 10 Ohio St. J. Crim. L. 5, 5 (2012) (internal footnotes omitted). Although the criticism of *McCleskey* was undoubtedly heightened by the stakes involved – literally life and death – its core failing was that the Court accepted that the processes of Georgia’s courts were infected with racism and did nothing about it.

Here, we have evidence of pervasive structural racism and ableism in the imposition of school suspensions. This case does not afford this Court an opportunity to fix that, but it does give this Court the opportunity to ensure that juvenile courts do not import those disparities into their treatment of children by making a school’s decision to suspend a child a violation of that child’s probation. The educational system’s disparate treatment of racial and ethnic minorities and children with disabilities is bad enough, but it is even worse to incorporate that

treatment into the juvenile justice system because it places upon such discrimination the imprimatur of the Judiciary. The Supreme Court has warned:

[T]he injury caused by the discrimination is made more severe because the government permits it to occur within the courthouse itself. Few places are a more real expression of the constitutional authority of the government than a courtroom, where the law itself unfolds. Within the courtroom, the government invokes its laws to determine the rights of those who stand before it. In full view of the public, litigants press their cases, witnesses give testimony, juries render verdicts, and judges act with the utmost care to ensure that justice is done.

Race discrimination within the courtroom raises serious questions as to the fairness of the proceedings conducted there. Racial bias mars the integrity of the judicial system and prevents the idea of democratic government from becoming a reality.

Edmonson v. Leesville Concrete Co., 500 U.S. 614, 628 (1991) (citations omitted).

Since the appeal was filed, the juvenile court has closed S.F.'s cases, so the issue presented is moot as to him. But it is not moot to the many children who may be subject to no-suspension conditions of probation as a result of the Court of Special Appeals' reported opinion. Under these circumstances the Court can and should exercise its discretion to consider the issue even though it is moot as to S.F. "Although ordinarily we do not express our views on questions raised by a dismissed appeal," this Court has explained, "on occasion we do so to resolve a matter of substantial importance." *Thanos v. State*, 332 Md. 511, 521 (1993) (holding that the Office of the Public Defender lacked standing to file notice of appeal on behalf of death row inmate who had previously discharged it as his

counsel, but opting to address whether the 240-day stay of execution of the death warrant mandated by statute could be waived by the defendant (citing *Montgomery County v. McNeece*, 311 Md. 194, 200 (1987); *see also Chertkov v. State*, 335 Md. 161, 163 (1994) (holding that appeal must be dismissed because the State had no right to appeal, but opting to “nevertheless address the limits on a sentencing court's right to modify a sentence imposed pursuant to a binding plea agreement”).

In this case, the need to provide guidance to lower courts and litigants on this issue results not merely from its novelty, but from the mission of this Court to address and correct racial disparities in our justice system. This case provides an important and timely opportunity for this Court to put a stop to a practice that infects the judicial system with harmful disparities based on race and disability.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that this Court hold that it is improper for juvenile courts to include as a condition of probation that the school not suspend the child.

Respectfully submitted,

Paul B. DeWolfe
Public Defender

Brian M. Saccenti
Assistant Public Defender

Counsel for Petitioner

**CERTIFICATION OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112**

I hereby certify that:

1. This brief contains 5,898 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/

Brian M. Saccenti

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 2021, the Petitioner's Brief and Record Extract in the captioned case were delivered electronically via MDEC to

Carrie Williams
Assistant Attorney General
Criminal Appeals Division
Office of the Attorney General
200 Saint Paul Place, 17th Floor
Baltimore, Maryland 21202
cwilliams@oag.state.md.us

/s/

Brian M. Saccenti

PERTINENT AUTHORITY

Education Article, Section 7-305:

§ 7-305. Suspension and expulsion procedures

Student suspensions

(a) (1) Except as provided in subsection (b) of this section and § 7-305.1 of this subtitle, in accordance with the rules and regulations of the county board, each principal of a public school may suspend for cause, for not more than 10 school days, any student in the school who is under the direction of the principal.

(2) The student or the student's parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period.

(3) The student or the student's parent or guardian promptly shall be given a community resources list provided by the county board in accordance with § 7-310 of this subtitle.

Suspension or expulsion solely for attendance-related offenses prohibited

(b) (1) Except as provided in paragraph (2) of this subsection, a student may not be suspended or expelled from school solely for attendance-related offenses.

(2) Paragraph (1) of this subsection does not apply to in-school suspensions for attendance-related offenses.

Suspensions for more than ten days or expulsions

(c) Except as provided in § 7-305.1 of this subtitle, at the request of a principal, a county superintendent may suspend a student for more than 10 school days or expel the student.

Report of suspended or expelled student to superintendent

(d) (1) If a principal finds that a suspension of more than 10 school days or expulsion is warranted, the principal immediately shall report the matter in writing to the county superintendent.

(2) The county superintendent or the county superintendent's designated representative promptly shall make a thorough investigation of the matter.

(3) If after the investigation the county superintendent finds that a longer suspension or expulsion is warranted, the county superintendent or the county superintendent's designated representative promptly shall arrange a conference with the student and his parent or guardian.

(4) The student or the student's parent or guardian promptly shall be given a community resources list provided by the county board in accordance with § 7-310 of this subtitle.

(5) If after the conference the county superintendent or the county superintendent's designated representative finds that a suspension of more than 10 school days or expulsion is warranted, the student or the student's parent or guardian may:

(i) Appeal to the county board within 10 days after the determination;

(ii) Be heard before the county board, its designated committee, or a hearing examiner, in accordance with the procedures established under § 6-203 of this article; and

(iii) Bring counsel and witnesses to the hearing.

(6) Unless a public hearing is requested by the parent or guardian of the student, a hearing shall be held out of the presence of all individuals except those whose presence is considered necessary or desirable by the board.

(7) The appeal to the county board does not stay the decision of the county superintendent.

(8) The decision of the county board is final.

Students prohibited from school premises and activities while suspended or expelled

(e) (1) Any student expelled or suspended from school:

(i) Shall remain away from the school premises during those hours each school day when the school the student attends is in session; and

(ii) May not participate in school sponsored activities.

(2) The expelled or suspended student may return to the school premises during the prohibited hours only for attendance at a previously scheduled appointment, and if the student is a minor then only if accompanied by his parent or guardian.

(3) Any person who violates paragraph (1) or (2) of this subsection is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 for each violation.

(4) (i) If a student has been suspended or expelled, the principal or a designee of the principal may not return the student to the classroom without conferring with the teacher who referred the student to the principal, if the student was referred by a teacher, other teachers as appropriate, other appropriate school personnel, the student, and the student's parent or guardian.

(ii) If the disruptive behavior results in action less than suspension, the principal or a designee of the principal shall confer with the teacher who referred the student to the principal prior to returning the student to that teacher's classroom.

(5) A county superintendent may deny attendance to any student who is currently expelled from another school system for a length of time equal to that expulsion.

(6) A school system shall forward information to another school system relating to the discipline of a student, including information on an expulsion of the student, on receipt of the request for information.

Evaluations to identify disabilities

(f) (1) In this subsection, "firearm" means a firearm as defined in 18 U.S.C. § 921.

(2) Except as provided in paragraph (3) of this subsection, if the county superintendent or the superintendent's designated representative finds that a student has brought a firearm onto school property, the student shall be expelled for a minimum of 1 year.

(3) The county superintendent may specify, on a case by case basis, a shorter period of expulsion or an alternative educational setting, if alternative educational settings have been approved by the county board, for a student who has brought a firearm onto school property.

(4) The State Board shall adopt regulations to implement this subsection.

Discipline of children with disabilities

(g) (1) The discipline of a child with a disability, including the suspension, expulsion, or interim alternative placement of the child for disciplinary reasons, shall be conducted in conformance with the requirements of the Individuals with Disabilities Education Act of the United States Code.¹

(2) If a child with a disability is being considered for suspension or expulsion, the child or the child's parent or guardian shall be given a community resources list attached to the procedural safeguards notice required by regulation of the State Board.

Restitution to school

(h) (1) This subsection does not apply if the student is referred to the Department of Juvenile Services.

(2) If a student violates a State or local law or regulation and during or as a result of the commission of that violation damaged, destroyed, or substantially decreased the value of school property or property of another that was on school property at the time of the violation, as part of a conference on the matter with the student, the student's parent or guardian and any other appropriate person, the principal shall require the student or the student's parent to make restitution.

(3) The restitution may be in the form of monetary restitution not to exceed the lesser of the fair market value of

the property or \$2,500, or the student's assignment to a school work project, or both.

Md. Code Ann., Educ. § 7-305 (2017 Supp.).

COMAR 13A.08.01.11:

Disciplinary Action.

A. Local Board Authority. Each local board of education has both the responsibility and authority to adopt policies designed to create safe schools. In the context of school discipline, by the beginning of school year 2014--2015, each local board shall review and revise its student discipline policies and regulations with the goal of maintaining an environment of order, safety, and discipline necessary for effective learning. The policies and regulations at minimum shall:

- (1) Reflect a discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior;
- (2) Be designed to keep students connected to school so that they may graduate college and career ready;
- (3) Describe the conduct that may lead to in-school and out-of-school suspension or expulsion;
- (4) Allow for discretion in imposing discipline;
- (5) Address the ways the educational and counseling needs of suspended students will be met; and
- (6) Explain why and how long-term suspensions or expulsions are last-resort options.

B. Terms Defined. In this regulation, the following terms have the meanings indicated:

- (1) "Confer" means a discussion or dialogue by any means, for example, telephone, electronic mail, or face-to-face meeting, where the views of the teacher are communicated and considered.

(2) "Expulsion" means the exclusion of the student from the student's regular school program for 45 school days or longer, which only may occur under the following circumstances:

(a) The superintendent or designated representative has determined that the student's return to school prior to the completion of the expulsion period would pose an imminent threat of serious harm to other students or staff;

(b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable; and

(c) The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.

(3) "Extended suspension" means the exclusion of a student from a student's regular program for a time period between 11 and 45 school days, which only may occur under the following circumstances:

(a) The superintendent or designated representative has determined that:

(i) The student's return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff; or

(ii) The student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted.

(b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable; and

(c) The school system provides the excluded student with comparable educational services and appropriate

behavioral support services to promote successful return to the student's regular academic program.

(4) "In-school suspension" means the removal within the school building of a student from the student's current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school principal.

(5) "Long-term suspension" means the removal of a student from school for a time period between 4 and 10 school days for disciplinary reasons by the principal.

(6) "Principal" means the principal of a school or the principal's designee.

(7) "Public prekindergarten program" means:

(a) Any publicly funded prekindergarten program established under Education Article, § 7-101.1, Annotated Code of Maryland; or

(b) Any qualified vendor of prekindergarten services as defined in Education Article, § 7-101.2, Annotated Code of Maryland.

(8) "Restorative practices" means practices conducted in a whole-school ethos or culture that supports peacemaking and solves conflict by building a community and addressing harm in a school setting and that:

(a) Are conducted by trained staff;

(b) Focus on repairing the harm to the community through dialogue that emphasizes individual accountability; and

(c) Help build a sense of belonging, safety, and social responsibility in the school community.

(9) "Short-term suspension" means the removal of a student from school for up to but not more than 3 school days for disciplinary reasons by the principal.

(10) "Suspension" means the application of extended suspension, in-school suspension, short-term suspension, or long-term suspension.

C. Suspension and Expulsion.

(1) Prohibition.

(a) Except as provided in § C(1)(b) of this regulation, a student enrolled in a public prekindergarten program, kindergarten, first grade, or second grade may not be suspended or expelled from school.

(b) A student described under § C(1)(a) of this regulation may only be:

(i) Expelled from school if required by federal law;
or

(ii) Suspended for not more than 5 school days per incident if the school administration, in consultation with a school psychologist or other mental health professional, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports.

(c) The principal or school administration shall promptly contact the parent or guardian of a student suspended or expelled under § C(1)(b) of this regulation.

(2) In-School Suspension.

(a) An in-school removal is not considered a day of suspension as long as the student is afforded the opportunity to continue to:

(i) Appropriately progress in the general curriculum;

(ii) Receive the special education and related services specified on the student's IEP, if the student is a student with a disability in accordance with COMAR 13A.05.01;

(iii) Receive instruction commensurate with the program afforded to the student in the regular classroom; and

(iv) Participate with peers as they would in their current education program to the extent appropriate.

(b) A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective.

(c) The school principal shall provide the student's parents with written notification of the in-school suspension action taken by the school.

(d) After 10 days of cumulative in-school suspension, the student, the student's parents or guardian, and the principal shall confer.

(e) The student's school of current enrollment shall make provision for the student's education during the period of in-school suspension.

(f) Local school systems shall develop policies pertaining to a student's participation in extracurricular activities if the student receives an in-school suspension.

(g) Local school systems shall develop and implement a behavioral program of positive interventions to address the causes of misbehavior as part of the in-school suspension.

(3) Suspension for Not More Than 10 Days.

(a) In accordance with the rules and regulations of the local board, each principal of a public school may suspend for cause, for not more than 10 school days, any student in the school who is under the direction of the principal, except as provided in § C(1) of this regulation.

(b) The student or the student's parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period.

(c) At or before the conference, the student shall receive oral or written notice of the charges against him or her. If the student denies the charges, the student has the right to an explanation of the evidence supporting the charges and an opportunity to present the student's side of the story.

(d) A student whose presence in school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be removed immediately from school, if the notice and conference required by this subsection is provided as soon as possible.

(e) If the principal finds that an extended suspension or expulsion is warranted, the principal immediately shall report the matter in writing to the local superintendent.

(4) Suspension for More than 10 Days or Expulsion.

(a) At the request of a principal, a local superintendent or the designated representative may suspend a student for more than 10 school days or expel the student, except as provided in § C(1) of this regulation.

(b) Upon receipt of a written report from a principal requesting an extended suspension or expulsion, the local superintendent or designated representative promptly shall make a thorough investigation of the matter.

(c) If after the investigation the local superintendent or designated representative finds that an extended suspension or an expulsion is warranted, the superintendent or designated representative promptly shall arrange a conference with the student and the student's parent or guardian.

(d) The process described in § C(3)(a)--(c) of this regulation shall be completed by the 10th school day of the initial suspension. If additional time is necessary to complete the process, either because of delays due to parent or guardian unavailability or due to the complexity of the investigation, the student shall be allowed to return to school, unless the local superintendent or designated representative determines that the student's return to school

would pose an imminent threat of serious harm to other students or staff.

(e) If the student is not allowed to return to school after the 10th day, the superintendent or designee shall notify the student and the parent or guardian within 24 hours and provide the reasons for the delay in the process and the denial of reentry and send a copy of the notice to the State Superintendent of Schools;

(f) If after the conference the local superintendent or designated representative finds that an extended suspension or an expulsion is warranted, the student or the student's parent or guardian may appeal to the local board within 10 days after the determination.

(g) If an appeal is filed, the local board or its designated committee or hearing officer shall have 45 days from the date the appeal was received to hear the appeal and issue a decision, as follows:

(i) This timeline period may be extended if the parent, guardian, or his/her representative requests additional time; and

(ii) This timeline shall also apply in the event that the local board elects to use a hearing examiner.

(h) If due to extraordinary circumstances or unusual complexity of a particular appeal, the local board determines that it will be unable to hear an appeal and issue a decision within 45 days, it may petition the State Superintendent for an extension of time.

(i) The student or the student's parent or guardian or representative:

(i) Shall be provided the school system's witness list and a copy of the documents that the school system will present at the hearing 5 days before hearing; and

(ii) May bring counsel and witnesses to the hearing.

(j) Unless a public hearing is requested by the parent or guardian of the student, a hearing shall be held out of

the presence of all individuals except those whose presence is considered necessary or desirable by the board.

(k) The appeal to the local board does not stay the decision of the county superintendent.

(l) The decision of the local board is final.

(5) A student expelled or suspended from school shall remain away from the school premises during those hours each school day when the school the student attends is in session, and may not participate in school-sponsored activities. The expelled or suspended student may return to the school premises during the prohibited hours only for attendance at a previously scheduled appointment, and if the student is a minor then only if accompanied by the student's parent or guardian.

(6) A student suspended or expelled from school shall be allowed to return to school on the day that the terms and conditions of the suspension or expulsion are met whether or not the student, parent, or guardian has filed an appeal of the suspension.

(7) If a student has been suspended or expelled, the principal may not return the student to the classroom without conferring with the teacher who referred the student to the principal, if the student was referred by a teacher, other teachers as appropriate, other appropriate school personnel, the student, and the student's parent or guardian.

(8) If a student's disruptive behavior results in action less than suspension, the principal shall confer with the teacher who referred the student to the principal before returning the student to that teacher's classroom. The principal may satisfy this requirement by consulting with the teacher before returning the student to the classroom.

(9) A local superintendent may deny attendance to a student who is currently expelled or on extended suspension from another school system for a length of time equal to that expulsion or extended suspension. A school system shall forward information to another school system relating to the discipline of a student, including information of an expulsion

or extended suspension of the student, on receipt of the request for information.

D. Restitution. Unless the student is referred to the Department of Juvenile Services, if a student violates a State or local law or regulation and during or as a result of the commission of that violation damaged, destroyed, or substantially decreased the value of school property or property of another that was on school property at the time of the violation, as part of a conference on the matter with the student, the student's parent or guardian, and other appropriate individual, the principal shall require the student or the student's parent or guardian to make restitution. The restitution may be made in the form of monetary restitution not to exceed the lesser of the fair market value of the property, or \$2,500, or by the student's assignment to a school work project, or both.

E. Corporal Punishment. Corporal punishment may not be used to discipline a student in a public school in the State.

F. Minimum Education Services. In order to establish accountability and keep suspended or expelled students on track with classroom work, as is reasonably possible, each local board shall institute education services that at a minimum provide that:

(1) Each student suspended or expelled out-of-school who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher, which shall be reviewed and corrected by teachers on a weekly basis and returned to the student; and

(2) Each principal shall assign a school staff person to be the liaison between the teachers and the various students on out-of-school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone or email with those out-of-school suspended/expelled students and their parents.

G. Education Services During Short-Term Suspensions.

(1) For short-term suspensions, the local board of education shall inform all schools under their jurisdiction:

(a) To provide all students who receive short-term suspensions with the opportunity to complete the academic work they miss during the suspension period without penalty; and

(b) To provide all students who receive short-term suspensions, and their parents or guardians, with the contact information for a school employee who will be responsible for ensuring that the requirement described in § G(1)(a) is met.

(2) All other aspects of the process for suspended students receiving missed assignments, completing missed assignments, and making up tests shall be identical with each school's established policy and practice for makeup work in the event of any other excused absence.

H. Intervention and Support.

(1) School personnel shall provide intervention and support to address the student's behavior if the student is:

(a) Suspended under § C(1)(b) of this regulation; or

(b) Enrolled in a public prekindergarten program, kindergarten, first grade, or second grade and:

(i) Is disruptive to the school environment; or

(ii) Commits an act that would be considered an offense subject to suspension but for the student's grade.

(2) Intervention and support provided under § H(1) of this regulation includes:

(a) Positive behavior interventions and supports;

(b) A behavior intervention plan;

(c) A referral to a student support team;

(d) A referral to an individualized education program team; and

(e) A referral for appropriate community-based services.

(3) The school system, to the best of its ability, shall remedy the impact of a student's behavior on school climate through appropriate intervention methods including restorative practices.

COMAR 13A.08.01.11 (2018).

POLICY	BOARD OF EDUCATION OF FREDERICK COUNTY, MARYLAND
SUSPENSION AND EXPULSION	SECTION 408
408.1 Graduation Activities 408.2 Notification of Charges 408.3 In-School Suspension 408.4 Suspension of Bus Transportation	Adopted: 11/2/75 Amended: 3/22/06

The superintendent shall establish rules for the effective administration of the provisions of Maryland law pertaining to the suspension and expulsion of students.

408.1 Graduation Activities

Suspended students who are high school seniors may not participate in graduation activities.

408.2 Notification of Charges

Prior to suspension, a student shall receive oral or written notice of the charges and, if the student denies the charges, he/she shall have the right to an explanation of the evidence supporting the charges and an opportunity to present his side of the story. A student whose presence in school poses a continuing danger to persons or property or an ongoing threat to disrupt the academic process may be immediately removed from school, provided that the notice and hearing required by this section be provided as soon as possible.

408.3 In-School Suspension

In order to address and modify inappropriate student behavior, in-school suspension may be used as a corrective disciplinary tool at the discretion of the school administration.

408.4 Suspension of Bus Transportation

School principals have the authority to suspend the bus riding privileges of students without suspending students from school when disciplinary action related to inappropriate behavior on school buses warrants this measure.

FREDERICK COUNTY PUBLIC SCHOOLS	Reg. No. 400-04
Subject: SUSPENSION AND EXPULSION	Issued: 4/6/78
Preparing Office: Office of the Superintendent	Amended: 11/15/17

I. Policy 408

II. Procedures

Definitions

A. Confer: A discussion or dialogue by any means, for example, telephone, electronic mail, or face-to-face meeting, where the views of the teacher are communicated and considered.

B. Expulsion: The exclusion of the student from the student's regular school program for forty-five (45) school days or longer, which only may occur under the following circumstances:

1. The Superintendent or his/her designee has determined that the student's return to school prior to the completion of the expulsion period would pose an imminent threat of serious harm to other students or staff;
2. The Superintendent or his/her designee limits the duration of the exclusion to the shortest period practicable; and
3. The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.

C. Extended Suspension: The exclusion of a student from a student's regular program for a time period between eleven (11) and forty-four (44) school days, which only may occur under the following circumstances:

1. The Superintendent or his/her designee has determined that:
 - a. The student's return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff; or
 - b. The student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted.
2. The Superintendent or his/her designee limits the duration of the exclusion to the shortest period practicable; and
3. The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.

D. In-school Suspension: The removal within the school building of a student from the student's current education program for up to, but not more than, ten (10) school days in a school year for disciplinary reasons by the school principal.

E. Long-term Suspension: The removal of a student from school for a time period between four (4) and ten (10) school days for disciplinary reasons by the principal.

F. Out-of-School Suspension: The removal of a student from the school, by the principal, for up to ten (10) school days for disciplinary reasons.

G. Principal: The principal of a school or the principal's designee.

H. Restorative Justice: A system of justice that focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.

I. Short-term Suspension: The removal of a student from school for up to, but not more than, three (3) school days for disciplinary reasons by the principal.

J. Suspension: The application of extended suspension, in-school suspension, short-term suspension, or long-term suspension.

III. Discipline of Students

A. Frederick County Public Schools (FCPS) Regulation 400-08 *Discipline* outlines a range of consequences imposed for inappropriate student conduct. The procedures outlined below identify the process of imposing those consequences.

B. Procedures to be Followed When a Student is Suspended or Expelled

1. In-School Suspension

a. An in-school removal is not considered a day of suspension as long as the student is afforded the opportunity to continue to:

- i. Appropriately progress in the general curriculum;
- ii. Receive the special education and related services specified on the student's Individualized Education Plan (IEP), if the student is a student with a disability in accordance with COMAR 13A.05.01;
- iii. Receive instruction commensurate with the program afforded to the student in the regular classroom; and
- iv. Participate with peers as he/she would in his/her current education program to the extent appropriate.

b. A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective.

c. The school principal shall provide the student's parents or guardian with written notification of the in-school suspension action taken by the school.

- d. After ten (10) days of cumulative in-school suspension, the student, the student's parents or guardian, and the principal shall confer.
 - e. The student's school of current enrollment shall make provision for the student's education during the period of in-school suspension.
 - f. The student will be provided access to a behavioral program of positive interventions to address the causes of misbehavior as part of the in-school suspension. Examples of positive interventions include those services that are provided by an assistant principal, school counselor, student intervention specialist or pupil personnel worker.
2. Suspension for Not More Than Ten (10) Days for Students 3rd Grade through 12th Grade
- a. Each principal of an FCPS school may suspend for cause, for not more than (10) school days, any student in the school who is under the direction of the principal in accordance with the FCPS approved disciplinary guidelines.
 - b. The student or the student's parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period.
 - c. At or before the conference, the student shall receive oral or written notice of the offense that the student is suspected to have committed and shall be provided an opportunity to offer a response. If the student elects not to offer a response or denies the charges, the student has the right to an explanation of the evidence supporting the charges and the principal can proceed with issuing an appropriate disciplinary consequence in accordance with FCPS Regulation 400-08.
 - d. A student whose presence in school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be removed immediately from school, if the notice and conference required by this subsection is provided as soon as possible.
 - e. If the principal finds that an extended suspension or expulsion is warranted, the principal immediately shall report the matter in writing to the Superintendent.
3. Suspension for More Than Ten (10) Days or Expulsion for Students 3rd Grade through 12th Grade
- a. At the request of a principal, the Superintendent or his/her designee may suspend a student for more than ten (10) school days or expel the student.
 - b. Upon receipt of a written report from a principal requesting an extended suspension or expulsion, the Superintendent or his/her designee shall promptly make a thorough investigation of the matter.
 - c. If, after the investigation, the Superintendent or his/her designee finds that an extended suspension, an alternative placement, or an expulsion is warranted, the Superintendent or his/her designee shall promptly notify the parent or guardian in writing.

- d. The Extended Suspension/Expulsion (ESE) process as previously described shall be completed by the tenth (10th) school day of the initial suspension. If additional time is necessary to complete the process, either because of delays due to parent or guardian unavailability or due to the complexity of the investigation, the student shall be allowed to return to school, unless the Superintendent or his/her designee determines that the student's return to school would pose an imminent threat of serious harm to other students or staff.
- e. If the student is not allowed to return to school after the tenth (10th) day, the Superintendent or his/her designee shall notify the student and the parent or guardian within twenty-four (24) hours and provide the reasons for the delay in the process and the denial of reentry and send a copy of the notice to the State Superintendent of Schools.
- f. If, after the conference, the Superintendent or his/her designee finds that an extended suspension or an expulsion is warranted, the student or the student's parent or guardian may appeal to the Board of Education within ten (10) calendar days after the determination.

C. Procedures to be Followed When a Parent or Guardian of a Student Appeals a Suspension of More Than Ten (10) Days or an Expulsion under Section B, Paragraph 3

1. If an appeal is filed, the Board of Education shall have forty-five (45) days from the date the appeal was received to hear the appeal and issue a decision. This timeline period may be extended if the parent, guardian or his/her representative requests additional time; and
2. If, due to extraordinary circumstances or unusual complexity of a particular appeal, the Board of Education determines that it will be unable to hear an appeal and issue a decision within forty-five (45) days, it may petition the State Superintendent for an extension of time.
3. The student or the student's parent or guardian or representative:
 - a. Shall be provided the school system's witness list and a copy of the documents that the school system will present at the hearing five (5) days before hearing; and
 - b. May bring counsel and witnesses to the hearing.
4. Unless a public hearing is requested by the parent or guardian of the student, a hearing shall be held out of the presence of all individuals except those whose presence is considered necessary or desirable by the Board of Education.
5. The appeal to the Board of Education does not stay the decision of the Superintendent.
6. The decision of the Board of Education is final.

D. Educational Services and/or the Appropriate Behavioral Support Services to be Made Available to a Suspended or Expelled Out-of-School Student

In order to establish accountability and keep suspended or expelled students on track with classroom work, as is reasonably possible, the Board of Education shall institute educational services that at a minimum provide that:

1. Each student suspended or expelled out-of-school who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher, which shall be reviewed and corrected by teachers on a weekly basis and returned to the student; and
2. Each principal shall assign a school staff person to be the liaison between the teachers and the various students on out-of-school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone or email with those out-of-school suspended/expelled students and their parent or guardian.
3. A principal or his/her designee will inform the parent or guardian of the name and contact information for the designated staff liaison at the time the principal or his/her designee informs the parent or guardian about the suspension.

E. Suspension and Expulsion of Students Prekindergarten through 2nd Grade

1. Except as provided in paragraph 2 below, a student enrolled in a prekindergarten program, kindergarten, 1st grade, or 2nd grade may not be suspended or expelled from school.
2. A student described in paragraph 1 above may only be:
 - Expelled from school if required by federal law; or
 - Suspended for not more than 5 school days per incident if the school administration, in consultation with a school psychologist or other mental health professional, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports.
3. The principal or school administration shall promptly contact the parent or guardian of a student suspended or expelled.
4. Intervention and Support by School

Intervention and support will be provided to address the student's behavior if the student is:

- Suspended; or
- Enrolled in a prekindergarten program, kindergarten, 1st grade, or 2nd grade and (a) is disruptive to the school environment; or (b) commits an act that would be considered an offense subject to suspension but for the student's grade.

5. Intervention and support provided includes:

- Positive behavior interventions and supports;
- A behavior intervention plan;
- A referral to a student support team;
- A referral to an individualized education program team; and
- A referral for appropriate community-based services.

6. Remedying Impact of Behavior

The appropriate administrator shall remedy the impact of a student's behavior through appropriate intervention methods that may include restorative practices.

"Restorative practices" means practices conducted in a whole-school ethos or culture that supports peacemaking and solves conflict by building a community and addressing harm in a school setting and that:

- Are conducted by trained staff;
- Focus on repairing the harm to the community through dialogue that emphasizes individual accountability; and
- Help build a sense of belonging, safety, and social responsibility in the school community.

Consultation with the school psychologist or other mental health professional shall be documented and shall include consideration of interventions and supports that may reduce or eliminate the threat.

F. Procedures to be Followed to Comply with Maryland State Board of Education (State Board) Reporting Requirements With Regard to Arrests on School Premises and Delinquent Acts

1. Delinquent acts are offenses committed by a person who is under eighteen (18) years old which would be crimes if committed by an adult. School officials shall promptly report to the responsible law enforcement agencies all delinquent acts coming to their attention whether occurring on or away from the school premises which involve students attending the particular school.
2. Delinquent acts do not include conduct which has been traditionally treated as a matter of discipline to be handled administratively by the particular school, except that all conduct of a serious nature should be promptly reported to the parents or guardian concerned.
3. Beginning in the 2015-2016 school year, the Board of Education shall report data to the Maryland State Department of Education (MSDE) on school arrests and referrals to law enforcement agencies or to the juvenile justice system in a form and manner developed by MSDE, in consultation with local school systems, and approved by the State Board.

G. Procedures to be Followed to Collect, Monitor, Analyze and Report Student Discipline Data

1. The Superintendent, or his/her designee, shall collect data on all student suspensions and expulsions each school year.

- 2. Suspension data shall be analyzed according to disciplinary incident and length of suspension. Data shall also be disaggregated according to racial subgroup and service category.
 - 3. Beginning with the 2015-2016 school year, the Board of Education shall report all suspension data to MSDE. The Superintendent shall report suspension data to all principals, to inform school based decision-making and professional development for school staff.
- H. Procedures to be Followed to Provide Ongoing Professional Development for School System Staff and School Resource Officers

The director of Student Services is responsible for coordinating ongoing staff professional development.

I. Corporal Punishment

Corporal punishment may not be used to discipline a student in a public school in the State of Maryland.

J. Restitution

Unless the student is referred to the Department of Juvenile Services, if a student violates a state or local law or regulation and during or as a result of the commission of that violation damaged, destroyed, or substantially decreased the value of school property or property of another that was on school property at the time of the violation, as part of a conference on the matter with the student, the student's parent or guardian, and other appropriate individual, the principal shall require the student or the student's parent or guardian to make restitution. The restitution may be made in the form of monetary restitution not to exceed the lesser of the fair market value of the property, or \$2,500, or by the student's assignment to a school work project, or both.

Legal References: Maryland Annotated Code, Education Article, Section 7-306(b)(1)
 Maryland Annotated Code, Education Article, Section 7-305.1
 Code of Maryland Administrative Regulations (COMAR) 13A.05.01, 13A.08.01.11A,
 13A.08.01.15

Approved:

original signed by

Theresa R. Alban
 Superintendent

FREDERICK COUNTY PUBLIC SCHOOLS	Reg. No. 400-08
Subject: DISCIPLINE	Issued: 5/22/78
Preparing Office: Office of the Superintendent	Amended: 10/28/20

I. Policy 403

Note: For purposes of this regulation for the 2020-2021 school year, Frederick County Public Schools (FCPS) views virtual learning as an extension of the FCPS classroom. As such, all expectations of behavior, interventions, and consequences apply to the virtual learning environment. Disciplinary consequences may result in a student being restricted from sharing audio and video in the virtual classroom, mandatory parent conferences, restorative conferences, delayed consequences such as detention, or suspension as appropriate, and loss of privileges that could occur later in the school year in the event extracurricular events and school functions are offered.

With the exception of approved documented medical exceptions, students must wear face coverings on school buses and when attending school events in person during the COVID-19 pandemic. Due to safety risks, failure to do so may result in restriction from in school instruction to receiving virtual instruction.

Note: Exceptions to disciplinary actions for prekindergarten through grade 2 are outlined in FCPS Regulation 400-04 Suspension and Expulsion

II. Procedures

A. Philosophy

All schools will have a safe, positive, healthy, and inviting environment: one that fosters respect, responsibility, trustworthiness, fairness, caring, and good citizenship. It is the responsibility of everyone associated with the school—staff, students, parents, and members of the community—to teach, promote and model self-discipline in order to preserve the quality of our educational environment.

Frederick County Public Schools' (FCPS) discipline philosophy is based on the goals of fostering, teaching and acknowledging positive behavior. Discipline is designed to teach appropriate behavior, encourage more effective habits of conduct, and promote the development of self-discipline.

Consistent with the belief that we continuously teach by example and that training is important in the development of good citizens, the school system adopts the principles of cultural competency, fairness, equity, continuous improvement and conflict resolution. In order to maintain a positive, safe, and inviting school climate where learning and citizenship will occur, all individuals will be expected to exemplify this philosophy.

B. Process

It is expected that prior to imposing disciplinary measures, positive behavioral interventions and supports should be considered as practicable.

Students will be subject to the established disciplinary regulations for any incident occurring on any property owned by the Frederick County Public School system, before, during, and after school hours and also while attending school-sponsored activities on or off school property. Students may also be disciplined for possessing prohibited items in vehicles located on school property

Disciplinary interventions to be used by all schools are listed in Section D of this regulation. While school principals/designees have discretion in imposing discipline based upon the facts of the investigation and the

needs of the students, long term suspensions and requests for extended suspensions/expulsions should be considered as last resort options. With the exception of students enrolled in prekindergarten through grade 2, school principals or designees may suspend students for cause for not more than 10 school days. Students enrolled in prekindergarten through grade 2 may be suspended for up to five school days per incident if there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports (**consultation with school psychologist or other mental health professional required**). All students must receive due process and be aware of the charges against them. A parent/guardian conference must be held in the case of an out of school suspension. Some of the violations are criminal offenses and, if so, appropriate legal authorities may be informed.

In the event of an out of school suspension, school staff are encouraged to have a re-entry conference to provide transition and school connection supports to the suspended student as he/she returns to the educational setting.

(A school principal/designee reserves the right to temporarily secure an electronic device during a student discipline investigation to ensure integrity of the fact-finding process.)

C. Documentation

All administrative imposed discipline will be documented in the student information system. All discipline that results in suspension (for 1 or more days) will be maintained as part of the individual student's permanent record. The discipline record will consist of a description of the student's behavior that resulted in disciplinary action and a copy of the correspondence sent to the parent(s) informing them of the student's suspension or expulsion.

D. Disciplinary Measures

	Teacher	School Principal/Designee
Activity suspension ¹	X	X
Behavior contract	X	X
Behavior intervention plan		X
Bus suspension		X
Check- in/check-out	X	X
Class removal	X	X
Class suspension		X
Community service		X
Conflict resolution	X	X
Detention-lunch or after school	X	X
Functional behavior assessment		X
In-school removal	X	X
In-school suspension		X
Long-term out of school suspension ²		X
Loss of privileges	X	X
Parent-administrator conference		X
Parent-teacher conference	X	

	Teacher	School Principal/Designee
Parent-teacher-student conference	X	
Parent-teacher-administrator conference	X	X
Parent-teacher-student-administrator conference	X	X
Peer mediation	X	X
Probation		X
Recommendation for extended suspension/expulsion		X
Refer to agency		X
Refer to alternative program ³		X
Refer to counselor	X	X
Refer to law enforcement		X
Removal from extracurricular activities		X
Restitution		X
Saturday school		X
Short-term out of school suspension ²		X
Student Support Team referral	X	X
Suspension pending parent conference		X
Teacher-student conference	X	
Warning	X	X

¹ By the teacher primarily responsible for the activity

² By the administrator for a period up to ten (10) days; requests for extended suspension or expulsion must be approved by the Superintendent or a designated representative.

³ In addition to the established alternative programs, the deputy superintendent or his/her designee in certain circumstances may approve the development of an alternative educational program(s) that incorporate instruction provided in the home or other community facility as a means of delivering ongoing instruction to students.

E. Definitions

Check-In/Check-Out

- Selected students have an informal check-in and check-out with a designated staff member.

Community Service

- A service performed by a student for the school or the community in response to a behavioral issue.

Confer

- A discussion or dialogue by any means (telephone, electronic mail, or a face-to-face meeting) where the views of the teacher are communicated and considered.

Due Process

- Provide notification of the charges and an opportunity to respond.

Possession

- Possession includes, but is not limited to, having control over, or the right to use, even if the control or right is shared with others. Possession does not require ownership.

Constructive Possession

- Constructive possession of alcohol and drugs/drug paraphernalia is defined as failure to remove oneself as quickly and safely as possible from a person, area, or situation when the student is aware that drugs/alcohol are illegally possessed.

Restitution

- Maryland law requires restitution in the form of monetary reimbursement (up to \$2500) or school work projects performed by students or their parents when the student damages school or personal property. (See FCPS Reg. 400-75.)

Search and Seizure

- A school administrator may make a search of a student, his/her locker, automobile, or personal property when the administrator has reasonable belief that the student has in his/her possession an item, the possession of which is a criminal offense, violates civil laws, or violates school rules. (See FCPS Reg. 400-59)

Probation

- A defined period of time for a student to change undesirable behavior and still remain in the school with behavioral goals, set forth by the principal/designee.

In-School Removal

- Temporary removal of a student from class; not considered suspension as long as the student is afforded the opportunities to:
 - a. Appropriately progress in the general curriculum.
 - b. Receive the special education and related services specified on the student's IEP, if the student is a student with a disability.
 - c. Receive instruction commensurate with the program afforded to the student in the regular classroom.
 - d. Participate with peers as they would in their current education program to the extent appropriate.

In-School Suspension

- Removal by the school principal of a student from the student's current education program to another location within the school building for up to ten (10) school days in a school year for disciplinary reasons.*

Suspension Pending Parent Contact

- Temporary removal of a student from classes and/or activity by the principal until the school administrator has conferred with the parent.

Short-Term Suspension

- Removal of a student from school, by the school principal for a time period of not more than three (3) school days, for disciplinary reasons.*

Long-Term Suspension

- Removal of a student from school, by the school principal, for a time period of four (4) to ten (10) school days, for disciplinary reasons.*

Extended Suspension

- Temporary removal by the Superintendent or Superintendent's designee of a student from school for eleven (11) to forty-four (44) school days for disciplinary reasons. The school system will provide the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to a regular academic program.

Expulsion

- Removal of a student from the student's regular school program, for a specified period of time of forty-five (45) days or longer, as determined by the Superintendent/designee with comparable educational services and appropriate behavioral support services to promote successful return to a regular academic program. Expulsions from school are prohibited for students enrolled in prekindergarten through grade 2, except in instances where expulsion from school is required by federal law.

*(1) Each student suspended or expelled out of school who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher, and if completed and returned shall be reviewed and corrected by teachers on a weekly basis and returned to the student; and

- (2) Each principal shall assign a school staff person to be the liaison between the teachers and any student on out-of-school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone and or email with those out-of-school suspended/expelled students and their parents.; and
- (3) To provide all students who receive short-term suspensions and their parents or guardians with contact information for a school employee who will be responsible for ensuring that the requirement is met.

<i>Tiers of Interventions</i>	
<i>TIER 1</i>	<p><i>Classroom, Support and Administrative Responses</i></p> <ul style="list-style-type: none"> *Check-in/check-out *Classroom based response (Verbal correction, written reflections, apology, etc.) *Conflict resolution *Detention *Development of behavior contract *Formal/informal school based meeting *Parent outreach *Peer mediation *Referral to mental health services *Referral to School Counselor *Re-teaching of classroom/school rules and expectations *Student Support Team referral *Teacher/Parent conference *Warning
<i>TIER 2</i>	<p><i>Support, Removal and Administrative Responses</i></p> <ul style="list-style-type: none"> *Bus suspension *Check-in/check-out *Class removal *Community service *Detention *Development of behavior contract *Development of Behavior Intervention Plan *Functional Behavior Assessments *In school removal *In school suspension *Loss of privileges *Parent/Administrator conference *Probation *Referral to substance abuse counseling services *Referral to community based agencies *Referral to mental health services *Removal from extracurricular activities *Restitution *Saturday school *Student Support Team Referral *Teacher/parent/administrator conference *Temporary removal from class
<i>TIER 3</i>	<p><i>Support, Removal, Administrative and Exclusionary Responses</i></p> <ul style="list-style-type: none"> *Suspension pending parent conference *Short term out of school suspension *Long term out of school suspension *Extended out of school suspension *Expulsion

F. Respect for the Personal Rights of Others

Caring, Respect, Responsibility

All of us have a responsibility to treat one another with courtesy and respect. If students become angry or upset, school personnel will educate students regarding the resources available to them in school to reach a peaceful resolution to their problems.

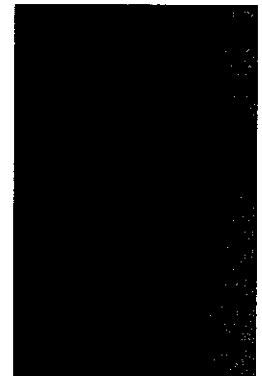
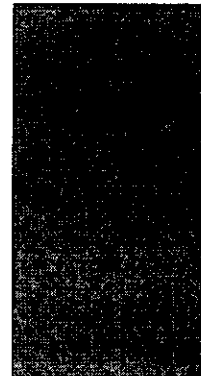
These resources include: classroom teachers, school counselors, student support teachers, and administrators. The purpose of discipline is to teach valuable behavior skills useful throughout one's lifetime. After exhausting positive behavior intervention and supports provided by school personnel, the following consequences will occur.

NOTE: A mandatory parent conference is required for any violation in this section. Where appropriate, the use of conflict resolution and peer mediation techniques should be used. It may also be necessary to make a law enforcement referral.

KEY	TIER 1		
Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.	Classroom, Support and Administrative Responses		
Assault The unlawful attempt, coupled with a present ability, to commit a violent physical attack upon a person. This includes threatening language or gestures without actually touching another person.			
Sexual Assault Physical sexual attack upon another person.			
Battery Any willful and unlawful use of force or violence upon another person			
Fighting Mutual aggression in which both parties have contributed to the situation by verbal and/or physical action.	X		
Verbal Abuse Disrespectful and/or inappropriate language directed toward another person	X		
Hazing Any action taken or situation created that causes or is reasonably likely to cause harassment, physical harm, serious mental or emotional harm, extreme embarrassment, ridicule, or loss of dignity to another person for purposes of initiation into a student organization or activity.			
Bullying/Intimidation A pattern of behavior which results in a person feeling intimidated or harassed by another. Note: For purposes of this regulation, bullying may also include those offenses, which occur through electronic mechanisms (i.e. cyber bullying) when such behavior impacts the health or safety of students and/or proves disruptive to the educational environment. Cross-reference FCPS Regulation 400-48			
Sexting Using an electronic communication device to send and/or possess text or email that includes nudity and/or sexually suggestive images. Parents of the students will be contacted. Because sexting may be deemed a form of child pornography, administrators are advised to contact law enforcement prior to investigating content on the electronic device.	X		

KEY
Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.
Gang Activity Any group of three (3) or more persons who share an ongoing relationship and whose purposes include the commission of illegal acts or acts in violation of school system regulations. Students who are in violation will be subject to disciplinary action in addition to applicable criminal and civil penalties. Refer to regulation 400-87 for more specific information.

TIER 1 Classroom, Support and Administrative Responses
X



Note: Special education students and students enrolled in prekindergarten through grade 2 are disciplined in accordance with provisions of state and/or federal law.

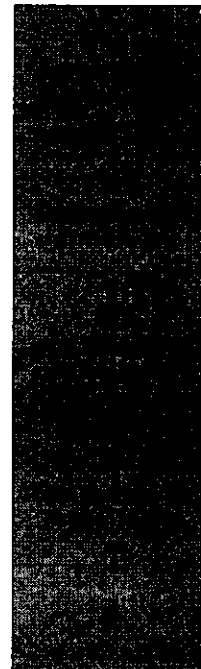
G. Responsibility and Respect for Property

Fairness, Citizenship, Trustworthiness

All of us have the right to expect our property to be secure, and all of us have the responsibility to respect the property of others. This includes property belonging to students, staff, and the Board of Education. Should a student choose not to respect others' rights or property, the following consequences will occur.

KEY
Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.
Extortion The obtaining of property from another, with or without that person's consent, by a wrongful use of force, fear, or threat. The parent or guardian shall be liable for all damages so caused by the student.
Theft The unlawful taking of property or obtaining property by false pretense. The parent or guardian shall be liable for all damages so caused by the student.
Destruction of Property Willfully cutting, defacing, or otherwise injuring in any way any property, real or personal, belonging to the school district or another person. The parent or guardian shall be liable for all damages so caused by the student
Unauthorized Access to Computer Networks Hacking (to gain illegal or unauthorized access to a file or network) or use of another user's account. The student's computer privileges may be revoked

TIER 1 Classroom, Support and Administrative Responses
X (Parent contribution as required by law)



Note: Special education students and students enrolled in prekindergarten through grade 2 are disciplined in accordance with provisions of state and/or federal law.

H. Responsibility for Maintaining Public Decency and Ethical Behavior

Trustworthiness, Caring, Respect

The nature of the school experience demands the highest standards of integrity on the part of all involved. Students have the responsibility to conduct themselves in a manner that demonstrates respect for themselves,

each other, the school staff, and the school community. Positive values and attitudes are imperative for student success in the school community as well as in life. Students who choose not to behave in this manner face the following consequences:

<p style="text-align: center;">KEY</p> <p>Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.</p>	<p style="text-align: center;">TIER 1 Classroom, Support and Administrative Responses</p>		
<p>Gambling The playing of a game of chance for stakes.</p>	X		
<p>Plagiarism Deliberately presenting work, words, ideas theories, etc. derived in whole or in part from a source external to the student as though they are the student's own efforts.</p>	X		
<p>Cheating Disseminating or receiving answers, data or other information by any means other than those permitted by the teacher as part of any academic exercise.</p>	X		
<p>Vulgarity/Profanity Language that is inappropriate, disgusting, or repulsive to the senses.</p>	X		
<p>Sexual Activity¹ Inappropriate behavior of a sexual nature, including indecent exposure, consensual sex, and other sexual activity not identified as sexual assault or harassment.</p>	X		
<p>Harassment/Intimidation Intentional negative actions on the part of one or more students in regard to race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socio-economic status, familial status, physical or mental ability or disability, and that interfere with a student's ability to participate in or benefit from the school's educational programs. Cross-reference FCPS Regulation 400-48.</p>	X		
<p>Sexual Harassment¹ Unwelcome sexual advances, requests for sexual favors, and/or other inappropriate verbal, written, or physical conduct of a sexual nature, directed toward others.</p>	X		

A teacher may impose a consequence of disallowing a grade in whole or in part, and/or making an office referral.

A teacher may impose a consequence of disallowing a grade in whole or in part, and/or making an office referral.

¹ Offenders will be required to participate in an educational activity. This activity, designed by the school administrator, counselor, or school team, and approved by the building principal, is intended to educate, sensitize, and instill openness, tolerance, and non-discrimination. Cross-reference FCPS Regulation 400-48.

Note: Special education students and students enrolled in prekindergarten through grade 2 are disciplined in accordance with provisions of state and/or federal law.

I. Responsibility for Maintaining Public Health and Safety

Citizenship, Responsibility, Caring

The school community considers the health and safety of our students extremely important. Violations in this area are not only a threat to the individual, but also the school community. Therefore, in order to protect the individual student and the total school environment, health and safety violations are considered serious.

The police shall be notified when a student is in possession of a firearm or weapon or is distributing, using, or believed to be under the influence of drugs, alcohol, or inhalants as described in this section.

Any student who is involved with dangerous drugs or alcohol must schedule a substance abuse assessment with an appropriate provider or agency before returning to school. A school-based administrator may refer a student to the Frederick County Health Department for assessment using the referral form attached to this regulation.

<p align="center">KEY</p> <p>Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.</p>	<p align="center">TIER 1 Classroom, Support and Administrative Responses</p>		
<p>Drugs, Narcotics, Controlled Dangerous Substances, Inhalants or Alcohol ** Possession, use, being under the influence to any degree, or being party to an actual or attempted transaction of any of the substances which are or have the appearance of drugs (prescription or non-prescription used outside of their legal medical purposes); narcotics; controlled dangerous substances; drug paraphernalia; inhalants; or alcohol. Steroids are considered a drug.</p>			
<p align="center">Note: Athletes/student leaders are ineligible to participate in practices and/or scheduled activities</p>			
<p>Distribution Dispensing, conspiring, or packaging to dispense, with or without the exchange of money, drugs, narcotics, controlled dangerous substances, drug paraphernalia, inhalants, alcohol, or any substance having the appearance of these items.</p>			
<p>Tobacco * ** Possession or use of any type of tobacco product.</p> <p>Tobacco products include, but are not limited to, any substance containing tobacco, including cigarettes, smoking tobacco, snuff, chewing tobacco, smokeless tobacco, or any vaporizing device with liquid nicotine (e.g. electronic cigarettes, cigars, pipes)</p>	<p>X</p>		
<p>Weapon Possession ** Possession of any instrument that the school administrative staff deems could cause or is intended to cause bodily harm. This category could include but is not limited to a knife, brass knuckles, BB gun, pellet gun, or look-alike weapon.</p>	<p>X</p>		
<p>Firearm Possession ** For purposes of definition under this regulation, a firearm is defined under Section 921(a) of Title 18 of the U.S.C.</p> <p>Possession of a firearm on school property is inclusive of vehicles parked on school property.</p>			
<p>Note: The Federal Gun Free Schools Act of 1994 and §7-305 of the Education Article-Maryland Annotated Code mandate that each local educational agency remove from school for a period of not less than one (1) year any student who is determined to have brought a firearm to school. Exceptions to the year-long rule can be made on a case-by-case basis by the Superintendent. However, special regulations and procedures for students identified under IDEA or 504 shall be followed.</p>			

KEY	TIER 1		
Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.	Classroom, Support and Administrative Responses		
Serious Acts by Student Leaders Students holding leadership positions or representing the school through academics, athletics, and/or activities, such as a club or organization, who commit an offense classified as a serious unlawful act in the community or a serious suspendable offense.			
		Student may be removed from the position. Arrest, conviction, or legal judgment is not required.	
Violent Offenses Off Campus "Violent offenses" include, but are not limited to, committing or attempting to commit murder, rape, or assault with a deadly weapon. Cross Reference FCPS Regulation 400-60			
		If a student is charged with committing an act of violence off of school property or during non-school hours, an assessment team will, as soon as practicable, convene to review the student's behavior and condition. The assessment team will promptly report, in writing, to the Superintendent its conclusions and recommendations regarding the student and the most appropriate educational placement or program. During this assessment period, and where appropriate, the student shall receive home teaching. Home teaching will not be provided during school closings.	

Note: Special education students and students enrolled in prekindergarten through grade 2 are disciplined in accordance with provisions of state and/or federal law.

Student leaders are defined as students who are involved in extracurricular, co-curricular, clubs, or student representative activities.

Note: VIOLATIONS LISTED BELOW SHALL RESULT IN THE NOTIFICATION OF THE FIRE MARSHAL

KEY	TIER 1		
Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.	Classroom, Support and Administrative Responses		
Explosive Devices and Fireworks The possession or detonation of any explosive device or fireworks.	X		
Bomb Threat False notification of impending explosion or presence of a bomb			
Arson/Fire Attempting to set, aiding in setting, or setting fire to a building or other property.			
False Fire Alarm Illegally activating a fire alarm or issuing a false fire alarm.	X		
Discharging Fire Extinguishers Willfully and maliciously discharging a fire extinguisher.			

J. Respect for School Administrative Procedures

Fairness, Citizenship, Responsibility

In a school, rules are established to protect the rights of everyone and to maintain a level of order that encourages academic and personal growth and success.

The overwhelming majority of students in Frederick County attend school daily, are respectful, and are attentive to those in positions of authority and, if they make a mistake, are honest and contrite about their error and successfully take the steps necessary not to make the same mistake again.

Students who choose not to behave in this manner face the following consequences:

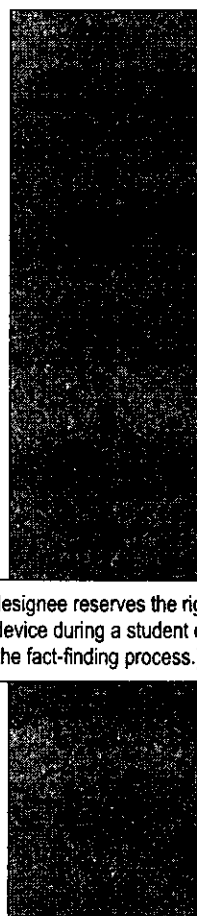
KEY	TIER 1 Classroom, Support and Administrative Responses		
Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.			
Defiance of Authority The willful refusal or failure to follow a legal direction/order given by a staff member or school resource officer.	X		
Continued Willful Disobedience Repeated refusal or failure to follow school rules and regulations.			
Disruptive Behavior Actions which interfere with the effective operations of the school.	X		

Note: Special education students and students enrolled in prekindergarten through grade 2 are disciplined in accordance with provisions of state and/or federal law.

KEY	TIER 1 Classroom, Support and Administrative Responses		
Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.			
False Identification Refusal to give identification or giving false identification when requested to do so by a staff member or school resource officer.	X		
Forgery The false making or the material altering of a document with the intent to defraud.	X		
Leaving Campus Leaving campus during school hours without proper clearance.	X		
Misbehavior on School Buses Bus drivers are responsible for the orderly conduct of students while they are on the school bus. Continued disorderly conduct or severe misbehavior shall be sufficient reason for the principal to deny the student transportation on a school bus.	X		
Student Attire Students will adhere to dress code provisions as outlined in Board Policy 439.	X		
Violation of Suspension Being present on a school campus or at a school activity while on suspension.			

KEY
Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.
Trespassing Unauthorized presence on school property
Refusal to Allow Search and Seizure Willful refusal to cooperate with a school administrator at any time during a search of the student's person or property.
Class Cutting Absence from class without permission.
Truancy Absence from school without permission. Chronic offenders will be referred to a pupil personnel worker and may receive court intervention.
Cell Phones and Other Portable Electronic Devices Student possession or use of portable electronic devices shall not: <ul style="list-style-type: none"> a. Disrupt the learning environment or approved school activity. b. Pose a threat to academic integrity. c. Violate confidentiality or privacy rights of others during the school day as well as during after-school activities or the safe transportation of students. d. Be used to take or transfer any image or recording at any time on school premises without teacher permission. e. Create safety concerns.
Note: Cross reference FCPS Regulation 400-18

TIER 1 Classroom, Support and Administrative Responses
X
X
X
X

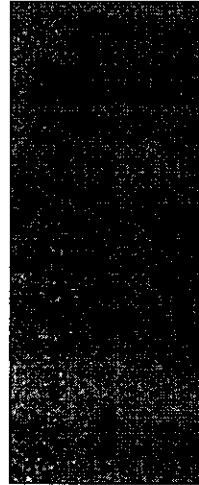


(* A school principal/designee reserves the right to temporarily secure an electronic device during a student discipline investigation to ensure integrity of the fact-finding process.)

Note: Special education students and students enrolled in prekindergarten through grade 2 are disciplined in accordance with provisions of state and/or federal law.

KEY
Lowest tiers of intervention should be considered first, if practicable followed by more intensive consequences.
Reckless Driving Driving on school property in such a manner as to endanger persons or property. Offenders may have their driving privileges revoked by the school.
Parking Parking in an unauthorized area on school property. The student's parking privileges may be revoked.
Computer Usage Unauthorized use of computers or use that violates the acceptable use regulation (400-73). The student's computer privileges may be revoked.

TIER 1 Classroom, Support and Administrative Responses
X
X



NOTE: A coach or activity supervisor cannot establish rules more or less restrictive than those placed in policy and procedures. Coaches or supervisors may enforce other rules approved by the principal if placed in writing and signed by the student and parent.

NOTE: Special education students and students enrolled in prekindergarten through grade 2 are disciplined in accordance with provisions of state and/or federal law.

**Parent conference at school is mandatory. **Refer to definition of Possession.*

Approved:

original signed by

Theresa R. Alban
Superintendent